

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

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

M. Baron Stanton, ...Appellant,

v.

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

and

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

v.

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

and

Sunset Lodge, LLC, ...Appellant,

v.

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

RECORD ON APPEAL
(Including Stipulation and Certificate of Counsel)

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INDEX

Orders, Decrees, and Decisions

Order in Sunset* Challenge II action granting motion to dismiss and for.....1 protection from discovery, dated April 22, 2021.	1
Form order in Sunset* Challenge II action denying motion to reconsider, ...14 Dated June 3, 2021.	14

Pleadings

Complaint in Sunset* Challenge II action, dated November 12, 2020.....18	18
Answer to Complaint in Sunset* Challenge II action, ...92 dated December 14, 2020.	92
Amended Complaint in Sunset* Challenge II action, dated 96 January 13, 2021.	96
Answer to Amended Complaint in Sunset* Challenge II action, ...237 dated March 3, 2021.	237

Transcripts

Transcript of Circuit Court hearing of motions 244 (including motions to dismiss and for protection from discovery) occurring April 1, 2021.	244
Transcript of Circuit Court hearing of motion 301 to reconsider occurring June 3, 2021.	301

Exhibits and Other Materials or Documents

Notice of abandonment in Sunset* Challenge II action, dated 345 February 10, 2021	345
Motion in Sunset* Challenge II action for protection from discovery, ...347 dated March 3, 2021.	347
Motion in Sunset* Challenge II action for judgment on the pleadings, ...361 dated March 5, 2021.	361

Id. (citing Seabrook v. City of Folly Beach, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999)). Sloan involved an appeal of a trial court ruling that a Freedom of Information Act challenge to the defendant's refusal to produce certain records became moot when the records were produced. As the Sloan Court explained,

In Seabrook, the plaintiffs brought an action against the city alleging that the city imposed conditions on a residential development for which it had no authority. 337 S.C. at 304, 523 S.E.2d at 462. After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. In reviewing the appeal this Court found that the issue was moot, and that although the scenario was capable of repetition, it did not evade review.

The instant case is analogous to Seabrook. Although Friends admits that the current situation is capable of repetition, it does not evade review. Should another person bring an action against Friends for a violation of FOIA and Friends fails to produce the requested documents, the Court will have the opportunity to review the issue.

Sloan at 27, 630 S.E.2d at 478. In other words, a matter susceptible to “evading review” is something which by its nature “usually becomes moot before it can be reviewed.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (citing S.C. Dep't of Mental Health v. State, 301 S.C. 75, 390 S.E.2d 185 (1990)).

As indicated in this analysis, South Carolina does not apply a “stringent” analysis of “voluntary cessation” of conduct as the plaintiff asserts is applied in federal appellate courts. *See* Plaintiff's Memo. in Opposition (discussing Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000)). The case of Jowers v. S.C. Dep't of Health & Env't Control, 423 S.C. 343, 815 S.E.2d 446 (2018), cited by plaintiff for the proposition that South Carolina follows federal mootness principles, is in fact a case involving separate doctrines of standing and ripeness. Instead, under South Carolina law, “[t]he utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.” Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

In the present action, any future attempt to condemn a similar easement would be inherently susceptible to judicial review and would invoke statutory attorney fee protections for the plaintiff. S.C. Code Ann. § 28-2-470 (“Proceedings to challenge condemnor’s right to condemn”); *see also* S.C. Code Ann. § 28-2-510(A) and (C) (providing for landowner recovery of attorney fees in successful challenge actions and withdrawn condemnation actions). This is distinguishable from a wastewater treatment plant sporadically violating effluent limitations, Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc., 528 U.S. 167 (2000), or a challenge to “[s]hort-term student suspensions [which], by their very nature, are completed long before an appellate court can review the issues they implicate.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996).

Under the second exception to the mootness doctrine, this case and the related actions are discrete disputes involving three properties and do not give rise to any “imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” Curtis at 568, 549 S.E.2d at 596. The third exception to mootness doctrine contemplates an appellate situation in which, because “a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” Id. As this matter is not on appeal, and does not involve review of any prior trial court decision, this exception is not relevant.

The Amended Complaint, in the prayer for relief, requests that “both the ‘Existing’ and the ‘New’ Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them.” For the reasons discussed above, this claim for relief is now moot as the New Notice has been withdrawn, and the plaintiff’s substantive objections underlying the request to quash the condemnation notice, relating to public necessity, “bad faith”, and similar issues, do not need to be addressed in this action. The pleading does not

contain a request for broad preclusive relief that would permanently bar the Town from any future similar condemnation action based on past “bad faith” or similar allegations. Without prejudice to the right of the plaintiff to later assert such a claim, the Court notes that no authority has been submitted for the proposition that a court has the power to grant that type of relief (with the exception of the theory of estoppel, as discussed below). As a general matter, municipalities are authorized to exercise the power of eminent domain in order to “become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose,” S.C. Code Ann. § 5-7-50.

Although the theory of estoppel was not included in the Amended Complaint, in connection with the subject motion counsel for the plaintiff did cite to an appellate opinion that found a golf course developer was entitled to an order estopping Santee Cooper from future attempts to condemn its property for an overhead high voltage transmission tower and line route. Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993) In Southern, the basis for estoppel was that the property owner had moved forward with plans to purchase and improve the property as a golf course, with expenses in excess of \$50 million, in reliance upon inaccurate representations from a Santee Cooper official that all powerline routes on the property would be buried. In this case, while the Amended Complaint includes allegations that the Town engaged in various types of procedural missteps, as well as “misrepresentation”, “bad faith”, and “fraud” in the process associated with the first and second condemnation notices, the Court is unable to see how the plaintiff’s factual allegations encompass the required elements of an estoppel claim, including the elements of reliance and prejudicial change in position.¹

¹ “The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the

Accordingly, the Amended Complaint and the single cause of action asserted in the pleading, a challenge to the "New Notice," are held to be moot and are hereby dismissed. This dismissal is without prejudice to any claims that the plaintiff may wish to assert at a later time and, likewise, without prejudice to any future condemnation attempts by the Town.

2.) Any claims related to the "Existing Challenge Action" are dismissed pursuant to Rule 12(b)(8), SCRC

The Amended Complaint also includes extensive discussion of the allegations underlying the plaintiff's separate prior "Existing Challenge Action." (*See generally, e.g.*, Paragraphs 81 through 212). Paragraph 182 specifically incorporates by reference the allegations from the Amended Complaint in the plaintiff's Existing Challenge Action. That current action is still pending between the same parties (subject to the recent summary judgment order, with a pending fee and/or cost petition by the plaintiff). Therefore, to the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to the separate prior condemnation notice and condemnation action, any such claim in this action is hereby dismissed without prejudice pursuant to SCRC 12(b)(8) on the ground that another action is already pending between the same parties for the same claim.

3.) The Court declines to grant plaintiff leave to conduct further discovery and then amend the pleadings to assert new claims for relief

At the hearing on this motion, counsel for the plaintiff expressed an interest in further amending the pleadings at an undetermined date to assert some new claims for relief. With the

party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. . . . As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993) (internal citations omitted).

exception of indicating a desire for an adjudication that the Town be forever barred from seeking a beach renourishment easement on the subject property, the plaintiff did not directly assert which specific causes of action or claims for relief would be raised in a Second Amended Pleading. Instead, counsel for the plaintiff generally referenced different types of claims, including claims for damages, that might be asserted after additional factual discovery.

The Court declines to grant plaintiff leave to amend the pleadings to assert new claims after conducting further discovery. A pleading “sets forth a cause of action, whether an original claim, counterclaim, [or] cross-claim[.]” Rule 8(a), SCRPC. While, generally speaking, additional claims may be permitted in an amendment after discovery of facts in the course of litigating an initial, properly stated cause of action, there is no basis under the South Carolina Rules of Civil Procedure for open-ended discovery in the absence of even a single pending claim. Allowing the action to move forward in that manner would be unfairly prejudicial to the Town, which would be subjected to the time and expense of participating in discovery without even knowing which claims might be at issue.

To the extent that such discovery may be intended to obtain evidence pertaining to potential claims for which the plaintiff presently lacks sufficient information or belief to even assert allegations, this only underscores the fact that such claims are beyond the scope of the facts pleaded in the Amended Complaint. The plaintiff must complete any additional desired factual investigation and assert any additional claims outside of this now moot action.

4.) The Town’s request for protection from discovery is granted

Based on the Court’s holding that the single cause of action asserted in the Amended Complaint is dismissed as moot, the Court also grants the Town’s request for protection from any obligation to respond to or comply with plaintiff’s outstanding written discovery requests and deposition notice in this action. This relief is granted on the grounds that (a) as set forth above, the

challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary; (b) such discovery would therefore be unreasonably burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCP; and (c) such protection is necessary to protect Town from unnecessary burden and expense, Rule 26(c), SCRCP. At this time, discovery is limited to any claim that may be submitted for attorney fees or costs.

Conclusion

For the foregoing reasons, Town's Motion to Dismiss and Motion for Protective Order Regarding Discovery are hereby granted in the respects set forth hereinabove, and the Amended Complaint and the single cause of action it asserts, a condemnation challenge action pertaining to the October 2020 "New Notice," are hereby dismissed without prejudice. This dismissal is without prejudice to any claims that the plaintiff may wish to assert at a later time and, likewise, without prejudice to any future condemnation attempts by the Town.

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

- (a) Delivery of the Condemnation Notice referenced as the "New Notice" in the Amended Complaint constituted service of the same and commencement of a condemnation action within the meaning of the Eminent Domain Procedure Act, and Town's filing of the *Notice of Abandonment* constituted an abandonment and withdrawal of such Condemnation Notice and action; and
- (b) Plaintiff may assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs as part of this action or, in the alternative and upon written notice to Town, in the separately pending "Existing Condemnation Action" referenced in the Amended Complaint.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Circuit Court Judge

_____, 2021

Georgetown, South Carolina



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Case Number: 2020CP2200932

Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-04-21 17:12:30 page 12 of 12

Form order in Sunset* Challenge II action denying motion to reconsider,
Dated June 3, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200932

Sunset Lodge Llc
PLAINTIFF(S)

Pawleys Island Town Of
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Plaintiff's Motion to Consolidate is GRANTED with consent of all parties. This case is consolidated under case number 2020CP2200932.

Plaintiff's Motion to Reconsider is DENIED. The only relief sought by the plaintiff in the Amended Complaint is "that both the 'Existing' and the 'New' Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs." The "existing" and "new" condemnation notices have been abandoned by the defendant and the issue of litigation costs remains pending.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/03/2021.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Sunset Lodge Llc VS Pawleys Island Town Of

Case Number: 2020CP2200932

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-06-03 12:26:21 page 3 of 3

Complaint in Sunset* Challenge II action, dated November 12, 2020

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS)
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-_____
Sunset Lodge, LLC,	)	
	)	SUMMONS
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
_____	)	

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously delivered, which is the subject of this action, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

TO: THE ABOVE NAMED DEFENDANT: YOU ARE SUMMONED AND REQUIRED

to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer upon the undersigned at P. O. Box 245, Columbia, SC 29202 (1230 Richland Street, 29201), within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

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Columbia, SC 29202

Tel: (803) 929-1484

bstanton@stantonlaw.com

Attorney for Sunset Lodge, LLC

11/12/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS)
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-_____
	)	
Sunset Lodge, LLC,	)	
	)	COMPLAINT
Plaintiff,	)	(Challenge of Authority to Condemn and Challenge
	)	to Subsequent Condemnation Notice Delivered
v.	)	Without Leave of Court While Challenge to Earlier
	)	Notices is Still Pending)
Town of Pawleys Island,	)	
	)	(Nonjury)
Defendant.	)	
	)	
_____	)	

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue; including but not limited to the filing of the Condemnation Notice previously delivered, which is the subject of this action, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

Plaintiff alleges as follows and requests the relief thereafter prayed for:

1. Plaintiff is an individual citizen of South Carolina who owns property at 746 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.
2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, extending to the center of the salt creek separating the island from the mainland.
3. On July 21, 2020, Plaintiff commenced an action against the Town in which Plaintiff challenged on numerous grounds, the right of the Town to condemn a certain interest in real property on Pawleys Island at the address aforesated.

4. Attached as Exhibit A is the Amended Complaint in that action, Case 2020-CP-22-00602 (the “Existing Challenge Action”).

5. All of its allegations are incorporated herein.

6. The Existing Challenge Action, by law, stays any and all further acts and actions in condemnation proceedings which were commenced by the Town by serving a condemnation notice on Plaintiff.

7. The Existing Challenge Action is still pending.

8. While the Existing Challenge Action was still pending, and all condemnation proceedings under the previously served notice (the “Existing Notice”) were stayed, the Town Council held a public meeting, live-streamed, on October 12, 2020.

9. On the agenda was public comment, and consideration of a resolution concerning condemnation.

10. As alleged in the Existing Challenge Action, the Town’s attempt to condemn under the Existing Notice suffers from numerous incurable defects depriving the Town of the power to condemn what it seeks to condemn. These include, but are not limited to (1) failing to get, before commencing proceedings, authorization of Town Council to condemn anything other than an easement “basically, simply to put sand on the beach,” as opposed to the easement the Town thereafter actually pursued, which, instead, was one granting public access to substantial portions (if not all) of the owner’s property, empowering the Town or the federal government to thereafter “operate a public beach” on substantial portions (if not all) of the owner’s property, empowering the Town or the federal government to limit the owner’s access to broadly and vaguely described portions of the owner’s property, empowering the Town or the federal government to destroy the owner’s improvements on portions (or all) of the owner’s property,

etc.; (2) failing to have the appraiser, prior to commencing proceedings, put a value on what the Town actually seeks to condemn, rather than on some fictional interest in property which produces a different appraisal value; (3) failing to offer to pay the landowner the value of the correct interest in property so appraised, rather than the value of a fictional interest in property based on oral representations of the Town Administrator; (4) failing to provide the appraisal to the landowner before serving the notice which commenced the proceedings, as opposed to providing the appraisal only after serving the notice; (5) failing to negotiate in good faith for purchase of the interest in property sought, at the price indicated by the appraisal of the correct interest in property, so that during the statutory time for offer and negotiation, the landowner, would have an appraisal, at the condemnor's expense, of the correct thing, and could either knowingly and knowledgeably accept a fair price for the right thing, or knowingly and knowledgeably point out the defects before being sued; and (6) failing to seek to condemn only what is reasonably needed, which in this case, for example, does not include a blanket grant of public access 24/7/365 up to a few feet from the owner's house and door, including now private decks, steps, patios, etc.

11. At the meeting, just as it failed to do in the public May 18, 2020 Town Council meeting, the Council never once discussed the specific proposed terms of the proposed easements the Town had sought to acquire, never once discussed any of the objecting three property owner's concerns with the terms, never once discussed any balancing of the harm to the property owner against any legitimate needs for a concrete, legitimate, existing project, if any, and never once discussed any of the true circumstances of the property owners' efforts to cooperate with the Town or the misrepresentations of Town officials.

12. Instead, the Town Council recognized, simply on the say-so of the Town Attorney, that the resolution, which included attached exhibits designated "A," "B," and "C," needed only further "tweaking" in terms of defining public use.

13. The Town Council then conditionally approved the incomplete resolution, then abdicated its decision-making duties as a body completely, and then attempted to delegate these nondelegable duties to a private later decision of only the mayor and Town Administrator, who is not a Council member, without a quorum and without further action in a transparent public meeting as required by law.

14. After the October 12, 2020, public, meeting, the "Town Council," in the above described fashion, privately, revised and issued a document (the "Private Resolution").

15. The map which is part of Exhibit C of the Private Resolution was swapped out for a different one than the one in the proposed resolution on record for the public Council Meeting.

16. Upon information and belief, the Private Resolution, including its three exhibits, was never publicly debated or voted on or publicized for comment.

17. The Private Resolution falsely stated that the proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits "A," "B" and "C" were "previously proposed to" and previously "sent" to the three property owners respectively affected thereby.

18. None of the documents represented in Exhibits "A," "B," and "C" of the Private Resolution were previously proposed to Plaintiff or the other two property owners.

19. The Private Resolution is fraudulent in the above respect, among possible others, and is part of the continuing series of bumbles at the landowner's expense, frauds, and coverups alleged in the Existing Action and now this one.

20. None of the documents represented in Exhibits "A," "B," and "C" of the Private Resolution were previously sent to Plaintiff or the other two property owners.

21. The Private Resolution, in keeping with the alleged "say anything" modus operandi of the Town, is fraudulent in the above respect, among possible others, and is part of the continuing series of bungs at the landowner's expense, frauds, and coverups alleged in the Existing Action and now this one.

22. The Private Resolution also states, "the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment," thus falsely implying that the thereafterdescribed proposed Beach Renourishment Easement agreements which were attached to the Private Resolution as Exhibits "A," "B" and "C," and which were stated to have been previously "proposed" and "sent," were the same as the proposed agreements which were the subjects of the Existing Notices served months ago in June 2020.

23. The proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits "A," "B" and "C," were not, as implied by the Private Resolution, the subjects of the Existing Notices served months earlier, in June 2020.

24. The proposed easements originally served as part of the Existing Notices are not the same as the easements attached to the Private Resolution.

25. The Private Resolution is fraudulent in the above respect, among possible others, and is part of the continuing series of bungs at the landowner's expense, frauds, and coverups alleged in the Existing Action and now this one.

26. The proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits "A," "B" and "C" (the "Revised Easements") are different from the

proposed agreements in the Existing Notices because, among other things (such as moving the PEL in one), the Revised Easements alter the description of the interest in property sought to be acquired, by adding a 9-line footnote.

27. The highly unusual footnote discusses only the Town's ostensible perception or ostensible understanding of one of the words used in the Existing Notice.

28. The footnote addresses the second occurrence of the word, "public."

29. The footnote strangely states only that the word "should" be defined to mean certain confusingly stated things for purposes of this proposed formal, perpetual title document, instead of stating that the word is defined to mean these confused things, and states this under various unconfirmed arcane conditions and legal circumstances of questionable applicability. This tepid preface and the ensuing gobbledygook is an apparent attempt to add a provision the Town can later sell to the Corps of Engineers as meaningless and can simultaneously sell to duped property owners as meaningful.

30. The footnote thus provides what can only be described as a bizarre nonsensical conveyancing passage either somehow thought to make things confusing enough to "water down" the easement, or to partially ameliorate the terms Plaintiff complains in the Existing Challenge Action to be unreasonable, to be bungling, to be sloppy, to be unnecessary, to be overreaching, to be without authority, and to be a horrible cloud and blight on title now imposed in an apparent act of municipal treachery.

31. To wit, the footnote in its entirety states:

"Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of

plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

(Absence of closing quotation marks in original.)

32. The footnote does not define at all what is being granted. The footnote instead unnecessarily injects an untested legal argument from unknown sources as to what exists in the absence of the grant expressly stated in the proposed easement. The document grants “public use and access.” Even under its errant approach, the footnote is silent as to what “should” be the definition of “public use” when, as here, the Town does not “retain” an easement by virtue of continuous public use by the public. The footnote then states that reference to the plat attached to the proposed deed of easement does not create an “implied easement” for “unrestricted” public access, when the printed language of the proposed deed of easement, without reference to the plat, expressly grants complete, unqualified, perpetual, public access. The footnote then states that uses by the public are “limited to the uses set forth” in “the terms of the easement document,” but the easement document does not describe any particular, limited, uses by the public. The document describes the public’s uses as “public use and access” in general, with no limitation whatsoever. The footnote does not state anywhere that the public’s access is limited to the purpose of showing up with shovels to assist in distributing sand pumped from offshore. If this were the limited purpose, it would be a simple matter to state that the public are granted access for the purpose of assisting in the renourishment work and associated work. However, the Town is afraid to do it, because the Corps of Engineers makes no such pretense in any of its publications elsewhere and would reject such clarity. The whole footnote is a ridiculous ruse of providing a confusing and illusory piece of verbiage the Town may hope to sell to the Corps as meaningless and ineffectual to limit public access to the owner’s private property in any way.

This is the same Town and Council which will simultaneously tell its constituent owners it has helped them by limiting the scope of an easement they have already granted.

33. Following the October 12, 2020 Town Council meeting and the subsequent revision of the resolution which was supposed to be considered publicly there, while the Existing Challenge Action was still pending and all condemnation proceedings under the Existing Notice were stayed, the Town then “issued” a new condemnation notice (the “New Notice”).

34. The Town Attorney formally delivered and presented this New Notice to Plaintiff’s counsel.

35. The New Notice is similar to the Existing Notice, but among other possible differences, the New Notice attempts, without leave of court, to alter the Existing Notice by adding the aforescribed 9-line footnote in the description of the property sought to be acquired.

36. The New Notice is falsely dated June 9, 2020.

37. It is dated the same as the Existing Notice, but upon information and belief, did not exist on that date and was not prepared until after the October 12, 2020 Town Council meeting.

38. The New Notice is fraudulent in the above respect, and is an attempt, like other aforescribed activities, to create a false public record and a morass of official-looking paperwork to obscure the delicts and derelictions of the various Town actors involved; the New Notice is part of the continuing series of bumbles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

39. Plaintiff’s counsel pointed out to the Town Attorney in writing that the caption of the New Notice was the same as the caption of the Existing Notice (neither yet having a case

number) and obviously was not the caption of the existing challenge action, and that the New Notice therefore did not purport to be a proposed filing or operative document in the existing challenge action.

40. Plaintiff's counsel pointed out that the existing challenge action stays all further proceedings under the existing condemnation notice, precluding any amendment until the existing challenge has been assessed.

41. Plaintiff's counsel pointed out that, even in the absence of a stay, the Eminent Domain Procedure Act makes no provision for the condemnor's unilateral "amendment" of the scope of the property description in the condemnation notice or a "do-over" of conditions precedent which the notice states were done, but which were not.

42. In the context of the overall required exclusive procedure, no such amendment is possible.

43. Under the EDPA, when served, the notice commences condemnation proceedings of a specifically identified interest in property, which, in turn, are predicated on the appraisal and the negotiations for that specific interest in property having already occurred, which, in turn, are based on there first having been an appropriate description of the interest in property sought to be acquired.

44. Obviously, the description of the property interest also cannot be composed without a full and complete discussion and weighing by the condemning authority and a knowing and untainted approval of it.

45. The root of many of the Town's present frauds and the past ones is that the Town Administrator and some others insist on pretending that provisions in the proposed easements are not in the proposed easements. The Town has carried on this pretense in selling the easements to

other property owners, covering up the matter afterwards, misrepresenting to the public, the objecting landowner's positions, and even in having the wrong interest in property appraised, and then trying to condemn something entirely more onerous. The Town now takes it a step further, wanting other owners to think that the Town, as a mere municipality, can change the legal effect of past and present executed conveyances by local legislative act and even that the language of a proposed grant by one (or three) landowners can somehow change the legal effect of past executed conveyances by others. It is preposterous. It will not work.

46. Plaintiff's counsel asked what the procedural purpose and status of the New Notice is intended to be, but time has not afforded a response; yet, without ever withdrawing the Existing Notice, the Town has simply bucked all law and procedure and has attempted to sue Plaintiff yet again in a new proceeding and shoehorn in an attempted cure to obvious defects raised in the Existing Challenge Action without acknowledging them in the Existing Challenge Action, all in spite of the existing statutory stay.

47. The New Notice violates Rule 12(b)(8), SCRCP (regarding commencing another action on the same subject when another action is already pending) and principles of subject matter jurisdiction and judicial economy and management, in that the Existing Notice already commenced proceedings on the same subject matter. The Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant additional challenge action after awarding litigation expenses to Plaintiff.

48. If the New Notice is not so quashed, the Court should declare the Existing Notice and the proceedings commenced by it abandoned by Defendant, and award Plaintiff the litigation costs incurred by Plaintiff in the Existing Challenge Action in causing the Town to thus admit it had no right to pursue condemnation under the Existing Notice, for, among other apparent

reasons, lack of power because of noncompliance with the Eminent Domain Procedure Act, lack of authorization from Town Council, seeking more than was reasonably necessary, failing to even consider what was reasonably necessary in light of the real burdens imposed, and being misled on the facts and the law, if not participating in a bad faith fraud and sham.

49. The Town has issued a backdated and amended notice without calling it one, and has formally presented it to Plaintiff in freestanding fashion, and the terms of the document announce an intent to proceed with a new condemnation and a deadline to make a challenge to same.

50. This is that challenge.

WHEREFORE, Plaintiff prays that both the "Existing" and the "New" Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton

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Attorney for Sunset Lodge, LLC

11/12/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00600
	)	
Sunset lodge, LLC,	)	AMENDED
	)	COMPLAINT
Plaintiff,	)	(Challenge of Authority to Condemn and In
	)	the Alternative, for Other Remedies)
v.	)	
	)	(Nonjury, except as to possible cause of
Town of Pawleys Island,	)	action arising in the alternative, for which
	)	jury trial is demanded, so as not to be
Defendant.	)	waived)
	)	
	)	
	)	

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 746 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously served, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

CONTENTS

PRELIMINARY STATEMENT 3

PARTIES, PEOPLE, AND FACTUAL BACKGROUND 11

Early Corps Plans.....23

Nonaction by Corps 23

Town Plans.....23

Re-emergence of Corps Plans.....23

Request for “Sand” Easements 24

Nonaction by Corps, Decision of Town That Corps is Unreliable 39

Town Plans, Action, Formal Decision That Easements 39

Are Unnecessary, Rejection of Corps Project, and Completion of

Town Project with No Easement

Re-emergence of Corps Interest in Possible Future Projects.....42

<u>Requests for Easement for Speculative Possibility of</u>	43
<u>Future Projects When No Actual Project is</u> <u>Any Longer Proposed or Pending</u>	
<u>Town's and Corps's Capricious or Spiteful Insistence</u>	46
<u>That Property Owner Relinquish to Town and Others in</u> <u>Easement, Property Rights Previously Agreed in Writing Not</u> <u>to Be Necessary to Any Proposed Project, Whether Past, Future,</u> <u>Moot, or Completely Speculative</u>	
<u>Town Council's Punitive and Bad Faith Vote to Condemn Wholly</u>	48
<u>Unnecessary Easements With Features Agreed to Be Unnecessary to</u> <u>Anything, Under False Pretenses, Continuing to Conceal or Misrepresent</u> <u>the Features Sought, or Under Abject Failure to Understand or Attempt</u> <u>to Inform Itself of the Meaning of Plain English in Easement</u>	
<u>Condemnation Notice Purposefully Obscuring Nature and</u>	54
<u>Extent of the Easement Sought and What Is Being Valued,</u> <u>Including False Certifications, Sent Without Ever Having Made</u> <u>Appraisal Available or Having Negotiated in Light of Appraisal;</u> <u>Later-Obtained Appraisal Similarly Murky About What the Attributes</u> <u>of the Subject Easement Include; Missing Elements From Loose Leaf Papers</u>	
<u>Clarification of Town Punitive and Bad Faith "Intent" to Be</u>	55
<u>Unclear and Maybe Pursue Wholly Unnecessary Easements</u> <u>With, Not Just Some, But All, Features Previously Agreed to Be</u> <u>Unnecessary While Having Publicly Concealed or</u> <u>Misrepresented Features Sought</u>	
<u>FOR A FIRST CAUSE OF ACTION AND REQUEST FOR RELIEF</u>	56
(Any necessity for the easement requested for the Corps project and any other ceased, when the proposed Corps project for which an easement was requested was rejected, the Town officially determined that an easement was not necessary, the work was not done by the Corps, and the work was completed by the Town.)	
<u>FOR A SECOND CAUSE OF ACTION AND REQUEST FOR RELIEF</u>	56
(Because no new Corps project is proposed in good faith, an easement is also not necessary for a merely speculative project that may or may not occur many years in the future.)	
<u>FOR A THIRD CAUSE OF ACTION AND REQUEST FOR RELIEF</u>	57
(If a new Corps project were proposed, the Town's insistence that the easement is only for placement of sand when all the sand has already been placed, and the Town's own bad faith, if not fraud and abuse of discretion,	

in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF 57

(The South Carolina Eminent Domain Procedure Act is the “exclusive procedure” for condemnation, the sections of the Act which require the condemnor to provide the appraisal before serving the notice and which specify the contents of the notice are stated in imperative terms of “shall” and “must,” and the Town’s failure to comply with these mandatory procedures is a fatal defect, rendering any attempted condemnation void and ultra vires; these defects, coupled with the fact that under the statute, the notice is the operative pleading for purposes of an action, and that the notice contains a false certification, further justify dismissal pursuant to Rules 11 and 12, SCRCF and other applicable authorities.)

FOR A FIFTH CAUSE OF ACTION AND REQUEST FOR RELIEF 59

(If, despite the Town’s prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

FOR A SIXTH AND POSSIBLE FURTHER CAUSES OF ACTION AND REQUESTS FOR RELIEF 61

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

PRELIMINARY STATEMENT

Plaintiff brings this action pursuant to S.C. Code Ann. § 28-2-470 and the common law to challenge the Town of Pawley’s Island’s attempt to condemn an easement on Plaintiff’s oceanfront land which is improved with a private residence.

There being no project requiring an easement, acquisition is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited. The scope of the proposed acquisition is also broader than is necessary to accommodate any legitimate project and need for the easement, if there were any project and need. Procedural deficiencies, deliberate vagueness

and confusion in the documents served by the Town, and the Town's noncompliance with law also require a remedy of dismissal of its condemnation attempt, or at minimum, correction. All of the foregoing facts are more than a little imbued with, if not the Town's fraudulent acts, its bad faith and abuse of discretion. These matters are set forth with more particularity herein.

There is no project for which the proposed acquisition is necessary, because the Town rejected the project for which the acquisition was originally proposed, and elected to complete, and did complete, a larger, substitute, project, requiring no easements, before the Town ever attempted the threatened condemnation. Consequently, the condemnation attempt should be dismissed as a matter of law.

The "sand placement" easement the Town nevertheless seeks to acquire has always been overbroad and unnecessary for any renourishment project, whether past, present or hypothetical.

Among the serious problems with the easement that the Town now seeks to acquire is an unpublished issue the Town has tried for over a year to conceal, ignore, obscure or misrepresent. 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, which was similar to the project recently completed by the Town, dictates that the owner signing the document does not merely grant permission to deposit sand on the owner's property, but grants public access to the owner's property, and more. There is no demonstrated legal justification or authority for such a despotic third-party exaction.

The good faith of three property owners including Plaintiff is demonstrated by the fact that over a year ago, all three separately offered signed easements to the Town. These were offered for the now moot, unperformed, Corps of Engineers beach renourishment project. In response to the needs which the Town had actually officially stated for the now moot project,

these owners offered, and in some cases, recorded, signed easements, which were more than sufficient for such stated needs.

These purposes stated by the Town were placement and maintenance of sand on the beach and on part of the owner's property. The three owners fully complied.

The Corps of Engineers project was later rejected by the Town with no possibility of resurrection because the Town completed its own larger project instead of the Corps project. In doing so, the Town officially, expressly, determined that the requested easements were "not necessary."

The bad faith or abuse of discretion of the Town is demonstrated by Town Council and its agents never disclosing that these owners had signed and proffered easements.

In bad faith, Town Council and its agents shamed and defamed the owners, and instead presented the matter publicly – in statements to the newspaper, and in official, broadcasted, deliberations -- as if these owners would not sign "an easement," which the Town consistently represented as being essentially for the limited purpose of sand placement on the beach, including the owner's adjacent private property.

The bad faith or abuse of discretion of the Town is further demonstrated by the fact that not one single Town Council member has publicly acknowledged even reading the subject easements proposed by the Town. The scope of the proposed acquisition is a major issue.

Not one single Town Council member acknowledges knowing, or even asking, what it was in the proposed easements the owners objected to, much less, why they objected. These issues are not contained in a single deliberation by Town Council.

Instead, the Town Council was either misled that the owners had outright declined to sign an easement of any kind allowing sand placement on their property, or Town Council knew the

contrary and itself misled the public that the owners had declined to give any easement at all. The Town Council was accordingly also either misled about the contents and scope of the proposed document, or Town Council knew the contents and scope and owner concerns, pretended lack of such knowledge, and made no consideration of such matters.

In either case, deliberation concerning the excessive, unnecessary and illegally “required” exactions in the document was completely omitted. The Town not only made no factual conclusions at all on these factors it should by law have considered, but also had no evidentiary support for any facts it did consider, and proceeded under errors of law on which Town Council was uninformed or misinformed. Town Council’s decision making process was, accordingly, if not in bad faith, an abuse of discretion.

These considerations are eclipsed, of course, by the Town already deciding that the easements are categorically “not necessary.” If the easements are not necessary, it is per se bad faith and abuse of discretion to condemn something totally unnecessary, and condemnation cannot be allowed at all.

Returning to the fact that there is no still pending project at all for which the easements are now necessary, the Town may now assert the condemnation is now necessary for some other, future, hypothetical renourishment “project” of the Corps. The condemnation is still unnecessary and in bad faith in that any such putative future project is admitted by the Town to be speculative, unlikely, and by the Town’s own calculations, most probably unnecessary for as much as twenty-two years, and that even if a project arises then, the Corps cannot be relied upon, and Corps involvement is speculative.

To say that condemnation is necessary under a legally questionable after-the-fact scheme under which the Corps does some followup to the completed \$14.8 million dollar Town Project

by planting some “beach grass” and maybe putting up sand fence, is fiction. In any event, proceeding on this premise is not even an attempt by the Town to determine whether the scope of the proposed acquisition and the injury to the owner exceeds what is necessary for the mischaracterized “project.” At minimum, this is an abuse of discretion.

To state that using “beach grass” and sand fence to fictionally self-label the actually Town-completed project as “a completed Army Corps project” provides an “insurance policy” for which condemnation is necessary, is insufficient and is facially incorrect. Condemnation is not provided for a supposed “insurance policy,” instead of for a public project, and the Town thus admits the lack of necessity to condemn for any actual public project. Even the thin purpose of “insurance” is plainly inaccurate, which becomes more apparent when the Town explains on May 18, 2020 that -- more in the nature of a lottery ticket than an insurance policy -- “down the road, if money ever does become available, or if the Corps can get it,” the unpredictable and unreliable Corps may be able to use it or work out what will at that time still be unclear financial sharing.

The Town’s bad faith and abuse of discretion in attempting to condemn property for this “purpose” is all the more apparent when the Town admits on May 18, 2020 that it never would have even asked for easements for such a purpose two years earlier because of its speculative nature, but that, now, after having completed all desired renourishment without the Corps, the Town still has about 100 easements it had obtained back when a prospect of a Corps project existed. These were easements collected through the misrepresentations described herein and in no way justify condemnation to get more, just to play some odds.

In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has still been sought through knowing, intentional

misrepresentation, lack of honesty in fact, spite (e.g., requiring things previously acknowledged to be unnecessary, requiring things not required of others, etc.), caprice, arbitrariness, and illegality (e.g., including third party exactions based only on secretive bureaucratic whim), and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it (e.g., that the owner will have the same rights after acquisition of the easement as before, that the easement is for no more than putting sand on the beach, etc.).

In no way could it be successfully contended that the “project” (which is nonexistent) incorporating the easement which is professed to be necessary is designed in a way to enable sufficient public benefit while resulting in the least private injury.

The bad faith continues in that the easement is also being sought through bad faith noncompliance with statutes and procedural rules, which also obfuscates what is being sought. By serving condemnation notices, the Town began attempts to condemn without providing an appraisal at the time required by the exclusive, statutory procedure. The Town, falsely certified in the formal notice (which serves as the operative court pleading) that an appraisal had been timely provided. Contrary to statutory procedure, the Town provided conflicting information about the scope of the easement the Town seeks to acquire. This conflicting information took the form of either (in two notices) completely omitting from the notice, “an appropriate legal description of the interest to be taken,” or (in one of the three notices) sending subsequent documents contradicting the description given, so as to indicate that the easement sought was now even broader than as described in the actual condemnation notice.

Yet, despite its prior errant actions and misleading statements having been repeatedly called politely to its attention over the course of the recent year, the Town continued to act in bad faith, in keeping with its year-long practice of (i) misinforming the public (including other owners, neighbors and others in the small community), (ii) needlessly publicizing personal and private information, (iii) defaming the owners (and now disparaging their property), and (iv) depriving the owners of timely and accurate information. In this vein, after unlawfully delaying and withholding the hereinafterdescribed flawed appraisals from the owners until after serving the flawed and incomplete condemnation notices, the Town, upon information and belief, provided the flawed appraisals of the owners' specific properties (or the conclusions therein) to the newspaper for July 16, 2020 publication. When, after polite demand, the owners did receive the appraisals, the appraisals revealed, among other things, the not-reported fact that the proposed easement documents themselves had never been provided to the appraiser, whose task was to determine the loss in value and other damage caused by the imposition of such easements.

In the Condemnation Notice served upon Plaintiff, the Town does not describe the scope of the easement at all. The Town only states that it seeks to condemn "an easement for public purpose," describes Plaintiff's property (the entire lot, as well as an additional described part), and attaches a map showing the geographical area of the easement (which conflicts with the earlier statement that the entire lot is "subject to the condemnation notice"). Without the name given to the attached map, the easement description in the Condemnation Notice would not even indicate the general type of project the easement is for. The purpose of an easement, rather than acquisition of complete fee simple title, is to acquire only the limited right to occupy the subject land in a certain specified way or perform only certain specified activities on the subject land. The Condemnation Notice does not specify at all, what powers and activities are included in the

easement sought, i.e., the notice does not say the easement allows construction, piling of spoil material, public access, limiting access including that of the owner, allowing Town “operation” of a public beach, restriction of walkover structures, removal of Plaintiff’s property in the area, or anything else. A later paragraph alleging the “public purpose” of the easement limits it to being for “the Condemnor’s beach nourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.” A separate, unincorporated document was simply sent with the Notice, with no explanation, and was not part of it. This unexplained document is also incomplete, missing the “Exhibit A” it states is attached to it. Plaintiff is not required to guess or decide for itself what the Town must mean to include in the drastic measure of condemning property.

Despite its voluntary participation in providing “information” to the paper for July 16, 2020 publication, upon information and belief, as of July 19, 2020, the Town also has failed to respond as legally required – or respond at all -- to a request under the Freedom of Information Act, pertaining to, among other things, the contents of easements accepted from others, and the bona fides of communications with the Corps. (Such failure continues as of July 31, 2020.) All these facts constitute “fraud, bad faith or abuse of discretion,” and the Town’s contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

In the further alternative that the Town later shows in good faith, any actual necessity for any easement at all across Plaintiff’s land and improvements, it is still necessary to first limit any condemnation to what is actually reasonably necessary to the “project” (which is nonexistent), causing the least private injury necessary. Whatever the result of that exercise, it is also

necessary to clearly define the easement being sought, including its limitations and consequences, so that it and the damage it would cause can be actually properly valued.

To do so requires correction of the Town's persisting legal error as to not only the nature of the easement that is sought, but also the lack of basis, or legal or practical need, for the easement attributes the Town either recklessly or deliberately attempts to include, and as to the consequences of Plaintiff granting the easement or the Town taking the easement.

Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and orderly procedure for assessing value, including knowing exactly what is or is not proposed to be valued and what is or is not proposed to be taken.

In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

PARTIES, PEOPLE, AND FACTUAL BACKGROUND

1. Plaintiff is a limited liability company organized under the laws of the state of South Carolina, which owns property at 746 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.

2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, extending to the center of the salt creek separating the island from the mainland.

3. The Town purports to be governed by a council form of government, requiring a mayor and four council members.

4. This action concerns proposed easements formerly proposed for a prospective project which did not occur. That project was followed by a different project, which has now been completed. The now proposed easements are not for an actual, concrete, prospective proposed project. These easements, sometimes hereinafter referred to as the "Public Access Easements," are, in reality, for, among other things, completely speculative, putative future construction and installation activities on Plaintiff's land and improvements, putative future deposit on Plaintiff's land and improvements of large volumes of dredged ocean spoil material, ongoing, perpetual broad ability of the Town to restrict the owner's access to and use of the owner's own land and improvements, open-ended perpetual public access to the owner's land and improvements, and broad, ambiguous powers of the Town itself, as opposed to the public, to engage in endeavors on the owner's land including "operating a public beach."

5. Brian Henry is an individual owning an interest in property on Pawleys, but upon information and belief, owns no property in the area of the island in which owners are requested to execute the Public Access Easements. Henry owns, lives at least part of the time at, and may have previously resided at, property outside the Town of Pawleys Island elsewhere in Georgetown County, but in running for mayor, swore to reside on the Island at a seasonal inn in which he has an interest, within the Town of Pawleys Island. Henry acts as mayor. Henry was acting as mayor on Town Council at the time of its unanimous vote to condemn Plaintiff's property, and at the time of the Town serving the Notice of Condemnation.

6. Henry, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English

clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Henry, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

7. Ashley Carter is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, Carter owns and has owned alternative residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but has sworn to reside on the Island in order to run for and hold office in the Town. Carter is a real estate salesman affiliated with Pawleys Island Realty. Carter was on Town Council at the time of his, Henry's and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

8. Carter, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Carter, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately,

presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

9. Sarah Zimmerman is an individual owning an interest in property on Pawleys, but upon information and belief, none for which the owner is requested to execute the Public Access Easements. Zimmerman is a real estate saleswoman affiliated with RE/MAX Beach & Golf, which upon information and belief is actually Beach and Golf Properties of the Carolinas, LLC. Zimmerman was on Town Council at the time of her, Henry's, Carter's, and the other members' unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

10. Zimmerman, upon information and belief, has at least a primary school education, speaks English as her native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of her own statements or those of others in which she concurs by word or action. Upon information and belief, Zimmerman, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, falsely presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

11. Guerry Green is an individual owning an interest in property offered for rent on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Upon information and belief, since approximately 2013

or before, Green has owned residential property outside the Town of Pawleys Island elsewhere in Georgetown County, but swore to reside on the Island in order to run for office in the Town. Green is a principal of a companies located in Georgetown County known as Screen Tight and GreenCore Materials. Green was on Town Council at the time of his, Henry's, Carter's, Zimmerman's, and the other member's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

12. Green, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Green, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

13. Lawrence "Rocky" Holliday is an individual owning an interest in property on Pawleys, but upon information and belief, none in the area in which owners are requested to execute the Public Access Easements. Holliday was on Town Council at the time of his, Henry's, Carter's, Green's, and Zimmerman's unanimous vote to condemn Plaintiff's property and at the time of the Town serving the Notice of Condemnation.

14. Holliday, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English

clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon information and belief, Holliday, before voting to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's and other parties' extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

15. Ryan Fabbri is an individual, upon information and belief, not owning an interest in property on Pawleys. Nor does Fabbri live on the Island. Fabbri is a hired administrator of the Town. Fabbri is Town Administrator of the Town and reports to Town Council. Fabbri has worked directly with an engineering company and a contractor for the completed Town renourishment project which the Town decided did not require easements, has advised Town Council concerning the now completed project and other matters, has, with Town consent, made public and private presentations of the Town's promises and intentions regarding the project and its effects on property owners, has liaised with the United States Army Corps of Engineers ("USACE" or the Corps) on the earlier, later abandoned, possibility of USACE doing the now completed project instead of the Town, has upon information and belief, provided information and directives to the Town Attorney on the details, nature and requirements for potential and actual renourishment projects, has dealt with property owners and given legal advice in requesting and obtaining easements for earlier purposes of the possibility of USACE performing the now Town-completed project, and has performed other administrative and, it appears, executive, functions for the Town. Fabbri was present at and participated in the Town Council

meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was the direct contact of the Town for the Town Attorney at the time of the Town serving the Notice of Condemnation.

16. Fabbri, upon information and belief, has at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Fabbri, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's and other parties' objections to the Public Access Easements which are the subject of this action, Plaintiff's early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

17. David Durant is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Durant is a hired Town Attorney of the Town. Durant, upon information and belief, lives in the Town of Surfside Beach. Durant was present as Town Attorney at and participated in the Town Council meeting May 18, 2020 at the time of Henry's, Carter's, Zimmerman's, Green's and Holliday's unanimous vote to condemn Plaintiff's property and was Town Attorney at the time of the Town serving the Notice of Condemnation.

18. Durant has a postgraduate degree, and therefore at least a primary school education, speaks English as his native and first language, and is able to read, write and understand English clearly in spoken and written form, and is able to appreciate the truth or falsity of his own statements or those of others in which he concurs by word or action. Upon

information and belief, Durant, before Henry, Carter, Zimmerman, Green, and Holliday voted to condemn Plaintiff's property, was aware of the nature and extent of Plaintiff's objections to the Public Access Easements which are the subject of this action, Plaintiff's and other parties' early and continued efforts to cooperate in what the Town constantly, inaccurately, presented as the Town's request for mere sand deposit easements, and Plaintiff's extensive attempts to deal in good faith with the discrepancies between the Town's stated purpose and its actual actions and now apparent intentions.

19. Gladys Oranga is an individual, upon information and belief, not owning an interest in property on Pawleys nor living on the Island. Oranga is a paralegal employed in Surfside Beach by and acting for the Town Attorney of the Town of Pawleys. Upon information and belief, Oranga has at least a primary school education, speaks English, and is able to read, write and understand English in spoken and written form.

20. After the Town sent a packet of loose leaf papers including a Condemnation Notice (but no appraisal), Oranga,, upon information and belief, confirmed in writing to another owner that the easement the Town wished to make an offer for and negotiate for would have different terms and a map attached to it (without amendment of the condemnation notice to that owner) which was materially different (being more disadvantageous to the owner) from the terms and map attached to the condemnation notice served on that owner. Upon information and belief, the new terms and map to be attached to the offer had previously been agreed by the Town to require and include more than was necessary for the contemplated "project," and had thus previously been agreed by the Town to be revised in a less onerous manner.

21. Plaintiff's property is on the southernmost mile of Pawleys Island (sometimes hereinafter "the south end") and is bounded on the east by the mean high water mark of the Atlantic Ocean.

22. The mean high water mark is not an actual mark on the beach itself.

23. The mean high water mark is an average measurement defining a potentially moving boundary line of the property owned by Plaintiff, extending the area of Plaintiff's fee simple title so that it always remains oceanfront.

24. Under the deeds from which Plaintiff's title derives, if the beach builds up or erodes or the ocean recedes or rises, in such a manner that the mean high water mark does not move, Plaintiff's eastern property boundary does not move.

25. Under the deeds from which Plaintiff's title derives, if the beach builds up or the ocean recedes in such a manner that the mean high water mark moves eastward, Plaintiff's eastern property boundary also moves eastward, so that it always remains oceanfront.

26. Since the 1950s or before, Plaintiff's land has been taxed on the basis of an area extending forty-nine (49') feet more or less oceanward of the current oceanwardmost (easternmost) part of Plaintiff's home on the premises constructed in the 1950s, this easternmost part being stairs providing access to the home. This area extends fifty-six (56') feet more or less oceanward of the location of the current most eastern main pilings of the structure of Plaintiff's home, which was constructed on the land in the 1950s.

27. The mean high water mark in the proposed Public Access Easements which are the subject of this action is shown in the foregoing approximate locations relative to the above-mentioned features of the structure.

28. The original and current construction of the house of Plaintiff is two stories.

29. Sometime before 2008, the Town began consideration of attempting to artificially build up the natural beach on the Island through excavation, dredging or other available or permitted means, and depositing large volumes of the dirt, sand, mud, shells, rocks or other spoil materials on the beach, which materials would be certified as ecologically and structurally compatible “sand.” (This general process is hereinafter referred to as “nourishing” the beach or, to use a slight misnomer, “renourishing” the beach.)

30. Beach “nourishment” has its pitfalls and detractors. Complaints include mudballs, rock, shells and dark, dirty sand virtually replacing beautiful white-sand beaches and the feeling of something like sharp aggregate underfoot when attempting to wade or swim. A walk on the beach then produces not sandy, but dirty, feet, and brings not just sand, but rock and dirt onto decks and porches and into the house. The effect is worse when children, or adults, dig, turning up dark sediment, and coming in with dirt under their fingernails. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

31. Complaints also include an altered foreshore, resulting in a steeper, if not cliff-like, descent of the beach and surf bottom into the water at the immediate shore, resulting in waves breaking immediately at shore and slamming into the steeply rising bottom just a few feet from the end of water, strong undertows and rip currents. These features have generated observations and complaints in North Carolina and other places ranging from making surf walking and “beach sitting” less convenient, less scenic and less pleasant (“We were like cows on a hillside [(like mythic Sidehill Dodgers)]”), to causing increased cervical injuries to surfers, creating drowning hazards for toddlers and others, causing poorer surfing and swimming conditions, creating an impediment to sea turtle reproduction, and posing a danger to already

living sea turtles. Despite these detractions, Plaintiff attempted to cooperate in the desire and decision of the Town to renourish.

32. Complaints also include “sand” deposits exterminating entire existing populations of coquina clams and molecrabs (“sand fleas,” but not the type that fly) in the shallow surf, which provide food to some shorebirds and marine organisms.

33. Larger complaints include obstruction of view, in the case of construction of artificial dunes. Also included are physical limitation of beach access and a longer distance to the water from beachfront homes, and large scale geological and ecological consequences (e.g., silting and clogging of inlets and creeks) from removing large volumes of “sand” from one place, and putting it in another where it has not previously existed, only to find out later the magnitude of the unintended consequences of its removal, deposit, or later migration or overwash elsewhere. Other projects which can be performed without renourishment, but which are sometimes performed after a renourishment project, may include planting of vegetation and installation of structures such as sand fence, and these projects, too, are not without drawbacks or cause for weighing, if not apprehension. Complaints or problems may include installed sand fence being of low utility or completely ineffectual based on contraindicated site conditions, while endangering nesting animals such as sea turtles, becoming debris on the beach or in the water when dislodged, presenting injurious sharp features (e.g., cut wire and nails) for humans and animals, altering bird and other animal habitat or blocking use or access. Complaints or problems with unthinking – or thinking --introduction of invasive non-native species of plants include those pertaining to *Vitex rotundiflora* (“beach vitex”) which was heavily promoted by coastal authorities in South Carolina in the 1980s, but which has become the subject of a complete eradication campaign by the same authorities after the plant choked out other dune-

building plants, failed to contribute to significant dune building or preservation, and contributed to the entanglement and deaths of hatchling sea turtles. The high-dune-building propensities of non-native *Ammophila arenaria* (European beach grass) have been known to result in high, steep, brushy-topped and brush-filled, and brush-choked, dunes, unnatural for the area, at the expense of view and indigenous plant scenery, sand volume and natural protective low dunes on the adjacent beach, and sand volume to areas behind the primary dune, as well as habitat for native plants and animals such as arthropods (e.g., ghost crabs). Non-native *Ammophila breviligulata*, (American beach grass) with intermediate-height dune-building propensities, is nevertheless invasive in some applications, and has created unforeseen monoculture and morphological changes with attendant loss of native plants and alteration of physical animal habitat, such as where introduced on northwestern beaches where it is being eradicated with bulldozers, herbicides and other means in an attempt to restore the plover habitat it destroyed.

34. As of July 9, 2020, scores of owners on the south end of Litchfield, the immediately neighboring beach to the north of Pawleys, filed objections to a proposed renourishment on the south end of Litchfield using offshore “sand,” because, among other reasons, their property was governed by a homeowner’s association which could assess them hundreds of thousands of dollars to primarily benefit others. One concern raised by owners opposing use of offshore sand was the quality of sand placed on Pawleys Island in the course of the completed renourishment eventually described below. It contained mud and shell. The proposed Litchfield project has been revised to use trucked-in sand from an inland source.

Early Corps Plans

35. In or around 2004 (some report 2006), the United States Army Corps of Engineers designed a project to renourish the beach on the south end of Pawleys Island, where Plaintiff's property is located.

Nonaction by Corps

36. The Corps's project was approved by the decision structure of the Corps and by any other required governing entities, but was not funded by the United States Congress.

37. For approximately fourteen years, Congress declined to include appropriations in the annual federal budget to fund the approved project. As the then acting mayor of Pawleys Island reported on October 25, 2011, the status of renourishment in October 2011 was "No change. No funding. No Progress!"

Town Plans

38. In or around 2015, the Town designed its own nourishment project and began preparations to do and pay for a nourishment project on its own, for the greater part of the Island, including the parts where then members of Town Council, and present members of Town Council (Henry, Green, Holliday, and Carter), owned property.

Re-emergence of Corps Plans

39. In or around 2018, the Corps announced it had funding to proceed with a project to renourish the south end, as approved in or around 2004 but not funded for around fourteen years.

40. The Town had to decide whether to delay commencement of its own project, which was for both mid-island and the south end, while waiting on the Corps to decide in what manner and with what timing it would do the south end project, or whether the Town should proceed without the Corps entirely and not miss another hurricane season.

41. The Town decided to wait on the Corps.

42. The Town did so under the expectation that the Corps would do its south end project and the Town would do the mid-island project it had planned, using the Corps as the Town's agent for supervision and contracting.

Request for "Sand" Easements

43. In early 2019, the Town announced to property owners that because the Corps would be doing the south end renourishment project, easements for "renourishment" would be needed, but only from south end owners, for 113 properties.

44. In March 2019, the Town, through Fabbri, stated that proposed easement grant documents had already been prepared and that the Town had begun to mail them out. The Town, through Fabbri, represented to all south end owners: "The easement is required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project."

45. No mention was made by the Town of owners providing an easement, not only to the Town, but to the general public. No mention was made in the latter case, of "public access" over the owner's entire lot, or, at minimum, two (2') feet from the remaining portions of the owner's house not destroyed in the course of the renourishment. Public access, while generally

considered beneficial to the public who want it, is generally not considered beneficial to those whose rights are taken in order to provide it, nor is public access generally considered beneficial to the value of property either subjected to it or adjacent to it. Public access, when provided, may include general traffic and occupation, frolic, day camping, inadvertent littering, immaculate pet exercise, cheerful and celebratory yelling, admiration of the occupants inside the adjacent house or their belongings, playing favorite tasteful music, showing sweet physical love of each other, putting up large beautiful tents, breathing only through face masks at a distance downwind, or gathering to respectfully and peacefully picket and protest regarding important issues of a socioeconomic nature, or pertaining to political party or elections, or relating to gender, sexual, or public-access matters, or others. No mention was made by the Town of the owners granting access to the public, permitting the above-described activities by the general public (i.e., strangers) within two (2') feet of the owner's private residence, if not on the owner's whole lot and improvements. No mention is made of this item of scope, which has nothing to do the public doing any work to deposit sand, to construct beach profiles, to erect sand fence or to plant sea oats.

46. No mention was made by the Town of encroachment of the easement (including public access) onto property improvements of owners, like previously private decks, steps, walkways, etc.

47. No mention was made of allowing the foregoing access of the general public, deposit of sand, creation of artificial dirt and rock dunes, and destruction of the owner's improvements – all, up to two feet from the main pilings of the owner's house.

48. No mention was made by the Town of subjecting not just the "work" area, but the entire lot of the owner, to general public access.

49. At this same time in March 2019, the Town, through Fabbri, represented to all south end owners, “The easement provides the town and its contractors with the ability to work in the area of the beach.”

50. In early 2019, the Town, through Fabbri, sent proposed easement grant documents to south end property owners, not offering to pay anything for the grant of partial interest in the subject real estate, stating, again, as to the scope of the proposed easement: “The easement will be used to construct and maintain the improvements authorized under the Pawleys Island Coastal Storm Risk Management Project. Only the work specifically authorized under this easement and under the Pawleys Island Project as authorized by Congress, will be performed.”

51. However, the proposed documents sent by Fabbri in or around March 2019 differed from all the Town’s foregoing representations regarding the simplicity and limited nature of the requested easement. The document reflected something far in excess of what was “required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project,” as represented by the Town.

52. The requested Public Access Easement grant was excessive, injurious, contrary to the representations of the Town, and unnecessary to the described project in the following particulars, among others:

- a. The grant, which was forever, was not just to “the Town.” It was to the Town “or its assigns,” e.g., USACE or potentially others.
- b. Shockingly, it was also to the “public,” for “public access.”
- c. The grant was not limited to being active and valid only when renourishment work, maintenance, sand fence erection or sea oats planting was being

done. It was “perpetual” and had no limitation language to indicate it was anything but continuous as to much more than allowing a deposit of “sand” to remain. It in fact provided not only for “maintenance,” which is an unlimited ongoing activity, but also “public access” and such things as “patrolling” and “operating a public beach.”

d. The grant included a map/plat showing the boundaries of the allowed project work, which encompassed the land and improvements two (2’) feet from the main pilings of Plaintiff’s house, and included components of Plaintiff’s house such as portions of the stairs -- and this proposed grant explicitly, in plain English, provided for the ability of the Town or its assigns to destroy things within the easement area.

e. Despite the attached map/plat showing a smaller area, the plain English language of the written proposed grant was devoid of appropriate relational language (e.g., “the premises subject to this easement is”) and described the entire lot of Plaintiff as being subject to the easement, and the easement scope language of the document went on in other passages to describe the rights of the grantees – the Town, and its assigns, and the public -- to do various things in the “described” property, which literally was the whole lot.

f. The grant included the right of the Town or its assigns to exclude the owner from the owner’s land under a broadly worded right to “limit access” to “dune areas” in order to “facilitate preservation” of vegetation or dunes.

g. The grant included the right of the Town to engage in broad activities on Plaintiff’s land, including “patrolling,” “operating” and “maintaining” a “public beach a[nd] dune system.”

h. The grant, after clarifying the right of the Town and its assigns to destroy Plaintiff's owned improvements constructed on Plaintiff's land in the mapped area (and the rest of the lot), and the right of the Town and its assigns to limit Plaintiff's access to Plaintiff's property, also restricts Plaintiff to building only such walkovers as may be "approved" by "a designated representative" of the Town, without any statement of standards anchored to state or local law or anchored to any language in the grant itself. That is, rather than leave Plaintiff subject only to such lawful restrictions as may be imposed under state or local law, the grant adds an additional private-law layer of restriction in the conveyancing document, which restriction can be exercised by whim of some unknown Town's or "project sponsor's" "designated representative," without regard to other law or regulation.

53. Assuming the gravely serious and perpetual document to be the result of haste, ignorance of its permanence and gravity, or inattention, or to drafting by an unlicensed person, Plaintiff eventually set about preparing an easement grant which was responsive to the Town's previously publicly explained needs. Plaintiff tried to prepare a document which was as close as possible to the document requested by the Town, but one which corrected, among others, the above defects. Plaintiff prepared its own proper plat and an easement which was more than that "required solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project," this being the purpose stated by the Town.

54. Into the spring, the Town continued to represent that the easement was for limited purposes, activities and powers, but, unbeknownst to Plaintiff, several other owners, too, had read and understood the gravity of the proposed document.

55. On April 20, 2019, in a Town meeting for property owners, Fabbri, speaking for the Town, acknowledged that “the project” had “taken many turns” and had “changed a lot in two years.” Fabbri reported that of the 113 easements sought, he had 70, with about 40 to 45 to go.

56. In the April 20, 2019 meeting, Fabbri, speaking for the Town (at about time stamp 16:19 of the video record of the meeting), emphasized that there would be “no work on or under decks, patios, or porches.” Fabbri continued, “People are concerned about the easements. Are we going to tear up their walkway? Are we going to tear up their stairs? The idea is to do our best to work under and around.” The proposed perpetual easement grant Fabbri sent to Plaintiff in March made no exception for such items and affirmatively showed them in the mapped area.

57. Speaking for the Town, Fabbri continued April 20, 2019 (at time stamp 17:59): “I know it is private property and I don’t want anyone to sign anything they are not comfortable with. *** At the end of the day, this is an easement to the Town, not the federal government.”

58. Fabbri continued, “This easement will always be controlled by five council members who live here, who live here full time – who, I cannot imagine for the next fifty years or however long this easement is in place, that they are going to do something to violate your rights, or to screw you over. I cannot see that happening.”

59. The proposed easement grant sent by Fabbri to Plaintiff in March 2019 was perpetual and was not limited to the Town – it was to the Town or its assigns, which could include the federal government; the composition of Town Council changed within the next year; Town Council included then, and still includes, members who do not live full time on the Island and the next mayoral election involved a legal dispute over the actual residency of the challenger to Braswell; Upon information and belief, Town Council has made as close to zero effort as is

possible to advocate for Plaintiff's property rights and reasonable concerns to USACE; and the present Town Council has now, upon information and belief, knowingly voted to condemn a clearly excessive and unnecessary "easement" on Plaintiff's property, while making false public pretenses about the nature and scope of the requested easement, about their lack of knowledge of the nature and scope of Plaintiff's objections to it, and about the extent of Plaintiff's efforts to cooperate in providing, free of charge, an easement within what have been publicly touted by the Town as the limits of the necessary scope.

60. Contrary to Fabbri's assurances, Town Council has done little or nothing to protect Plaintiff's property rights and may actually be the sponsor of their violation. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property, while, with the exception of emergency vehicles, driving on the public beach in the Town is prohibited by Town ordinance, and driving on Plaintiff's land is a trespass. As described hereinbelow, the Town now has an appraisal report on Plaintiff's property but has never contacted Plaintiff to obtain any permission to enter onto Plaintiff's property as required by statute.

61. Speaking for the Town on April 20, 2019, in response to questions about public access language in the proposed documents, Fabbri represented that the project would be complete and at an end when the sand fill was in place, and at that point, all the public access rights in the proposed easement would also be at an end: "It will only be used for this project," he stated (at time stamp 29:42). "It will never be used for anything else." As demonstrated further herein, the Town's later and current insistence on public access -- if necessary, even through condemnation -- even after the Corps project was rejected and the Town's project has been completed, renders Fabbri's assurance totally and utterly false.

62. Fabbri explained (at time stamp 29:48), “I can promise you that and can say it with one hundred (100%) percent confidence, because it is to the Town.” (Emphasis Fabbri's.)

63. Fabbri continued, “And I cannot imagine,” Fabbri stated (at 29:48), “under any scenario, where five council members decide they’re going to go do something that is going to violate your property rights. Zero.” The easement the Town sought in March 2019 is not limited to the Town. The Condemnation Notice, as mentioned above, is incomplete. The proposed project by the Corps for which the easements were solicited in 2019 did not occur. Instead, the Town did its own project and the Town project is now complete. Even the Town project, done with no easement from several owners, is at an end, and yet the Town Council, with no actual proposed project pending, has authorized and directed that a Public Access Easement, completely unnecessary by the Town’s own previous statements, be obtained on Plaintiff’s property by the drastic measure of condemnation.

64. At the same April 20, 2019 meeting, then mayor Jimmy Braswell, who was later succeeded in a contested, and disputed, Town election, stated (at 1:11:17), “I would have bet anything we would not be hit by four hurricanes in four years. *** Who is to say we won’t go another twenty years and not be hit hard.”

65. At the same April 20, 2019 meeting, Bill Otis, the mayor preceding Braswell, clarified (at 1:29:51) that the projects at hand were going to last only the few months necessary for the act of putting a specified volume of fill sand on the beach: “Today’s decision is renourish or not – not what we’re going to do ten, twenty, thirty years from now ... if we get to nine years and stop, we’re better off.” Otis emphasized (at 1:30:44), “Just separate [the two questions]: Do we do the beach project or not.” Braswell concurred (at 1:32:26), “Once we do this first project, it’s done.” (Emphasis Braswell’s.)

66. Unbeknownst to Plaintiff until later, on or about April 28, 2020, Fabbri received from another owner, the Beattie trust, a revised easement document intended to correct many of the same abovedescribed defects in the proposed Public Access Easement, and for which Beattie had included and recorded his own plat, prepared for him. However, upon information and belief, Fabbri requested a correction to a matter of form occurring on the signature page, and Beattie executed another page, authorizing it to be attached only to the easement grant Beattie had submitted. Upon information and belief, unbeknownst to Beattie at the time, Fabbri thereafter attached the signature page to a Public Access Easement and filed it in the title records for Georgetown County. Upon information and belief when Beattie weeks later discovered these actions, he was in touch with both Fabbri and Durant, and eventually had the inauthentic document cancelled.

67. On April 30, 2019, speaking for the Town, Fabbri wrote by e-mail to another owner:

The intent of this letter is to clarify the purpose of the perpetual easement the Town is seeking for beach renourishment and how it will impact your property. The easement will be used only by authorized personnel solely for activities related to the construction and maintenance of the project including sand placement and associated earthwork, installation of sand fencing, and planting of beach grass associated with the project. Additionally, this activity is confined to the easement area only and not the remainder of your lot. The easement is and always will be for the purpose of constructing and maintaining the project. It does not change the boundaries of your property, convey property to the Town, or change your ability to access or use the property as you currently do, except in limited instances during the construction phase of the project. You will still maintain private access to the beach.

Fabbri is not a licensed attorney. Fabbri is not the mayor (who would also not have authority to make such statements binding on the Town). Fabbri did not cite any Town resolution or ordinance making such statements. Fabbri did not make such statements in an enforceable filed conveyancing document altering the wording or enforceability of the proposed permanent

easement grant document. He cited no legal opinion from licensed counsel willing to make such a statement, nor did he offer a title insurance company which would insure such conditions.

68. Many parts of the statement in Fabbri's April 30, 2019 e-mail letter are patently false, and the Town will not agree to put any of them in writing in the requested easement grant itself.

69. The proposed Public Access Easement grant, by its statements in plain English, will and can be used by the public at any time. In plain English, the document proposed in March 2019 provides for patrolling, "operating," and maintaining a "public beach a[nd] dune system," which is different and greater in scope than merely piling sand, maintaining it, planting on it and putting sand fence on it. On and before July 4, 2020, there were already numerous tire tracks of a full size nonemergency Town vehicle on the dry sand beach on Plaintiff's property.

70. The proposed March 2019 document states that the easement does lie "over, upon, through and under" what is stated in plain English as "the following described premises," and this phrase is followed by a description of Plaintiff's whole lot.

71. The document does convey property to the Town. It is a proposed "grant" of a perpetual easement. An easement is a property interest, and in this case, if it is the perpetual right to both exclude the owner from the land, and a perpetual evisceration of the owner's right to exclude others (the public) from the land, it is a very big property interest, close to taking the entire "bundle" of rights constituting property ownership.

72. The document does change, or allows the Town, or its assigns, to change, the manner in which Plaintiff accesses and uses the property, in that it allows, among other things, destruction of Plaintiff's access structures, then permits a "walkover" only as approved by the Town with no standards set forth for such approval, and includes a broadly stated express ability

of the Town, or its assigns, to “limit access,” which includes access of the owner. “Limit access” means to limit access.

73. Fabbri, who is not a lawyer, and who, upon information and belief, claims that in dealing with the Corps, he “never worked with a lawyer,” still must know his lay representations are false, unless he has received legal advice elsewhere that the document does not mean what a grade-school reader of English would know it to mean. He also must know that one cannot describe an easement in purposefully broad or sloppy language, or even specific language, and then just “say,” on the side, what it means, or that it does not mean what it says.

74. The easement grant or the easement condemnation must explicitly say within the operative document – not in a “side letter” -- what the document means and does not mean. Otherwise, a purchaser, title insurance company, appraiser, or present owner, must assume the worst, and must at least assume what the document plainly says. This is the only basis for assessing whether to make the grant, and in a condemnation action, is the only basis on which to assess the value of what is taken and the damage done by the taking.

75. The Town’s hereinbelowdescribed repeated and continuous insistence on including sloppiness and deliberate ambiguity, if not express overreaching, permanently in Plaintiff’s chain of title, is in bad faith and is an abuse of discretion.

76. Under the proposed Public Access Easement, Plaintiff will not, as stated by lay fiat of Fabbri alone, “still maintain private access to the beach,” when in fact the document expressly grants to others, rights to engage in sweeping activities on Plaintiff’s land and improvements, “together with the right of public use and access.”

77. Upon information and belief, some time after another owner sent a proposed easement grant document to the Town on April 8, 2019, signed and in recordable form, and

responsive to the actual stated needs of the proposed project, the Town rejected it. Here again, the Town was on acute notice of the fact that the easement the Town was actually trying to obtain was different from the easement the Town publicly and privately stated the Town needed.

78. Having consistently publicly misrepresented the scope of the easements sought by the Town to be minimal short-term authorizations to simply bring in equipment and deposit sand for a few months, Fabbri thereafter publicly (in the newspaper and Town published communications) represented in references to certain other owners, that these owners had not sent Fabbri an easement or had not signed an easement, implying outright refusal rather than diligent cooperation. Fabbri did so rather than risk publicizing the inaccuracies of his own prior public statements and the problems with the excessive, overreaching, and in many ways, reckless or sloppy, proposed document.

79. Upon information and belief, the Town represented directly to another owner that the Town had never worked with an attorney at USACE and that USACE would not allow the Town to alter the defective draft document the Town had prepared and proposed, which included incomplete sentences, punctuation errors affecting intelligibility and meaning, misspellings, and typographical errors in addition to the other defects recounted herein. The Town represented that the wording and format of the document was “standard” and not susceptible to any exception.

80. Cursory research and a facial inspection of the document, however, reveals that the Corps has on other projects, employed similar language in only one block of text of the overall easement grant document, which the Corps refers to as “Standard Estate 26,” which is a further identification and description of the scope and nature of easement interest being conveyed. The remaining components of the document, such as the premises (identification of parties, the consideration, the granting clause), the description of the property subjected to the

easement conveyed, the habendum clause, any reddendum clause, the execution and the probate or modernized acknowledgement or proof of execution, are clearly and necessarily left to the document assembler. Standard Estate 26 accounts for many, but not all, serious problems presented by the proposed Public Access Easements, including the sneaked-in grant of public access.

81. Further, Standard Estate 26 is anything but standard, or legitimate.

82. Standard Estate 26 has not been established by statute.

83. Upon information and belief, Standard Estate 26, as opposed to some other USACE Standard Estates, has never been adopted as, or in, a regulation in accordance with the federal Administrative Procedures Act.

84. Upon information and belief, Standard Estate 26 does not have the status of actually adopted written policy by USACE. There is no readily accessible record of who came up with its contents, or why, or who approved them. Further, other versions of this nonstandard “estate” contain blanks for insertions of exceptions, making it, per se, not standard.

85. Upon information and belief, continuing to try to resolve the matter, another owner, against constant dissuasion attempts by the Town, insisted on contacting the parties at USACE in Savannah perceived to be involved in the proposed project, D. Steinbeiser and J. Hinely. Upon information and belief, that owner provided them information about nonstandard, nonrequired Standard Estate 26, including a different version used elsewhere, and set up a phone call with one of them and a USACE lawyer.

86. Upon information and belief, in the May 1, 2019 call, the excessive and injurious nature of the proposed document was discussed, as were the public shaming and misinformation tactics employed by the Town to try to stampede remaining owners (under a falsely stated

deadline) into signing the damaging document. Upon information and belief, USACE resolved to look into changing some of the more injurious aspects of the document, likely by employing an exceptions clause in the different version found by the other owner.

87. Upon information and belief, meanwhile and subsequently, the Town publicly falsely represented that the other owner was among a few of an inaccurately stated number, who “had not signed an easement,” or from whom the Town “had not received an easement” (e.g., “Lawyers with the Army Corps of Engineers were scheduled to talk Wednesday with one of two property owners who declined to sign easements to allow the federally-funded beach renourishment project on the south end”), attempting to defame and shame the other owner and others and intimidate them into signing the sloppily drafted, defective, excessive, overreaching, permanent easement grant described hereinabove. By early May, the Town, through Fabbri, was also already publicly threatening condemnation in statements to the newspaper.

88. Upon information and belief after the May 1, 2019 telephone conference, the Corps ignored the other owner’s request to work with him on the revision before sending anything to the Town. Upon information and belief, instead, after the Corps had some communication with the Town, in which the owner was not included, the Corps had the Town draft something to send the owner. Upon information and belief, it took the Town and USACE until around June 18, 2019 to respond, although Fabbri had previously represented April 30 as a drop dead date for owners to provide easements. Upon information and belief, then USACE responded, not to the owner, but to the Town, who would in turn send a re-drafted document with no record of whose drafting was involved or whose decisions went into what was presented.

89. Upon information and belief, meanwhile, the owner worked with the Town to alter other portions of the document, presumably not requiring Corps input, or otherwise being

approved by USACE in communications not including the owner. Upon information and belief, one of these changes, agreed and proposed by the Town in writing around June 18, 2019, was to move the project line on the proposed attached map a few feet so that it did not envelope the owner's concrete foundation in the project area.

90. Upon information and belief, the putative Corps changes the Town drafted to other parts of the proposed document were inadequate to address all the other owner's concerns. Upon information and belief, for example, they excepted the owner's deck from destruction, but not from all aspects of the easement, such as public access, and also made no other effort to preserve the owner's rights to maintain, repair, replace or relocate the deck or other improvements. Upon information and belief, the owner promptly sent the Town a suggested further revision in June 2019.

91. Upon information and belief, despite the urgency for which the request for an easement was first presented to the other owner and others, for weeks and months, the owner never got a response.

92. Upon information and belief, it would be eight months before the other owner would hear anything further about a request for an easement, and about nine and a half months before the owner would hear anything further about the agreed substance of any proposed easement.

93. On July 26, 2019, Plaintiff recorded a proper easement and plat responsive to the Town's publicly stated needs, correcting many of the same abovedescribed defects,

Nonaction by Corps. Decision of Town That Corps is Unreliable

94. By early July 2019, for reasons of deciding to do a cost-benefit study of the potential Corps project, USACE put the proposed project on hold, with no promise of when it would be pursued or on what basis with regard to levels of sand or money.

95. By early July 2019, the Town, through Fabbri, was publicly claiming in statements to the paper that the Town had acquired all 113 easements sought. He also stated that the entire initial decision to let the Corps do the south end project was based on a waiver, in writing, stating that a new cost-benefit analysis would not be needed and that the Town was exempt from it.

96. Then-mayor Braswell said, “[T]hey’re not holding up their end of the bargain ... They are leading us down the primrose path.” Holliday said, “We can’t rely on them.” Holliday later stated, “the question for council is, will they do it at all? That’s the biggest concern I have.” Carter stated, “There’s so much uncertainty in trying to deal with the Corps.” And again, Holliday stated that although he thought the benefits of Corps involvement were huge, “You have to weigh that against the potential that they won’t do anything at all.”

Town Plans, Action, Formal Decision That Easements Are Unnecessary, Rejection of Corps Project, and Completion of Town Project with No Easement

97. In or around July 2019, the Town rejected the Corps project. The Town decided to do its originally designed project, on its own, for both the south end and mid-island.

98. On July 29, 2019, the Town stated, “The easements that were collected were necessary for the Army Corp of Engineers to do our project.” However, the Town Council officially acknowledged, “...but if we decide to go with Marinex the easements are not necessary.”

99. Town Council decided to go with Marinex. As Fabbri, stated it August 1, 2020, “In light of the uncertainty clouding the future of the USACE option, council decided to forgo the federal project and move forward with Marinex and the construction of our original project.”

100. The Town's “Town of Pawleys Island South Carolina Local Comprehensive Beach Management Plan August 2011” is adopted by Town ordinance but is absent from the codified ordinance itself and is there said to be available at Town Hall. It is also available at <https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/local-comprehensive-beach>. There, the Town claimed at page 47, that while the beach in the vicinities of some of the properties of the 2020 Town Council members had relatively stable beach and a low or negative long term erosion rate (measured in feet of shoreline change per year), the beach in the vicinity of Plaintiff's property (at Monument 4200C) had a long term erosion rate which was actually a positive accretion rate (presented as a positive number) of one and forty-one one hundredths (1.41) feet of positive beach accretion per year. These rates are shown in the Plan at Table 3 and in Figure 17, which is mislabeled as “Figure 4.”

101. In August 2020, the Town continued to consider the various amounts of sand it could include in the Town project, which would be done without involvement of the Corps. On August 27, 2019 Rocky Holliday stated in the Town Council meeting that the Town now understood and acknowledged that they were not thinking about the timing of future projects correctly. Originally, he explained, the Town was looking at doing a project every ten 10 years. Now, in working with the Town's engineers and discussing it among Council members and Town “staff,” there was another scenario reviewed with a much longer time span between projects. Holliday presented a graph showing that if the project added one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand to the beach, it would be twenty-two (22) years

before the additional sand eroded down to four hundred thousand (400,000 c.y.) cubic yards of sand more than was presently on the beach. According to Holliday and the engineers and Council and Town “staff,” four hundred thousand (400,000 c.y.) cubic yards more than was then on the beach would be a “trigger point” for another renourishment project. I.e., it might be twenty-two (22) years before another renourishment project, assuming one were done even then.

102. In early September 2019, the Town decided to contract for the option providing the maximum amount of sand for the project, one million, one hundred thousand (1,100,000 c.y.) cubic yards of sand, at a forecasted price of fourteen million, eight hundred thousand (\$14,800,000.00) dollars.

103. With no easement from Plaintiff different from the proper one Plaintiff had recorded July 26, 2019, between late October 2019 and late April 2020, the Town did all the renourishment in its own project, on its own, from stern to stern, with a contractor paid by the Town. By March 16, 2020, the full contracted volume of one million, one hundred thousand cubic yards of “sand” fill was in place and complete, from the south end north to just north of the pier, about three miles from Plaintiff’s house.

104. The renourishment on the south end was largely completed before mid-February 2020, and placed a large artificial dune-like berm of spoil material directly on the ocean side of Plaintiff’s house.

105. In February 2020, in an e-mail to all owners, echoing Holliday’s August 27, 2019 estimates of twenty-two (22) years of sand, Henry stated sand in place would last fifteen (15) years, with a substantial volume still remaining at that time.

106. The executed, engineer-designed-and-supervised project avoided Plaintiff’s stairs and bent the berm around a nearby owner’s deck to avoid the deck and other features. The berm,

full of rocky material, shells, mud balls, rocks, and blackish-grey dirty sand, was high enough to completely block the view of the ocean from the under the house, and required the building of a walkway out from the deck to get up over it to get to the ocean.

107. The spoil material of the completed renourishment also built the beach up to where the high tide in early April 2020 generally did not rise or encroach closer than about seventy-seven yards from the eastern edge of Plaintiff's stairs.

108. About a block south of Plaintiff's property, the engineer-designed-and-supervised project also moved the berm about thirty (30') feet seaward from its originally designed location. Upon information and belief, this was done simply to have the berm further from the public parking area already existing at that location.

Re-emergence of Corps Interest in Possible Future Projects

109. In late February 2020, after all renourishment under the Town's project was complete on Plaintiff's end of the beach and for miles to the north, Fabbri began contacting some owners to discuss obtaining either an easement or a revised easement because the Town wanted the Corps possibly to be available to do future renourishment projects and money swapping under a contrivance characterizing the Corps as a participant in the already completed project costing over fourteen million (\$14,000,000) dollars, on which the Corps had done nothing.

110. The contrivance was to let the Corps do as much as \$40,000 to \$80,000 worth of work erecting sand fence and planting "beach grass" on the already completed spoil berm and be "deemed" to have done the project. ("Beach grass" is now assumed to NOT refer to the iconic, southern, native, dune-building grass, *Uniola paniculata* (sea oats), a food producer for the red-winged blackbird, but rather, to either *Ammophila breviligulata* ("American beach grass," with a

range from Maine to North Carolina) or *Ammophila arenaria* ("European beach grass," with a wide northern range), both of which are non-native and can be invasive.) Upon information and belief, Fabbri admitted that if the Town obtained "the easements" and had the Corps enter the contrived relationship, given the Corps's and Congress's track records, there was absolutely no guarantee the Corps would ever do anything. However, he pointed out that if the Town did not get the Corps into such a relationship, there was a 100% chance the Corps would never do anything. This is the same principle which prevents one from winning a dollar in poker if one never sits at the table to take a chance, and dictates that one might not catch any fish at all in a boat, but one certainly won't if one is sitting on the couch.

111. Upon information and belief, after such a discussion, another owner, on February 24, 2020, yet again sent the Town a proposed easement grant, updating the owner's prior unresponded-to, June 18, 2019 revisions to correct previously unnoticed broad language allowing the Town or its assigns to exclude the owner from his own property, and clarifying, in light of adverse experiences in other jurisdictions suffered years after similar easements were signed, that the scope and nature of the Town's activities in the subject part of the owner's land were not to broaden or change, and that owner's access to and use of the beach would not be hindered or changed.

Requests for Easement for Speculative Possibility of Future Projects When No Actual Project is Any Longer Proposed or Pending

112. Upon information and belief around March 31, 2020, Fabbri contacted the other owner with what was represented to be the Corps's response to the revisions requested by the owner about nine and a half months earlier, on June 18, 2019, before the Corps project was rejected. Upon information and belief, according to Fabbri, with one exception, the Corps

refused any changes beyond those the Town had sent the owner in June 2019 back before the Town elected not to involve the Corps and completed the renourishment project on its own. Upon information and belief, according to Fabbri, the Corps did now agree to adding one word, “public,” requested by the owner in the easement the owner offered February 24, 2020. Upon information and belief, Fabbri, however, represented that Fabbri himself cleaned up the document in some particulars and also had the map/plat changed to move the project line (the so-called “Perpetual Easement Line”) itself seaward. Upon information and belief, in his e-mail, Fabbri stated that he had “incorporated an alternate perpetual easement line that removes all structures.”

113. Upon information and belief, Fabbri attached an updated proposed easement grant, but inadvertently failed to add the agreed added word, “public,” in what he sent. Who Fabbri copied on this written communication is unknown, but, upon information and belief, the map/plat in document he e-mailed also did not move the PEL to remove all structures. It did move the PEL off the concrete foundation system, further from the main pilings of the house, but it left the deck and stairs fully enveloped.

114. Upon information and belief, on April 8, 2020, now, like the rest of the populace, fully submerged in the COVID-19 pandemic crisis and widespread quarantining-lockdown issues, the owner wrote to Fabbri again.

115. Upon information and belief, in the April 8, 2020 e-mail, the owner explained specifically and at length, again, what was unreasonable, excessive, and injurious about the documents the Town had sent and kept sending.

116. Upon information and belief, in the April 8, 2020 e-mail, the owner explained in eight items, that the document the owner sent February 24, 2020 was properly expressed and

would have granted more than was actually or reasonably needed, but that the March 31, 2020 proposed grant prepared by Fabbri unreasonably sought far more. The easement grant Plaintiff had recorded July 26, 2019 bore a similar relationship to the documents the Town had proposed, correcting many of the same concerns.

117. Upon information and belief, the other owner subsequently again reminded Fabbri, that it was not correct to state that he had “failed to get an easement” from the owner, but had, rather, he had failed to get an unreasonable easement from the owner. Upon information and belief, the owner reminded Fabbri, the Town Administrator of Pawleys Island, who reported to Town Council, in writing:

Those unreasonable features include encumbering our improvements in a manner which might prevent their repair and might remove our ability to exclude others from them, lack of clarity that our rights to access the ocean from our property are not affected, granting the public an easement across our property which is not legally necessary for renourishment, not explicitly limiting the scope and nature of the Town's future use of the easement area to renourishment-related activities, and requiring permission to build access structures to be obtained by whomever the Town designates without requiring the person to be appointed by law and to apply standards applicable to all owners.

118. Upon information and belief, later in April 2020, the other owner contacted Henry directly, explained the situation, and offered Henry and the rest of Town Council an opportunity to understand, directly, what had been going on and do the right thing. Upon information and belief, at Henry’s suggestion, on April 21 and 24, 2020 the owner sent Henry a history of the matter and a specification of the repeated unreasonableness and excessiveness of the Town’s requests along with corrective revisions.

119. Upon information and belief, Henry forwarded it to the Corps, not advocating for the owner in the least. Upon information and belief, despite all the information provided to Fabbri, and now directly to Henry, Henry stated to the Corps that he “[did]’nt claim to fully

understand the legalese associated with some of the language in question,” and asked if the Corps could have a conversation with the owner.

120. Upon information and belief, the Corps had no conversation with the owner.

Town’s and Corps’s Capricious or Spiteful Insistence That Property Owner Relinquish to Town and Others in Easement, Property Rights Previously Agreed in Writing Not to Be Necessary to Any Proposed Project, Whether Past, Future, Moot, or Completely Speculative

121. Upon information and belief, on May 7, 2020, Henry reported to the owner third hand that Fabbri, not Henry, had spoken to the Corps “again” and that Fabbri advised that the Corps had advised that the Corps was not in agreement with any changes, including any previously agreed.

122. Upon information and belief, the changes to which the Corps allegedly retracted its agreement, to add ambiguity, were allegedly called “minor” by the Corps, according to Henry, according to Fabbri. Upon information and belief, the changes were, however, verified later to be all those that were previously agreed in writing to be unnecessary to the earlier, moot, Corps project, and to be unnecessary to any speculative possible future project. Upon information and belief, the retracted changes included some which were made for other owners, thus confirming they were per se unnecessary to exact from the other owner or Plaintiff, and spiteful or for purposes of some misguided negotiating pressure, which is bad faith.

123. Upon information and belief, these previously agreed, but now retracted, changes for the other owner and some others included:

a. those agreed to by the Town preceding owner’s June 18, 2019 requested revisions, which included an insufficient, but very material, not “minor,” statement that the

owner's improvements in the shaded area on the proposed map would not be subject to destruction or removal by the easement holder;

b. the "cleanup" in the March 31, 2020 proposed grant Fabbri sent to the owner, which included the very material, not "minor," clarification that the easement – with all its attributes, including public access – did not run over the owner's entire lot;

c. the very material, not "minor," moving of the PEL in the map attached to that same document, four to five feet further away from the main pilings of the house; and

d. the very material, but not "minor," addition of the word "public" as a qualifier of the type of access the Town or later owners of the easement would be able to limit from accessing the property. That is, a change removing the ability of the holder of the easement to keep the owner off his own property.

124. Including in any proposed easement, the following attributes in favor of the grantee, if not absolutely required for the purpose of the proposed project, is unnecessary as a matter of law; doing so is also, if not fraudulent, then spiteful and in bad faith, or capricious, or arbitrary, or done out of such indifference, ignorance or lack of training as to be an "abuse of discretion" on multiple levels of the definition of that term:

- a. the right to destroy owner improvements in the shaded area;
- b. an implication or statement that the attributes of the easement apply to the entire lot;
- c. showing a shaded area for work, sand piling, and public access two (2') feet from the main body of the house, if not also enveloping foundation elements; and

d. an ability to exclude the owner from the owner's own land in dune "areas" under an overbroad power to "facilitate preservation" of "dunes" or "vegetation," which could be just about anything.

Town Council's Punitive and Bad Faith Vote to Condemn Wholly Unnecessary Easements With Features Agreed to Be Unnecessary to Anything, Under False Pretenses, Continuing to Conceal or Misrepresent the Features Sought, or Under Abject Failure to Understand or Attempt to Inform Itself of the Meaning of Plain English in the Easement

125. Upon information and belief, neither Henry, nor Fabbri, nor anyone on Town Council, despite having a Town Attorney available and involved, despite Fabbri's reports to Council, despite having at least one other owner's explanation of the matter numerous times in writing, and despite being fully aware of Plaintiff's and other owners' concerns with the very real, legal and real-life consequences of the unreasonable, overreaching, overbroad and intentionally sloppy and ambiguous granting document the Town kept proposing, did anything to advocate for their constituent and its property.

126. What the Town Council and Fabbri did was take rapid public steps to approve an attempted condemnation of an interest in Plaintiff's property, and publicly misrepresent the approved measure as condemning an easement "only to put sand on the beach," and publicly represent the measure to be necessary because, for reasons Town Council pretended not to know, Plaintiff simply had not signed "an easement."

127. On May 18, 2020, after, upon information and belief, plans already made and pursuant to an agenda already set, the Town Council of the Town of Pawleys Island met (live-streamed and now recorded, found at <https://www.facebook.com/TownofPawleysIsland/>).

128. There, the Council, consisting NOW of Henry, Green, Holliday, Carter, and Zimmerman, joined by Fabbri as Town Administrator, first have an off-the-record "executive session" with the lawyer, Durant to get "legal advice."

129. They then go through an exercise of ostensibly thorough and thoughtful and hesitant discussion about the nature of the problem and whether to condemn the properties of four of their fellow citizens.

130. The theme is they can't understand why everybody wouldn't "sign" "an easement," and the implication is that certain people simply would not grant one. In reality, and truth, however, these are two different things.

131. Fabbri assures the Council on the record that he has worked diligently on the matter for "a year and a half." Fabbri knew full well that, of three of the owners: one had actually sent a proper executed easement to him over a year earlier and had followed numerous times, in writing, with exactly the reasons certain aspects of the easement sought by the Town were unnecessary and unreasonable; another had prepared and hand delivered an easement in April 2019, which Fabbri subsequently altered without authorization, resulting in the Town filing a cancellation in July 2019 and that owner filing a clearer cancellation in October 2019; and Plaintiff had prepared and filed an easement and plat in late July, 2019. Yet, Fabbri states to Town Council and the viewing public (at 59:10) that "for whatever reasons," the owners in question had not "signed." Despite having received a very full explanation, Fabbri does not disclose this fact and adds, "they do not owe us an explanation," clearly implying, falsely, that no explanation was given and no reason was known. The then-mayor, Henry, states that he has gone to bat for concerned owners, but doesn't state what he did. Not one mention is made by any Council member of having read the proposed easement or of knowing its contents. Not one

mention is made of at least three of the subject owners having offered easements of different scope. The written resolution Council eventually votes on, despite its liberal recitations and “whereas”s, makes no mention of the actual nature of the easement or any concern expressed about its unnecessary scope.

132. Durant, the lawyer advising the Town, simply states and advises Council on the record that the owners "would still have all the same rights they had before granting the easement."

133. Administrator Fabbri says he had a “dialogue” with all 4 owners to get an easement to deposit spoil/sand in front of their respective houses and “doesn’t know why they won’t sign.”

134. Town Lawyer, Durant, of Surfside, adds: “property owners will still have title to the property.”

135. Zimmerman, at time stamp 1:02:35, asks Town Lawyer Durant, on the record in the publicly broadcast session, "and the easement basically is simply to put sand on the beach, right, David?" Durant officially replies, advising Council, "Yes, that is correct." The three aforescribed owners had all offered easements to put sand on the beach.

136. No mention is made of the cooperative efforts or the nature of the objections, if any, of the citizens whose property is the subject. No mention is made of the tenuous nature of Corps involvement.

137. No mention is made that one subject owner actually gave Fabbri/The Town an easement to deposit spoil/sand in front of his house, in person, on or about April 25, 2019, at Fabbri's office, and that what happened after that was that Fabbri requested and was provided a

corrective signature page, and then attached the signature page to a different, unauthorized document, and recorded it in the title records of Georgetown County.

138. No mention is made of the owner's later discovery of the more-than-a-little-inauthentic document, letter to Fabbri, and efforts to get his title corrected.

139. No mention is made of another owner's extensive, if not exhaustive, efforts to accommodate the Town, give it every chance to do the right thing, and do the job it should have done or at least should have backed.

140. No mention is made that Plaintiff had, at its own expense, actually signed and directly recorded an easement responsive to the publicly professed needs of the Town for an "easement basically simply to put sand on the beach."

141. Upon information and belief, contrary to the implication of Town Council at the May 18, 2020 meeting, and contrary to statements and implication of those reporting to Council, three of the owners referenced had been willing, since the previous year, to grant the Town the right to renourish in front of their homes, and indeed, do more than "simply to put sand on the beach."

142. No mention is made that for months, the Town abandoned any effort to obtain, or iron out any questions about, the remainder of the previously sought 113 easements, because the Town determined to not get easements. The Town determined to do the project on its own, which it did and completed. After plunging itself into a huge, long term debt, the Town then sought an angle to possibly get some money. After the actual renourishment was already done, the Town then began a last-minute resumed courtship with the Corps and now, under the bad faith pretense that there was a project yet to be done, the Town Council presented the matter as if it were one of great urgency. The Town also presented this matter of needlessly condemning the

property of its own citizens as if the citizens had plenty of time to get this done, when in truth the matter was presented by the Town, both the first time and a second time, as an emergency under falsely stated deadlines.

143. Also not emphasized in the Town Council's comments on the subject, as the present council purports to agonize over condemnation of its citizens' properties, is that easements are only sought from roughly the last mile of property owners on the south end. Neither the mayor, the other council members, the town attorney, nor the town administrator have signed such an easement. The Council do not even publicly claim to have read or understood the Public Access Easement, although they are charged with understanding Town affairs, are educated people, are reported to by Fabbri, are advised by a Town attorney, and condemning their own neighbors' property is certainly a grave and drastic matter, costing those neighbors time, stress, and legal and other expense, if nothing else.

144. The renourishment which is also already done for the roughly two miles to the north will be paid for by the Town with whatever different help the Town can get, but with no help from the Corps. What the Town may or may not get back from the Corps someday perhaps twenty-two (22) years hence with respect to the south end, and whether, if so, the Town would re-allocate the benefit to all, are speculative matters. If the Town had not begun courting the unreliable Corps again, the south end would simply be in the same situation the two miles to the north is in -- with beach renourishment, already completed, and paid for by the Town of Pawleys Island with long term debt and whatever non-Corps help it can come up with.

145. While Durant states: "Property owners will still have 'title' to the property," no mention is made of the fact that Durant, with Fabbri's approval, drafted an easement unequivocally granting "public access" up to within a few feet of all the owners' houses, as

indicated by the PEL. This public access includes decks, stairs, and other improvements shown as being on the owners' land, some being original appurtenances to houses built over 50 yrs. ago. In its pretended thoroughness, the Council does not acknowledge that the Town's proposed easements also include the ability of the Town, or others coming to control and use the easement, to "limit access" to the easement area - without any qualification as to whose access may be limited. In plain English, this means the Town would have power to exclude people, including the owner, from the property.

146. Nor does the Council acknowledge in its pretended careful deliberation, that the proposed easements do not provide or reserve any right to the owner to repair, rebuild, or maintain any improvements of the owner's, located now or in the future, within the area the Town wants.

147. Nor does the Council let slip to the public that the proposed easements include the affirmative right of the Town to remove "obstructions" -- in plain English this means tear down the owner's improvements, in the area the Town wants. Instead, in an abuse of discretion, the Council votes on something it professes not to have read and not to understand. Shockingly, Carter states in the May 18, 2020 meeting, simply, "I can't understand it."

148. Upon information and belief, on May 21, 2020, one of the other owners asked Henry, directly, whether Henry himself had ever gotten a written a response from the Corps to Henry's own e-mail in which Henry forwarded the Corps the details provided by the owner, of the serious issues presented and solutions for them. Upon information and belief, when Henry did not respond, the owner asked again by e-mail on June 4, 2020, and Henry did not respond in any way.

149. Upon information and belief, on May 27, 2020, the other owner asked Fabbri, directly, since the only information the owner had received as to the Corps's response was third hand from Henry, whether Henry got it right in describing the Corps's communication with Fabbri on the subject, whether there was any more detail or reasoning given by the Corps, and whether there was anything in writing as to what the Corps meant. Upon information and belief, Fabbri did not respond, the owner followed up on June 4, and Fabbri did not respond.

Condemnation Notice Purposefully Obscuring Nature and Extent of the Easement Sought and What Is Being Valued, Including False Certifications, Sent Without Ever Having Made Appraisal Available or Having Negotiated in Light of Appraisal; Later-Obtained Appraisal Similarly Murky About What the Attributes of the Subject Easement Include; Missing Elements From Loose Leaf Papers

150. In Late June 2020, the Town sent Plaintiff a condemnation notice in which:

- a. The Town falsely stated, in contravention of express statutory procedure and Rule 11, SCRCF that the Town had first made an appraisal report available to Plaintiff and falsely certified that the Town had negotiated in good faith with respect to that appraisal report for the purchase of an easement prior to serving the condemnation notice;
- b. The Town offered to pay zero dollars because of the reasoning and opinion of the appraiser in the appraisal report, which had never been provided;
- c. The Town gave Plaintiff two (2) thirty-day deadlines: (1) thirty days from service to respond to the offer in the Condemnation Notice, and (2) thirty days from service to file a separate action challenging the ability of the Town to condemn the subject property, in whole or in part;
- d. The Town did not, even then, include a copy of an appraisal; and
- e. The Town did not describe the attributes of the easement it sought to condemn.

151. Not in the Condemnation Notice itself, another partial proposed Public Access Easement document was simply included in the envelope with the mailed Condemnation Notice. The additional document was not part of the Condemnation Notice, nor referred to in it, nor referenced in any transmittal letter. The unexplained partial Public Access Easement document had approximately the same language used in the proposed Public Access Easement proposed by the Town around March 2019.

152. Plaintiff had to contact the Town after having been served with the Condemnation Notice in order to obtain the appraisal report upon which the time-sensitive Notice and the offer therein was supposedly based, and which was required by law to have been sent to Plaintiff before serving a condemnation notice. The appraisal report indicates that the appraiser was never provided a copy of the proposed easement which was the sole subject of his appraisal.

Clarification of Town Punitive and Bad Faith "Intent" to Be Unclear and Maybe Pursue Wholly Unnecessary Easements With, Not Just Some, But All Features Previously Agreed to Be Unnecessary While Having Publicly Concealed or Misrepresented Features Sought

153. Upon information and belief, subsequently to another owner's receipt of a condemnation notice, upon information and belief, Oranga sent to the other owner, another separate Public Access Easement document, this time complete with attached map, the document being the one proposed by Fabbri to that owner March 6, 2019 (the one with maximum defects, before any of the changes of the past year had been made).

154. Upon information and belief, the owner asked Oranga why this separate document was sent and what its purpose was, and Oranga responded in writing on behalf of the Town that this was the original version of the proposed easement grant document and to please consider all other versions withdrawn "at this time."

155. Upon information and belief, the document conflicted materially with the easement described by the condemnation notice sent to that owner.

156. Upon information and belief, no amendment of the condemnation notice or its exhibit was sent to the other owner, however, nor was any extension or reset of time mentioned. Plaintiff objects to the Town constantly creating vagueness and unintelligibility in serious legal documents which are supposed to require professional valuation opinions, and does not agree to the Town changing its position on time-sensitive legal matters unilaterally without leave of court, by simply sending more or different things.

FOR A FIRST CAUSE OF ACTION AND REQUEST FOR RELIEF

(Any necessity for the easement requested for the Corps project and any other, ceased, when the proposed Corps project for which an easement was requested was rejected, the Town officially determined that an easement was not necessary, the work was not done by the Corps, and the work was completed by the Town.)

157. The foregoing facts and allegations are incorporated herein.

158. The contemplated condemnation is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited, and the Town of Pawley's Island's attempt to condemn an overbroad easement after the fact for an already completed and no longer proposed or prospective project should be disallowed and permanently restrained.

FOR A SECOND CAUSE OF ACTION AND REQUEST FOR RELIEF

(Because no new Corps project is proposed in good faith, an easement is also not necessary for a merely speculative project that may or may not occur many years in the future.)

159. The foregoing facts and allegations are incorporated herein.

160. In the alternative that the Town asserts the condemnation is for some other, future, hypothetical project, the condemnation is still unnecessary and in bad faith in that any

such putative future project is admitted by the Town to be speculative, unlikely, and by the Town's own calculations, most probably unnecessary for as much as twenty-two years.

FOR A THIRD CAUSE OF ACTION AND REQUEST FOR RELIEF

(If a new Corps project were proposed, the Town's insistence that the easement is only for placement of sand when all the sand has already been placed, and the Town's own bad faith, if not fraud and abuse of discretion, in misrepresenting the purpose and scope of the easement, bars and disqualifies any claim by the Town that the easement is necessary.)

161. The foregoing facts and allegations are incorporated herein.

162. In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite, caprice, arbitrariness, and illegality, and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it. The easement is also being sought through bad faith noncompliance with procedural rules. In that these facts constitute "fraud, bad faith or abuse of discretion," the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

FOR A FOURTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(The South Carolina Eminent Domain Procedure Act is the "exclusive procedure" for condemnation, the sections of the Act which require the condemnor to provide the appraisal before serving the notice and which specify the contents of the notice are stated in imperative terms of "shall" and "must," and the Town's failure to comply with these mandatory procedures is a fatal defect, rendering any attempted condemnation void and ultra vires; these defects, coupled with the fact that under the statute, the notice is the operative pleading for purposes of an action, and that the notice contains a false certification, further justify dismissal pursuant to Rules 11 and 12, SCRPC and other applicable authorities.)

163. The foregoing facts and allegations are incorporated herein.

164. The Town failed to give reasonable notice of request of the appraiser to enter onto the property, as required by S.C. Code Ann. subsection 28-2-70(C) and the common law of trespass

165. The Town made no such request at all and gave no notice at all of any request.

166. After obtaining an appraisal, the Town failed to make the appraisal available to Plaintiff before service of the condemnation notice as mandated by S.C. Code Ann. subsection 28-2-70(A).

167. After obtaining an appraisal with no request to enter the property or notice of intent to enter, and delaying in providing the report to Plaintiff, the Town made the appraisal or its conclusions available to the newspaper.

168. By failing completely to describe in the Condemnation Notice, the attributes of the easement sought, the Town failed to give, in the condemnation notice, “an appropriate legal description of the interest to be taken,” as required by S.C. Code Ann. subsection 28-2-280(C)(3).

169. Rule 11, SCRCF applies under S.C. Code Ann. section 28-2-120 because Rule 11 is not in conflict with the Eminent Domain Procedures Act, and because under S.C. Code Ann. subsection 28-2-30(5), a condemnation action includes all acts after the service of the condemnation notice, and the condemnation notice therefore constitutes a “pleading, motion or other paper” in an action, as described by Rule 11.

170. The Town failed to comply with Rule 11, SCRCF in that the statements in the Town’s operative pleading, the condemnation notice itself, i.e. the Town’s statement that the Town made the appraisal available before serving the condemnation notice and the Town’s

certification that a negotiated resolution in light of the appraisal provided was attempted prior to service of the condemnation notice, were false, and without factual basis.

171. After serving the condemnation notice, and only after Plaintiff's demand, the Town sent Plaintiff the appraisal report, which also did not set forth the attributes of the easement sought, because the Town did not provide a copy of the proposed easement document to the appraiser.

172. For the reasons that (1) noncompliance with exclusive mandatory procedure renders the Town's condemnation notice ultra vires and void, and (2) knowing or recklessly negligent false statements in a pleading render the pleader subject to sanctions including dismissal, the beginnings of the condemnation action represented by the Town's Condemnation Notice should be dismissed with prejudice.

FOR A FIFTH CAUSE OF ACTION AND REQUEST FOR RELIEF

(If, despite the Town's prior determination that no easements were required, the Town could falsely re-label the project the Town completed as one which was completed instead by the Corps and as being a project for which an easement is required by the Corps, the easement sought to be acquired by the Town is still unnecessary, in that it includes far more than is necessary to accomplish its stated purpose, fails to balance any injury to Plaintiff, seeks things the Town already admitted in writing were not necessary, and, upon information and belief, seeks some things not sought from other owners.)

173. The foregoing facts and allegations are incorporated herein.

174. In the further alternative that the Town could later show in good faith, any actual necessity for any easement at all across Plaintiff's land and improvements, it is necessary to first limit any condemnation to what is actually reasonably necessary, and to clearly define the easement being sought, including its limitations and consequences. To do so requires prior correction of persisting legal error or misrepresentation as to not only the nature of the easement that is sought, but also the basis, or legal or practical need, for the attributes the Town sloppily or

deliberately attempts to include, and as to the consequences of Plaintiff granting it or the Town taking it.

175. Among other things, there is no need for an easement over the owner's entire lot. There is no need for public access of any kind, no need to limit owner access, no need for broad Town activities unassociated with doing and maintaining the work, no need to include owner improvements, no need to be so close to owner homes, and no reason not to clarify there is no change in owner access to ocean and beach.

176. Additionally, the Town's bad faith noncompliance with procedural rules must first be cured before any contemplated condemnation may proceed, so that Plaintiff will not be deprived of a proper opportunity, forum and procedure for assessing value, including knowing exactly what is or is not proposed to be taken.

177. The extent of the easement sought was purposefully obscured in bad faith in Town pre-condemnation communications, but cannot be allowed to remain so in the Condemnation Notice and proceedings relating to it.

FOR A SIXTH AND POSSIBLE FURTHER CAUSES OF ACTION AND REQUESTS FOR
RELIEF

(Unanticipated arguments of the Town may give rise to other claims by Plaintiff in this or another action and Plaintiff does not waive jury trial on any that are so triable.)

178. The foregoing facts and allegations are incorporated herein.

179. In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages for trespass or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn.

WHEREFORE, Plaintiff prays that the Condemnation Notice be quashed and that the Town be forever barred and enjoined from filing it or proceeding with it, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

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Tel: (803) 929-1484

bstanton@stantonlaw.com

Attorney for Sunset Lodge, LLC

7/31/20

Answer to Complaint in Sunset* Challenge II action,
dated December 14, 2020

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	
	)	
	)	ANSWER
Plaintiff,	)	TO COMPLAINT
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	

DEFENDANT, TOWN OF PAWLEYS ISLAND, BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiff's Amended Complaint which is not hereinafter specifically admitted, modified or qualified, is denied, and strict proof thereof is demanded.

FOR A SECOND DEFENSE

2. The Defendant admits the allegations contained in Paragraphs 1, 4, and 7 of the Complaint.

3. The Defendant denies the truth of the allegations contained in Paragraph 2 of the Complaint, except admits that the Defendant is a municipal corporation.

4. The Defendant admits the truth of the allegations contained in Paragraph 3 of the Complaint, and adds that the Plaintiff filed an Amended Complaint on July 31, 2020.

6. The Defendant denies the truth of the allegations contained in Paragraphs 5, 6, and 8 through 50 of the Complaint.

FOR A THIRD DEFENSE

7. The Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted.

FOR AN FOURTH DEFENSE

8. The Defendant is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.* Furthermore, the determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity, in this case, the Defendant, exercising the power of eminent domain.

FOR A FIFTH DEFENSE

9. The easement sought to be acquired by the Defendant is intended for the public purpose of beach renourishment that would benefit both residents and visitors of the Town of Pawleys Island.

FOR A SIXTH DEFENSE

10. The easement sought to be acquired by the Defendant is a requirement by the United States Army Corps of Engineers (the "Corps") in connection with a 45-year beach renourishment project for the Town of Pawleys Island.

FOR A SEVENTH DEFENSE

11. If the Defendant complies with the easement requirements by the Corps, the Town's beach renourishment project will be federally protected. Thus:

- a. The Corps will be responsible for an estimated cost of \$300,000.00 for erecting sand fence and planting beach grass, at no cost to the Town;

b. The Corps will periodically renourish the Town's beach every nine (9) years in the next forty-five (45) years, and be responsible for 50% of the forecasted total renourishment costs of \$129,522,533.00; and,

c. The Corps will repair all beach damage resulting from a significant storm for the next forty-five (45) years, irrespective of federal declaration, at no cost to the Town.

FOR AN EIGHTH DEFENSE

12. Pursuant to S.C. Code Ann. § 27-3-10 *et seq*, the Plaintiff will not be liable to the general public by granting the easement sought by the Defendant.

WHEREFORE, having answered the Plaintiff's Complaint, the Defendant hereby respectfully asks the Court for the following relief:

- a. Dismissal of the Complaint with prejudice;
- b. An award of attorney's fees and costs to the Defendant; and
- e. Such other and further reliefs as this Court deems just and proper.

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

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

December 14, 2020

Amended Complaint in Sunset* Challenge II action, dated
January 13, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS)
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
Plaintiff,	)	AMENDED COMPLAINT
v.	)	(Challenge of Authority to Condemn, and
Town of Pawleys Island,	)	Challenge to Subsequent Condemnation Notice
Defendant.	)	Delivered Without Consent or Leave of Court
	)	While Challenge to Earlier Notice is Still Pending)
	)	(Nonjury)
	)	
	)	
	)	

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: PLEASE TAKE NOTICE that pursuant to S.C. Code Ann. § 28-2-470, the filing of this action automatically stays, without motion or other application, any and all further condemnation proceedings concerning 756 Springs Avenue, including but not limited to the filing of the Condemnation Notice previously delivered, which is the subject of this action, or the posting of any proposed payment, and any such actions taken in violation of this stay are void and of no effect.

Plaintiff alleges as follows and requests the relief thereafter prayed for:

1. Plaintiff is an individual citizen of South Carolina who owns oceanfront property at 756 Springs Avenue, on Pawleys Island, in Georgetown County, South Carolina.
2. The Town of Pawleys Island is an ostensible municipal corporation operating in Georgetown County, South Carolina, ostensibly incorporated in or around 1985 and having ostensible Town limits coextensive with the physical geological island of Pawleys Island itself, which is three and a half to four and a half miles long, said limits extending to the center of the salt creek separating the island from the mainland.
3. The Town has a council form of government under South Carolina statutory law, consisting of a mayor and four other council members.

4. Under a council form of government, all legislative and administrative powers of the municipality and the determination of all matters of policy are vested in the municipal council, not in a mayor, or city manager, or town administrator.

5. Under a council form of government, the legislative, executive or administrative action of the council is decided and constituted by a majority vote of the council including the mayor.

6. At all times pertinent hereto, the Town Council of the Town consisted of a mayor and four other council members.

7. On May 18, 2020 and October 12, 2020, the five were Mr. Henry, Ms. Zimmerman, Mr. Carter, Mr. Green, and Mr. Holliday.

8. On May 18, 2020 and October 12, 2020, the Town Attorney was Mr. Durant (Sr.) and the Town Administrator was Mr. Fabbri; on May 18, 2020, the Town Clerk was Ms. Allen.

9. Under South Carolina statutory municipal law, as well as under the South Carolina Freedom of Information Act, official proceedings of Council are, with limited exceptions, required to be public and on the record with minutes taken.

10. The Town Administrator is an employee and not a Council member.

11. Under a council form of government, the mayor has no greater vote, or executive or other inherent powers than any other council member, other than to be the presiding officer at council meetings.

12. The majority of the owners on the island do not live on the island; the majority of the homes are not principal residences of the owners or anyone else; and the governing body is elected by the relatively small percentage of owners who are residents or putative residents, from a relatively small percentage of owners who are residents or putative residents on the island.

13. In early 2019, the Town Administrator of the Town began repetitive public and private requests to oceanfront property owners on the south end of Pawleys Island to grant permanent oceanfront easements to the Town on their property at no charge.

14. The requests to south end owners stated that the permanent easements were for the purpose of a project placing additional sand on the beach continuously for three miles more or less, from the south end north past the middle of the island up to a point on the north end some distance north of the fishing pier.

15. Although the beach on Pawleys Island had never before been “nourished” in the first place with pumped-in offshore sand in the manner proposed, the project was commonly referred to as a “renourishment project.”

16. In early 2019, the Town was proposing to do the south end of the renourishment project in conjunction with the U.S. Army Corps of Engineers, which had indicated on-again-off-again intentions and abilities to participate in some form of renourishment for the preceding ten to fifteen years.

17. The repetitive public and private requests were only made to the owners on the southernmost mile, more or less, of beach, and were directed to approximately 113 owners.

18. In the repetitive public and private requests of the Town Administrator to south end property owners for permanent easements, he also encouraged all owners on the island to persuade south end property owners to grant easements. In the verbal public requests, he stated that the encouragement should stop short of showing up at doorsteps with torches and pitchforks.

19. Around this time, the Town began publishing lists of questionable completeness or accuracy, of homeowners who were alleged to have not yet granted an easement, along with

personal information such as property address, details of form of ownership and others with interests in the property, primary contact person, and home address.

20. Around this time, the Town, through the Town Administrator, Ryan Fabbri, and possible others, also began and continued to give similar information and comments on it, of questionable completeness or accuracy, to the local paper.

21. In the repetitive public requests of the Town Administrator to south end property owners, and in public descriptions to all other owners, he consistently stated, in writing, "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."

22. Mr. Fabbri made these same representations in private requests directly to south end property owners.

23. In April 2019, south end property owner M. Baron Stanton sent the Town a signed easement in recordable form, allowing conduct on his property of 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.

24. The easement was prepared by Stanton at his expense and was offered by Stanton free of charge.

25. The Town rejected the easement offered by Stanton.

26. The Town Administrator, Mr. Fabbri, and the Town Attorney, Mr. Durant, continued to have specific exchanges with Stanton about features of the permanent easement proposed by the Town which Stanton explained were not necessary because irrelevant to the

stated purpose, because excessive or because otherwise unreasonable, poorly conceived, or poorly drafted.

27. In April 2019, south end property owner Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust, delivered to the Town, a signed easement, allowing conduct on his property of 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.

28. The easement was prepared by Beattie at his expense and was offered by Beattie free of charge.

29. The Town Administrator asked Beattie to sign another execution page in Mr. Fabbri's office to correct a deficiency in execution asserted to exist.

30. Beattie did so.

31. The Town Administrator thereafter recorded a different easement than the one delivered by Beattie.

32. Thereafter, Beattie requested in writing of Mr. Fabbri, a written explanation by Mr. Fabbri, but did not receive one.

33. At Beattie's demand, the Town cancelled the easement it had recorded.

34. Beattie thereafter recorded his own cancellation prepared by him at his expense.

35. From before the time Beattie requested a written explanation From Mr. Fabbri, for the remainder of 2019, the Town Administrator, Mr. Fabbri, made no further easement request of Beattie.

36. By early May 2019, Stanton had also written to the Corps and discussed the matter with the Corps, and by the end of June, Stanton made Mr. Fabbri acutely aware of the issues which concerned Stanton, if Mr. Fabbri was not already aware of them.

37. After the middle of June 2019, for the remainder of 2019, the Town Administrator, Mr. Fabbri, made no further easement request of Stanton.

38. By a point in July 2019, property owner Sunset Lodge, LLC, at its expense, recorded with the Georgetown County Register of Deeds, an easement allowing conduct on its property of 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.

39. The easement was prepared by Sunset at its expense and was provided and offered by Sunset free of charge.

40. For the remainder of 2019, the Town Administrator, Mr. Fabbri, made no further easement request of Sunset.

41. By July 2019, the Town Administrator, Mr. Fabbri, had ceased to make public requests for easements from south end property owners, and upon information and belief, also ceased to make private requests.

42. In July 2019, the Town Council declared that if the Town proceeded with the renourishment project and contracted for the whole project with the contractor Marinex instead of waiting for Corps involvement, no easements would be necessary.

43. In July or August 2019, the Town Council decided to, and did, proceed to contract for the whole renourishment project with the contractor Marinex, without any involvement of the Corps.

44. In 2019, in light of Town estimations that if a certain volume of sand were added, renourishment probably would not be required again for twenty-two years or longer, at which point 400,000 cubic yards of the additional sand would likely remain, the Town contracted for the optimal quantity of sand.

45. In late October or early November 2019, the Town commenced the work on the project, with no new or additional easements from Sunset, Beattie, Stanton or any others whose offers of easements had been rejected and no easements from those from whom the Town had not obtained easements.

46. In February 2020, as the renourishment project was approaching completion, Mayor Brian Henry publicly reported that according to the coastal scientist overseeing the project, the additional sand in place was expected to last at least 15 years, beyond which a significant portion of the additional sand would remain.

47. In the February 2020 published letter, Mr. Henry stated he was furnishing answers to "frequently asked questions" which were being asked as the project was nearing completion.

48. In the February 2020 published letter, Mr. Henry mentioned nothing about signing an agreement with the Corps, any future involvement of the Corps, any need for easements, or any need to renourish again at nine-year intervals.

49. In the February 2020 published letter, Mr. Henry stated that the coastal scientist advised, "While Pawleys Island has historically had a relatively low erosion rate, that rate has been influenced by exposed groins. CSE would expect the rate to increase in the first few years following the project while the groins are mostly buried. Over time, the rate will return to the historic rate. Barring significant storms, CSE expects the fill to last around 15 years, with some measurable sand volume remaining after that."

50. The Town thereafter completed the renourishment work, including all sand placement and associated earthwork.

51. The project had started on the south end in late October or early November 2019 and proceeded north as areas to the south were completed or substantially completed, but the whole thing was finished by mid-February to the beginning of March, 2020.

52. In early 2020, following completion of the renourishment work, the Town Administrator began again requesting easements from south end property owners from whom the Town had not received easements and those whose easements the Town had rejected.

53. In his requests, the Town Administrator, Mr. Fabbri, stated that easements were needed because of a conditional deal with the Corps.

54. In his requests, the Town Administrator, Mr. Fabbri, consistently stated, "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."

55. With regard to the easement document the Town Administrator was requesting be signed in 2019, the Town Administrator, Mr. Fabbri, knew in 2019 that these statements by him about the sole purpose and scope of the easement were not true.

56. With regard to the easement document the Town Administrator was requesting be signed in 2020, the Town Administrator, Mr. Fabbri, knew in early 2020 that these statements by him about the sole purpose and scope of the easement were not true and he continued to make them.

57. In April 2020, beginning with a phone call and following in writing, Stanton directly fully apprised the Mayor, Mr. Henry, in detail, of the problems with the proposed

easement, prior communications with the Corps, and the public-misrepresentation, public-threatening, public-shaming and loud defamatory-gossip methods employed by Mr. Fabbri.

58. On May 18, 2020, Town Council held a public, officially recorded, publicly live-streamed Town Council meeting.

59. At a public, officially recorded, publicly live-streamed May 18, 2020 Town Council meeting, the Council considered whether to condemn renourishment easements the Town Administrator, Mr. Fabbri, represented to the Town he had been unable to obtain.

60. The May 18, 2010 meeting was the sole meeting of Town Council held for the purpose of considering whether to condemn renourishment easements the Town Administrator, Mr. Fabbri, represented to the Town he had been unable to obtain.

61. The May 18, 2020 meeting was the sole meeting at which for Council to consider whether renourishment easements were to be condemned, what interest in property to condemn and at what cost.

62. There were no other meetings of Council at which these matters were considered.

63. The Mayor, all four other Council members, and the Town Attorney were in attendance.

64. At the May 18, 2020 video-streamed meeting, Mr. Fabbri publicly represented that he had been working diligently to obtain easements for over a year, and that he had been in dialogues with the subject owners.

65. At the May 18, 2020 meeting, Mr. Fabbri never stated that Stanton, Beattie and Sunset had previously offered easements.

66. At the May 18, 2020 meeting, Mr. Fabbri did affirmatively present the matter as if these owners had simply declined or refused to grant any easement at all.

67. At the May 18, 2020 meeting, Mr. Fabbri did affirmatively indicate by statements to the effect that “for whatever reason, they would not grant the easement,” and “they do not owe us any explanation,” that these owners had given no reason, that no reason was known, that no explanation was offered, and that there were no issues for Council to balance or discuss.

68. These statements and deliberate implications by Mr. Fabbri were false.

69. Neither the Mayor nor the Town Attorney corrected them.

70. At the May 18, 2020 meeting, the Council never once discussed the specific proposed terms of the proposed easements the Town had sought to acquire.

71. At the May 18, 2020 Town Council meeting, the Council never once discussed any of the objecting three property owners’ concerns with the terms or the differences between what the owners had offered and what Mr. Fabbri had previously tried to exact from them.

72. At the public May 18, 2020 Town Council meeting, the Council never once discussed any balancing of the harm to the property owner caused by the proposed scope of the easement against any legitimate needs for such scope for a concrete, legitimate, existing project, if any.

73. Mr. Fabbri’s explanations of the need for the “renourishment easements” was that obtaining the easements would allow the Corps to come in and plant beach grass and erect sand fence along a berm of sand created on the south end by the renourishment which had been totally completed approximately two and a half months earlier, and that having the Corps install vegetation and sand fence would allow the Corps to claim the project was a completed U.S. Army project, and that this claim, in turn, would make the Town “eligible” to receive future Corps assistance on the south end only.

74. At the public May 18, 2020 Town Council meeting, neither the Council nor the Town Attorney ever once discussed or even questioned the legitimacy or lack of legitimacy of any of the terms in the proposed easements Mr. Fabbri had previously tried to obtain.

75. At the public May 18, 2020 Town Council meeting, the Council never once discussed any of the property owners' actual offers of easements to the Town, or the true circumstances of the property owners' other efforts to cooperate with the Town, or the misrepresentations of Town officials.

76. At the May 18, 2020 meeting, Council proceeded in the light of the repetitive written statements by the Town Administrator over the course of the preceding approximately year and a quarter, "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."

77. At the publicized meeting, no statement or discussion by Mr. Fabbri, the Mayor, any other Council member or the Town Attorney, described the scope or terms of the easement in any terms correcting or contradicting this consistent public characterization by Mr. Fabbri.

78. At the May 18, 2020 meeting, the Town Attorney advised Council publicly and officially on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was "basically, simply to put sand on the beach."

79. At the May 18, 2020 meeting, the Town Attorney advised Council publicly and officially on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

80. At the May 18, 2020 meeting, the Council publicly resolved to authorize condemnation of an easement “basically, simply to put sand on the beach.”

81. On June 22, 2020, without previously providing Sunset an appraisal or engaging in any negotiations with respect to a furnished appraisal, the Town served on Pawleys Island property owner Sunset Lodge, LLC, the papers shown as “Exhibit A” to Exhibit 1 hereto, Exhibit 1 hereto being the Stanton Affidavit as to papers served on Sunset, Beattie and Stanton, and Exhibit A to Exhibit 1 being the papers served on Sunset.

82. The papers served on property owner Sunset by the Town on June 22, 2020 consisted of:

- (i) the text of a document entitled “Condemnation Notice and Tender of Payment”;
- (ii) a document entitled “Exhibit ‘A’ (Easement Areas)’”;
- (iii) a document entitled “Beach Renourishment Easement.”

83. Item (i), the notice and tender, was signed by Mr. Durant and was dated **June 9, 2020** and referred to an attached “Exhibit ‘A’”.

84. Item (ii), the document entitled “Exhibit ‘A’ (Easement Areas)’”, consisted of a title page followed by a map or plat, purporting to show an easement area on property owner Sunset’s property shown in the context of adjacent properties.

85. Item (iii), the document entitled “Beach Renourishment Easement”, consisted of four pages of text including the execution and acknowledgement pages, followed by a fifth and final numbered page, being a prospective affidavit of Norwood D. Durant, Jr. pertaining to public recording conditions.

86. Item (iii), the “Beach Renourishment Easement” document, did not include a separate or additional map or plat referenced in the text of the proposed easement document as “Exhibit “A””.

87. Item (ii), the map or plat, showed an easement area with a western boundary approximately two feet from the oceanfront main supports of Sunset’s house, enveloping portions of Sunset’s oceanfront deck and stairs, and then turning diagonally near the northeastern corner of the house and encroaching further westward into Sunset’s north side yard.

88. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a “right of public use and access” throughout the easement area on Sunset’s property.

89. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to remove “obstructions,” “obstacles,” and “structures” in the shown easement area on Sunset’s property.

90. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to “limit access” to dune “areas” within the shown easement area on Sunset’s property.

91. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated or showed a dune “area” or the location and boundaries of a dune “area” to which the easement gave the Town and its assigns the right to limit Sunset’s access on Sunset’s property.

92. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited “the right of public use and access” throughout the easement area on Sunset’s property.

93. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed "Beach Renourishment Easement," defined, delineated, explained, qualified or limited the right to remove "obstructions," "obstacles," or "structures" throughout the easement area on Sunset's property.

94. Item (i), the text of the notice and tender, proposed to take the property described in Item (iii), the "Beach Renourishment Easement," for which a formal offer of payment of zero (\$0.00) dollars was tendered by the Town.

95. No appraisal report to determine the amount that would constitute just compensation for the taking of the oceanfront easement was included in the papers served June 22, 2020.

96. No appraisal report to determine just compensation for taking the easement had been served on or made available to Sunset before June 22, 2020.

97. Before June 22, 2020, no negotiation with Sunset had occurred or been attempted by the Town after making an appraisal report available to Sunset.

98. Before June 22, 2020, no offer to purchase had been made by the Town to Sunset after making an appraisal report available to Sunset.

99. Sunset obtained from the Town after June 22, 2020, an appraisal report commissioned by the Town.

100. The "date of valuation" of the appraisal report was June 3, 2020, and it had a transmittal letter to the Town dated **June 8, 2020**.

101. At around page 44 of the June 3, 2020 appraisal report, it was stated that the Town had never provided the written terms of the proposed easement to the appraiser.

102. The Town had never provided the written terms of the proposed easement to the appraiser.

103. At around page 44 of the June 3, 2020 appraisal report and on the first page of the June 8, 2020 cover letter, it was stated that the appraiser based his understanding and interpretation of the easement rights on descriptions of "Town officials."

104. In October 2020 at his deposition, the appraiser corrected this statement to clarify that the sole "Town official" from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and that this understanding was derived solely verbally, over the phone.

105. The appraiser based his understanding and interpretation of the easement rights on descriptions of a Town official and that sole Town official from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and this understanding was derived solely verbally, over the phone.

106. The appraisal report indicated that the appraiser understood the easement he was appraising to only be subject to use when actual renourishment was going on, if even then, and that no improvements to property would be affected by the easement the appraiser was appraising.

107. These understandings and assumptions are incorrect when applied to the easements the Town sought to condemn as set out in Exhibit 1.

108. These understandings are contrary to the written terms of the easements the Town sought to condemn as set out in Exhibit 1.

109. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

110. The written terms of the easements the Town sought to condemn as set out in Exhibit 1 provide that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

111. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property.

112. The written terms of the easements the Town sought to condemn as set out in Exhibit 1, which include constructing dunes and berms and changing contours, provide that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property referred to in the easement as "dune areas".

113. On June 30, 2020, without previously providing Beattie an appraisal or engaging in any negotiations with respect to a furnished appraisal, the Town served on Pawleys Island property owner Franklin D. Beattie, as Trustee of the Franklin D. Beattie Preservation Trust, the papers shown as "Exhibit B" to Exhibit 1 hereto, Exhibit 1 hereto being the Stanton Affidavit as to papers served on Sunset, Beattie and Stanton, and Exhibit B to Exhibit 1 being the papers served on Beattie.

114. The papers served on property owner Beattie by the Town on June 30, 2020 consisted of:

- (i) the text of a document entitled "Condemnation Notice and Tender of Payment";
- (ii) a document entitled "Exhibit 'A' (Easement Areas)"; and

(iii) a document entitled “Beach Renourishment Easement.”

115. Item (i), the notice and tender, was signed by Mr. Durant and was dated **June 9, 2020** and referred to an attached “Exhibit ‘A’”.

116. Item (ii), the document entitled “Exhibit ‘A’ (Easement Areas)”, consisted of a title page followed by a map or plat, purporting to show an easement area on property owner Beattie’s property shown in the context of adjacent properties.

117. Item (iii), the document entitled “Beach Renourishment Easement”, consisted of four pages of text including the execution and acknowledgement pages, followed by a fifth and final numbered page, being a prospective affidavit of Norwood D. Durant, Jr. pertaining to public recording conditions.

118. Item (iii), the “Beach Renourishment Easement” document, did not include a separate or additional map or plat referenced in the text of the proposed easement document as “Exhibit ‘A’”.

119. Item (ii), the map or plat, showed an easement area with a western boundary approximately two feet from the oceanfront main supports of Beattie’s house, enveloping portions of Beattie’s oceanfront deck, and then turning diagonally near the northeastern corner of the house and encroaching further westward into Beattie’s north side yard.

120. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a “right of public use and access” throughout the easement area on Beattie’s property.

121. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to remove “obstructions,” “obstacles,” and “structures” in the shown easement area on Beattie’s property.

122. Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to “limit access” to dune “areas” within the shown easement “area” on Beattie’s property.

123. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated or showed a dune “area” or the location and boundaries of a dune “area” to which the easement gave the Town and its assigns the right to limit Beattie’s access.

124. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited “the right of public use and access” throughout the easement area on Beattie’s property.

125. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited the right to remove “obstructions,” “obstacles,” or “structures” throughout the easement area on Beattie’s property.

126. Item (i), the text of the notice and tender, proposed to take the property described in Item (iii), the “Beach Renourishment Easement,” for which a formal offer of payment of zero (\$0.00) dollars was tendered by the Town.

127. No appraisal report to determine the amount that would constitute just compensation for the taking of the oceanfront easement was included in the papers served June 30, 2020.

128. No appraisal report to determine just compensation for taking the easement had been served on or made available to Beattie before June 30, 2020.

129. Before June 30, 2020, no negotiation with Beattie had occurred or been attempted by the Town after making an appraisal report available to Beattie.

130. Before June 30, 2020, no offer to purchase had been made by the Town to Beattie after making an appraisal report available to Beattie.

131. Beattie obtained from the Town after June 30, 2020, an appraisal report commissioned by the Town.

132. The “date of valuation” of the appraisal report was June 3, 2020, and it had a transmittal letter to the Town dated **June 8, 2020**.

133. At around page 44 of the June 3, 2020 appraisal report, it was stated that the Town had never provided the written terms of the proposed easement to the appraiser.

134. The Town had never provided the written terms of the proposed easement to the appraiser.

135. At around page 44 of the June 3, 2020 appraisal report and on the first page of the June 8, 2020 cover letter, it was stated that the appraiser based his understanding and interpretation of the easement rights on descriptions of “Town officials.”

136. In October 2020 at his deposition, the appraiser corrected this statement to clarify that the sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and that this understanding was derived solely verbally, over the phone.

137. The appraiser based his understanding and interpretation of the easement rights on descriptions of a Town official and that sole “Town official from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and this understanding was derived solely verbally, over the phone.

138. The appraisal report indicated that the appraiser understood the easement he was appraising to only be subject to use when actual renourishment was going on, if even then, and that no improvements to property would be affected by the easement the appraiser was appraising.

139. These understandings and assumptions are incorrect when applied to the easements the Town sought to condemn as set out in Exhibit 1.

140. These understandings are contrary to the written terms of the easements the Town sought to condemn as set out in Exhibit 1.

141. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

142. The written terms of the easements the Town sought to condemn as set out in Exhibit 1 provide that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

143. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property.

144. The written terms of the easements the Town sought to condemn as set out in Exhibit 1, which include constructing dunes and berms and changing contours, provide that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property referred to in the easement as "dune areas".

145. On June 23, 2020, without previously providing Stanton an appraisal or engaging in any negotiations with respect to a furnished appraisal, the Town served on Pawleys Island

property owner M. Baron Stanton, the papers shown as “Exhibit C” to Exhibit 1 hereto, Exhibit 1 hereto being the Stanton Affidavit as to papers served on Sunset, Beattie and Stanton, and Exhibit C to Exhibit 1 being the papers served on Stanton.

146. The papers served on property owner Stanton by the Town on June 23, 2020 consisted of:

- (i) the text of a document entitled “Condemnation Notice and Tender of Payment”;
- (ii) a document entitled “Exhibit ‘A’ (Easement Areas)’”;
- (iii) a document entitled “Beach Renourishment Easement.”

147. Item (i), the notice and tender, was signed by Mr. Durant and was dated **June 9, 2020** and referred to an attached “Exhibit ‘A’”.

148. Item (ii), the document entitled “Exhibit ‘A’ (Easement Areas)’”, consisted of a title page followed by a map or plat, purporting to show an easement area on property owner Stanton’s property shown in the context of adjacent properties.

149. Item (iii), the document entitled “Beach Renourishment Easement”, consisted of five pages of text including the execution and acknowledgement pages, followed by a sixth and final numbered page, being a prospective affidavit of Norwood D. Durant, Jr. pertaining to public recording conditions.

150. Item (iii), the “Beach Renourishment Easement” document, did not include a separate or additional map or plat referenced in the text of the proposed easement document as “Exhibit ‘A’”.

151. Item (ii), the map or plat, showed an easement area with a western boundary approximately two feet from the oceanfront main supports of Stanton’s house, enveloping Stanton’s oceanfront deck and portions of Stanton’s stairs and concrete foundation system.

152. Item (i), the text of the notice and tender, and Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a “right of public use and access” throughout the easement area on Stanton’s property.

153. Item (i), the text of the notice and tender, and Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to remove “obstructions,” “obstacles,” and “structures” in the shown easement area on Stanton’s property.

154. Item (i), the text of the notice and tender, and Item (iii), the proposed “Beach Renourishment Easement” included, among other provisions, a right to “limit access” to dune “areas” within the shown easement “area” on Stanton’s property.

155. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated or showed a dune “area” or the location and boundaries of a dune “area” to which the easement gave the Town and its assigns the right to limit Stanton’s access.

156. Neither Item (i), the text of the notice and tender document, nor Item (ii), the map or plat, nor Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited “the right of public use and access” throughout the easement area on Stanton’s property.

157. Neither Item (ii), the map or plat, nor the nearly verbatim repeated block of text in Item (iii), the proposed “Beach Renourishment Easement,” defined, delineated, explained, qualified or limited the right to remove “obstructions,” “obstacles,” or “structures” throughout the easement area on Stanton’s property.

158. Item (i), the text of the notice and tender, proposed to take the property described in Item (iii), the “Beach Renourishment Easement,” for which a formal offer of payment of zero (\$0.00) dollars was tendered by the Town.

159. Subsequent to the initial June 23, 2020 service of the above papers, the Town purported to change the scope of the easement requested of Stanton by simply sending another map or plat that was different from the one in the initially served Item (ii).

160. Subsequent to the June 23, 2020 service of the papers in Exhibit C of Exhibit 1 and subsequently purporting to change the map or plat, the Town purported to change the scope of the easement requested of Stanton yet again by simply sending another set of papers and stating that all previous versions were “withdrawn.”

161. The last set of papers sent by the Town restored the previous description of the entire lot, rather than a portion, as being subject to the easement, removed any qualification on the right to destroy or remove owner’s improvements, and reiterated an intention to have the easement encroach on concrete, stairs, and the deck.

162. No appraisal report to determine the amount that would constitute just compensation for the taking of the oceanfront easement was included in the papers served June 23, 2020.

163. No appraisal report to determine just compensation for taking the easement had been served on or made available to Beattie before June 23, 2020.

164. Before June 23, 2020, no negotiation with Stanton had occurred or been attempted by the Town after making an appraisal report available to Stanton.

165. Before June 23, 2020, no offer to purchase had been made by the Town to Stanton after making an appraisal report available to Stanton.

166. Stanton obtained from the Town after June 23, 2020, an appraisal report commissioned by the Town.

167. The “date of valuation” of the appraisal report was June 3, 2020, and it had a transmittal letter to the Town dated **June 8, 2020**.

168. At around page 44 of the June 3, 2020 appraisal report, it was stated that the Town had never provided the written terms of the proposed easement to the appraiser.

169. The Town had never provided the written terms of the proposed easement to the appraiser.

170. At around page 44 of the June 3, 2020 appraisal report and on the first page of the June 8, 2020 cover letter, it was stated that the appraiser based his understanding and interpretation of the easement rights on descriptions of “Town officials.”

171. In October 2020 at his deposition, the appraiser corrected this statement to clarify that the sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and that this understanding was derived solely verbally, over the phone.

172. The appraiser based his understanding and interpretation of the easement rights on descriptions of a Town official and that sole “Town official” from whom the appraiser derived his understanding of the easement terms was Ryan Fabbri, the Town Administrator, and this understanding was derived solely verbally, over the phone.

173. The appraisal report indicated that the appraiser understood the easement he was appraising to only be subject to use when actual renourishment was going on, if even then, and that no improvements to property would be affected by the easement the appraiser was appraising.

174. These understandings and assumptions are incorrect when applied to the easements the Town sought to condemn as set out in Exhibit 1.

175. These understandings are contrary to the written terms of the easements the Town sought to condemn as set out in Exhibit 1.

176. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

177. The written terms of the easements the Town sought to condemn as set out in Exhibit 1 provide that the easement would include a perpetual right of public use and access throughout the easement area throughout the year.

178. The appraisal report did not indicate any understanding of the appraiser from any source that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property.

179. The written terms of the easements the Town sought to condemn as set out in Exhibit 1, which include constructing dunes and berms and changing contours, provide that the easement would include a perpetual right to limit the owner's access to undefined areas of the owner's property referred to in the easement as "dune areas".

180. On July 21, 2020, Plaintiff commenced an action against the Town in which Plaintiff challenged on numerous grounds, the right of the Town to condemn the interest in real property on Pawleys Island at the address aforesated pursuant to the papers served as described above June 22, 2020. (The papers in Exhibit A of Exhibit 1 which were served June 22, 2020 are sometimes hereinafter referred to as the "Existing Notice").

181. Attached as Exhibit A to the original Complaint herein is the Amended Complaint in the July 2020 action, Case 2020-CP-22-00600 (the “Existing Challenge Action”).

182. All of its allegations, by this paragraph, are hereby incorporated herein.

183. The Existing Challenge Action, by law, stays all proceedings under the Existing Notice until the disposition of the Existing Challenge Action.

184. The Existing Challenge Action was still pending as of January 13, 2021.

185. As alleged in the Existing Challenge Action, the Town’s attempt to condemn under the Existing Notice suffers from numerous incurable defects depriving the Town of the power to condemn what it seeks to condemn.

186. These defects include, but are not limited to exceeding the limited authorization granted by Town Council on May 18, 2020, for Mr. Fabbri and the Town Attorney to condemn an easement “basically, simply to put sand on the beach,” as opposed to the easement the Town Administrator and Town Attorney thereafter actually pursued.

187. The easement the Town actually pursued after the May 18, 2020 authorization was one granting public access to and use of substantial portions of the owner’s property.

188. This public access feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “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.”

189. This public access feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement

after being advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

190. This public access feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

191. The easement the Town actually pursued after the May 18, 2020 authorization was one empowering the Town or, if the Town assigned the easement to the federal government, the federal government, to thereafter “operate a public beach” on substantial portions of the owner’s property.

192. This “Town operation of public beach” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “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.”

193. This “Town operation of public beach” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being advised publicly and officially by counsel on the record as

part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

194. This “Town operation of public beach” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

195. The easement the Town actually pursued after the May 18, 2020 authorization was one empowering the Town or, if the Town assigned the easement to the federal government, the federal government, to limit the owner’s access to broadly and vaguely described “dune areas” portions of the owner’s property, and was one further prohibiting construction by the owner of structures for beach access and beach enjoyment without, in addition to compliance with existing local, state and federal law, obtaining “prior approval” from an undesignated, unidentified “designated representative” of the Town with no stated standards for designating the representative and no stated standards for the representative’s approval, and with the proviso that anything constructed was still subject to the “construction, operation, maintenance, repair, rehabilitation and replacement” of the project, which was previously stated to allow destruction of such things.

196. This “limitation of owner access” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “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.”

197. This “limitation of owner access” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

198. This “limitation of owner access” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

199. The easement the Town actually pursued after the May 18, 2020 authorization was one perpetually empowering the Town or, if the Town assigned the easement to the federal government, the federal government, to destroy the owner’s improvements on portions of the owner’s property.

200. This “destruction of owner improvements” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after hearing or reading repetitive written statements by the Town Administrator over the course of the preceding year and a quarter, “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.”

201. This “destruction of owner improvements” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought was “basically, simply to put sand on the beach.”

202. This “destruction of owner improvements” feature is materially different from any term a reasonable person or Council member would naturally and reasonably expect to be included in the easement after being additionally advised publicly and officially by counsel on the record as part of the deliberative proceeding that the easement for which condemnation authorization was sought would leave the property owner with all the same rights the property owner had before imposition or grant of the easement.

203. The defects alleged in the Existing Challenge Action also include, but are not limited to, failing to have the appraiser, prior to serving the Existing Notice, put a value on what the Town actually seeks to condemn; it is alleged that, rather, the Town had the appraiser put a value on some fictional interest in property which was fabricated by the Town Administrator without reference to any explicit written terms of the easement to be appraised and which was calculated to produce a different appraisal value.

204. The Existing Challenge Action’s allegations of incurable defects in the Town’s attempt to condemn under the Existing Notice also include, but are not limited to, failing to offer to pay the landowner the value of the correct interest in property so appraised, rather than the value of a fictional interest in property based on oral representations of the Town Administrator.

205. These defects also include, but are not limited to, failing to provide to the property owner before serving the Existing Notice, an appraisal of the interest to be condemned, as opposed to providing no appraisal at all until after serving the Existing Notice, and then providing an appraisal only of a different interest in property than the interest to be condemned.

206. These defects also include, but are not limited to, falsely stating in paragraph 7 of the Existing Notice served on Plaintiff, "The Condemnor has complied with the requirements set forth in S.C. Code Ann.§28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law."

207. At the time of serving the Existing Notice, the Town, the Condemnor, had not complied with the requirements set forth in S.C. Code Ann.§28-2-270(a).

208. At the time of serving the Existing Notice, the Town, the Condemnor, had not complied with the requirements set forth in S.C. Code Ann.§28-2-270(a) by having the property interest actually sought by the Town in the Existing Notice appraised as required by law.

209. At the time of serving the Existing Notice, the Town, the Condemnor, had not complied with the requirements set forth in S.C. Code Ann.§28-2-270(a) by making the appraisal of any property interest whatsoever – not even the appraisal of the wrong interest in property -- available to the Landowner.

210. These defects alleged in the Existing Challenge Action also include, but are not limited to, failing to negotiate in good faith for purchase of the interest in property sought, at the price indicated by the appraisal of the correct interest in property, so that during the statutory time for offer and negotiation, the landowner would have an appraisal, at the condemnor's expense, of the correct thing, and could either knowingly and knowledgeably accept a fair price for the right thing, or knowingly and knowledgeably point out the defects before being sued.

211. These defects also include, but are not limited to, falsely certifying to the Court in paragraph 7 of the Existing Notice served on Plaintiff, in conjunction with falsely stating that an appraisal had been previously made available, “The Condemnor ... certifies to the Court that a negotiated resolution has been attempted prior to service of this Condemnation Notice and commencement of condemnation action.”

212. These defects also include, but are not limited to, failing to seek to condemn an easement with only the scope which is actually and reasonably needed in order to accomplish the renourishment project, which in this case, for example -- but not by way of limitation -- does not reasonably need to include a blanket grant of public access 24/7/365 up to a few feet from the owner’s house, door, and windows, including now private decks, steps, patios, showers, etc.

213. Before October 12, 2020, at considerable time and expense, the parties in the Existing Challenge Action had engaged in drafting and exchange of pleadings, legal and factual research, motions practice and discovery.

214. These activities and efforts included a motion of the Town to dismiss, a motion of the Town to require a ten-million-dollar bond, a motion of the Town for protection from discovery, two notices by Plaintiff of the deposition of the appraiser, interrogatories by Plaintiff, requests by Plaintiff for production, a motion by Plaintiff to compel the Town to comply with discovery requests, and a motion for summary judgment by Plaintiff.

215. The Town’s August 10, 2020 motion was one to require Plaintiff to post a ten million dollar bond as a condition to being allowed to continue with Plaintiff’s challenge to the illegality and unreasonableness of the condemnation attempted by the Town.

216. In its motion and brief, the Town, without any supporting affidavit or other sworn testimony or expert treatise materials whatsoever, and without citing a single case, statute or

other source of legal authority, stated, “There is a real possibility that a storm surge from a major hurricane will destroy the beach and wash away all the sand that has been added recently.”

217. The Town made these representations to the Court about all the sand in the entire project without addressing or distinguishing its own recent representations to its constituent owners that after over fifteen years, significant portions of the sand added to the existing beach would still be there.

218. The Town misrepresented in its brief that obtaining the easements would allow the Town to recover from the federal government all of the money the Town spent on all the sand if a major storm wiped out all of the sand the Town put on the whole island.

219. The Town made this misrepresentation despite knowing the fact that only a little over a third – not all -- of the length of the total renourishment project had been earlier proposed to be done in conjunction with the Corps, and despite knowing that any prospective arrangement with the Corps would also be so limited, and despite knowing that the remaining approximately 2/3 of the length of the project would be ineligible for federal assistance other than any federal assistance which would be available in the absence of easements and Corps involvement on the south end of the island, and despite knowing that “eligibility” for federal assistance on even the south end does not ensure actual receipt of federal assistance at all or receipt of timely assistance, if any.

220. In order to intimidate Plaintiff with headlines in the local paper and ask for a ten million dollar bond from Plaintiff and in order to convey this misrepresentation that the federal government would repair any damage to any of the beach on the island if the easements could be obtained, the Town stated in its August 10, 2020 brief that there was “apprehension” by people the Town did not identify and who were never sworn, that “all of the Town’s beach

renourishment activities, with a cost of fourteen million four hundred thirty-one thousand (\$14,431,000.00) dollars, will be shattered and wiped out,” that “[t]here is a real possibility that a storm surge from a major hurricane will destroy the beach and wash away all the sand that has been added recently,” and that “[u]nless the Town is able to proceed with condemnation and obtain the easements required by the U.S. Army Corps of Engineers to keep the Town’s beach renourishment project in the federal project system, any damage to the beach will not be repaired by the federal government.”

221. At the hearing of its motion, the Town Attorney admitted to the hearing judge, Judge Culbertson, that the Town was unable to cite any case or statute as authority for the proposition that the Court could require a plaintiff to post a bond – much less a ten million dollar bond -- as a condition of continuing a stay which was imposed by a statute the terms of which allowed the lifting of the stay only upon consent of the plaintiff, or as a condition of continuing an action challenging Town attempts which were alleged to be unconstitutional, illegal, unauthorized, noncompliant, fraudulent, etc.

222. The motion by Plaintiff for summary judgment, requested that the Town’s condemnation attempt be declared invalid and not be permitted.

223. The motion for summary judgment was based on events occurring before the May 18, 2020 Town Council meeting, events, including false and fraudulent presentation by the Town Administrator, occurring and omitted at the May 18, 2020 Town Council meeting, and events occurring and omitted after the May 18, 2020 Town Council meeting, including false statements in the condemnation papers and failure to appraise the same interest in property for which condemnation was sought and failure to timely provide any appraisal of anything.

224. Four days before the October 16, 2020 commencement of the deposition of the appraiser, and twelve days before the then-scheduled October 30, 2020 hearing of the motion for summary judgment, while the Existing Challenge Action was still pending, the Town Council held a public meeting, live-streamed, on October 12, 2020. On or around the same day, the Town Attorney requested consent to continue the October 30, 2020 summary judgment hearing to attend the Clemson-Boston College football game, which hearing was later re-scheduled for December 4, 2020.

225. The Town Council held the public meeting, live-streamed, on October 12, 2020 while all condemnation proceedings under the Existing Notice were stayed.

226. The Council members Henry, Zimmerman, Holliday and Green, the Town Administrator, and the Town Attorney were in attendance.

227. On the agenda at the October 12, 2020 Town Council meeting was public comment, and consideration of a proposed written resolution, or "addendum to resolution," concerning condemnation.

228. In spite of the falsities, alleged below, in the final product of the meeting, the resolution was drafted to read as an after-the-fact ratification of what had already been done by the Town Administrator and Town Attorney.

229. What was not on the agenda, and what was not in the proposed resolution, and what was not discussed at the meeting or in any other way disclosed to the public viewing the live-streamed and recorded broadcast, was the service of a new and additional Condemnation Notice on Plaintiff or other property owners.

230. This meeting was yet another instance of the Town saying one thing but doing another.

231. In the meeting, the Town sought to justify to the onlooking public with completely unfulfilled spoken words and video what the Town had put Plaintiff and others through, while some Town actors pursuing the condemnation apparently used or created the opportunity to attempt to salvage positions previously taken in litigation with property owners, by substituting more documents, backdating, obscuring the issues with an adversarial pseudoscholarly footnote, and making more false statements in the public record and written documents.

232. The falsifications include making statements in the public meeting that documents under consideration state, or will state, things that are completely lacking.

233. The falsifications include implying publicly that documents under consideration at the meeting do not do or state things that the documents do and state.

234. The falsifications include further stating a purpose and intention to change documents in a way 'addressing the concerns' of property owners and helpfully "clarifying" things for all owners, and then later either not making the changes at all, or making meaningless, illusory changes, or making adversarial changes which are harmful to the titles of the three condemnees and all beachfront property owners on the whole island, or using the documents for purposes in litigation not disclosed or authorized in the meeting.

235. In the October 12, 2020 meeting, the proposed written October 12, 2020 resolution that was included in advance with the meeting agenda ("the Publicized Proposed Resolution") was part of the public record along with the agenda for the October 12, 2020 meeting. Its written terms are inconsistent with the spoken words at the meeting. The Publicized Proposed Resolution is attached hereto as "Exhibit 2."

236. At the October 12, 2020 meeting, although there were written documents in the Publicized Proposed Resolution, the Council still never once discussed the specific proposed terms of the proposed easements the Town had sought to acquire, nor the specific terms of the proposed easements in Publicized Proposed Resolution, which at that point, was worded and presented to Council as if the attached proposed easements had already been “proposed to,” sent to,” and served on the three condemnees.

237. Introducing the purpose of proposing the Publicized Proposed Resolution, Mr. Durant states (at close to mark 33:49 on the video time counter), “Essentially, this document is a document that defines the use of the area of the easement that we are asking for.”

238. Mr. Durant does not state, and perhaps Council is unaware, that the document then presented to Council, the Publicized Proposed Resolution, does not define the use to which the easement may be put any further than did the June 2020 Existing Notice, and, for example, does not define, or even purport to define, “public use” at all.

239. Mr. Durant does not state, and perhaps Council is unaware, that he has not yet added any language at all to define “public use” or further define any other use of the easement, but he states at c.34:43, “There is a couple of things that we might want to tweak on there as far as defining public use and that sort of thing.”

240. He adds at c. 36:08 that he will “meet with Ryan and go through the definition.”

241. Mr. Holliday, at c. 35:27, understands that the entire purpose of the resolution is proposed to be supplied, not at the meeting, but after the fact, as he inquires whether the resolution could be approved subject to Mr. Durant “making the change you just discussed, since you don’t have that particular language in there tonight.”

242. In a self-lauding added clarification of Council's purpose in considering the Publicized Proposed Resolution that is before them, Mr. Henry emphasizes at c.38:51, that the easement "is limited to very specific uses, thus it is a 'use easement,' and it is not a taking. It is a clarification of those key points." "It" refers to the Publicized Proposed Resolution, but "it" does no such thing; it contains no new clarifications, it contains no new definitions, and it contains no new narrowing, limitation, or specification of uses. Again, apparently no one on Council read the document or asked what on earth Mr. Henry was referring to.

243. As another example of "saying it doesn't make its so," nothing in the Publicized Proposed Resolution or in the Existing Notice "limits the easement to very specific uses"; it is exactly the opposite: the impetus of the present litigation (other than fraudulent behavior of Town actors, frivolous assertions, abusive use of Town power and resources, etc.) is that the easements proposed by the Town consume over a page clarifying just how oppressively and dangerously broad the easement is and contain virtually no limiting language or definitions at all; this same verbiage remained intact in the Publicized Proposed Resolution.

244. Mr. Henry adds at c. 38:51, "Because the phrase 'public use' is in the easement -- what exactly is that -- that is the whole gist of what we are trying to do here." While the ordinary meaning of "public use" is far from mysterious, the Publicized Proposed Resolution does nothing to state exactly what "public use" is, and leaves it to be understood by its plain ordinary meaning.

245. At the meeting, at approximately 37:25, the Town Attorney confirmed a requested clarification from Mr. Green (c. 37:00) that the "change in language is to address the concerns of the citizens or property owners who have objected to the easement."

246. The Town Attorney confirmed (c. 37:25), “Yeah, and I think it also provides clarification for all the folks who have signed easements out there as well.” There is nothing in the Publicized Proposed Resolution which does so, nor does the later harmful revision help the matter in any way.

247. The Town Attorney at c. 37:55, added, “The homeowner’s property is just subject to the use and for renourishment purposes only.”

248. It is of course unclear whether the Town Attorney is representing what the document then before the Council – the Proposed Publicized Resolution -- says, or what he expects the document to say in the future.

249. In fact, the document then before Council contained no explicit limitation of public use to “renourishment purposes only,” nor any narrowing of what was meant by “renourishment purposes.”

250. In fact, the Town has essentially argued in the past in its opposition to summary judgment, in circular fashion, that “for the purpose of renourishment” means anything which is included in the easement the Town has sought, i.e., that anything that is in the proposed easement, is, because it is in the easement, for renourishment purposes.

251. Mr. Durant continued at c.38:04, “And it sort of just identifies what renourishment purposes are.”

252. Again, the statement is less than clear on what “it” is – the document then before Council and the Existing Notice, or the nonexistent “it” -- some future altered version of one of these documents.

253. The document then before Council contained no identification of what “renourishment purposes” are.

254. Mr. Durant continued at 38:19, “So, to the extent that anybody uses the easement, it is going to be subject to what the use is as defined by the condemnation notice.”

255. Again, this begs the question – never considered by Council – of what “the use is as defined by the condemnation notice.” The term “public use” is not defined or limited at all, and was not defined or limited later.

256. Council and the Town Attorney exhibited, at best, confusion and lack of understanding of even the simplest aspects easements, condemnation, and what constitutes property in America.

257. They also exhibited an inability or refusal to read the language in the documents they were promulgating and blithely indulged in a shell game with present tense and future tense which concealed what they were not doing and what they were doing. They made no discernment between what document or verbiage existed and what document or verbiage did not exist at the time of the meeting.

258. For example, they clarified and emphasized in completely illusory and meaningless fashion no less than three times that the easement they were condemning was distinguished as being a less onerous subspecies of thing they called a “use easement.” (Durant, c. 34:05 (It is a “use easement”); Durant, c. 37:45 (“There have been incorrect statements out there ... this is a use easement”); Henry, 38:35 (It is “limited to very specific uses, thus it is a ‘use easement’”).

259. All easements are for the purpose of use; all easements are interests in property; and all condemnations are takings.

260. An easement is a nonpossessory right to use.

261. There is no separate species of easement known as a “use easement.”

262. By way of further example of the fundamental “misunderstanding” of Council and its counsel of the nature of property and the principles, objects and constraints of the process they were indulging in, they no less than twice emphasized self-assuredly that condemnation of the easements was “not a taking.” (Henry, c. 38:07; Henry, c. 38:35). Mr. Henry at c.38:51 described this as one of two “key points” they were “making” with whatever present or future resolution he was referring to.

263. The act of condemning is, by definition, the act of taking. The Town commenced a condemnation action.

264. Easements and other property may not be taken without just compensation.

265. Paying just compensation when taking by condemnation is not prohibited by the State and federal constitutions.

266. Paying for property involuntarily taken through condemnation does not make it not a taking. Taking and paying for an easement, as opposed to taking and paying for a fee simple interest in real property, also does not make the taking of the easement not a taking.

267. All condemnations are takings.

268. The “takings clause” of U.S. Constitution provides that “nor shall private property be taken for public use, without just compensation. The “takings clause” of the South Carolina Constitution provides, “private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.”

269. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also does not understand any of the significance of what it has embarked on doing to its property owners all up and down the beach.

270. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also cannot be trusted to read and understand the “definitions” proposed to be added to the document and determine whether what is written accomplishes the Council’s stated purpose, or any purpose, or some other purpose.

271. At the October 12, 2020 meeting, the Council never once discussed any of the objecting three property owner’s concerns with the terms.

272. At the October 12, 2020 meeting, the Council never once discussed any balancing of the harm to the property owner against any legitimate needs for a concrete, legitimate, existing project, if any.

273. At the October 12, 2020 meeting, the Council never once discussed or exhibited any knowledge of the property owner’s actual offers of easements to the Town, or any of the other true circumstances of the property owners’ efforts to cooperate with the Town, or the misrepresentations of Town officials.

274. At the October 12, 2020 meeting, the Town Council received advice from the Town Attorney that the Publicized Proposed Resolution, which included attached exhibits designated “A,” “B,” and “C,” needed further “tweaking” in terms of defining public use.

275. At the October 12, 2020 meeting, the Town Council thereupon conditionally approved the incomplete Publicized Public Resolution which Council acknowledged it knew would be changed by the Town Attorney in some manner not yet known to Council.

276. At the October 12, 2020 meeting, Town Council conditionally approved the written Publicized Public Resolution which stated that the documents attached to the resolution had been previously “proposed to” and “sent” to the subject property owners.

277. At the October 12, 2020 meeting, Town Council conditionally approved the written Publicized Proposed Resolution knowing that the Town Attorney proposed to change it.

278. At the October 12, 2020 meeting, Town Council conditionally approved the written Publicized Proposed Resolution knowing that the Town Attorney proposed to thereafter tweak the documents which were stated to have been previously “proposed to” and “sent” to the subject property owners.

279. At the October 12, 2020 meeting, the Town Council then did not discuss the actual terms of the Publicized Proposed Resolution or the contents of the proposed attachments.

280. At the October 12, 2020 meeting, the Town Council then stated it would allow a private later decision of only the Mayor and Town Administrator to determine the matter and the suitability of the resolution.

281. Upon information and belief, Town Council did not read the resolution it was approving.

282. Upon information and belief, Town Council either did not care whether the statements in the resolution it was approving were true or false.

283. Upon information and belief, Town Council did not understand that there are different legal consequences between stating true things and stating false things.

284. Upon information and belief, after the October 12, 2020 public meeting, namely, on October 13, 2020, the Town Attorney, Mr. Durant, the Mayor, Mr. Henry and the Town Administrator, Mr. Fabbri, alone, in the abovedescribed fashion, privately, invalidly, revised and issued a different document (the “Private Resolution”). The Private Resolution is attached hereto as “Exhibit 3.”

285. The Private Resolution did not accomplish any of the things stated or authorized in the meeting.

286. The map which is part of Exhibit C of the Private Resolution is different from the map which was shown in the Publicized Proposed Resolution's version of Exhibit C. This is not a tweaking of a nonexistent definition of "public use," as stated in the October 12, 2020 meeting.

287. The version of the map in Exhibit C in the Publicized Proposed Resolution was swapped out for a different one which now appears in the Private Resolution.

287. As a result of the swapping out of the map, the proposed Beach Renourishment Easement agreement attached to the Private Resolution as Exhibit "C" is different from the proposed Beach Renourishment Easement in the Existing Notice for that property because, among other things, the Revised Easement moves the western boundary of the easement area (the "PEL") five or six feet east. Although it is a move in the right direction, it is a misrepresentation and a coverup to state that this was the map in the Existing Notice, by which the Town first sued the owner of the property which was the subject of the Existing Notice, requiring him to file the Existing Challenge Action.

288. The version of the granting clause in Exhibit C in the Publicized Proposed Resolution was also altered to remove an exception to the right of the easement holder to destroy owner improvements, and a different text now appears in the Private Resolution. This is not a tweaking of a nonexistent definition of "public use," as stated in the October 12, 2020 meeting. This is also a change adverse to the property owner.

289. Upon information and belief, the Private Resolution, including its three exhibits, was never publicly debated or voted on or publicized for comment.

290. The Private Resolution, after more than a mere tweaking of the exhibits to the Publicized Proposed Resolution, still stated that the proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits "A," "B" and "C" were "previously proposed to" and previously "sent" to the three property owners respectively affected thereby.

291. These statements are false.

292. None of the documents represented in Exhibits "A," "B," and "C" of the Private Resolution were previously proposed to Plaintiff or the other two property owners.

283. None of the documents represented in Exhibits "A," "B," and "C" of the Private Resolution were previously sent to Plaintiff or the other two property owners.

294. None of the documents represented in Exhibits "A," "B," and "C" of the Private Resolution were part of the Existing Notice served on Plaintiff by the Town in June 2020, commencing a condemnation action against Plaintiff.

295. If the Mayor and Town Administrator had examined the Private Resolution before purporting to approve it on behalf of Town Council without vote, they would have known it was impossible for the statements in the document to be true.

296. The proposed Beach Renourishment Easement agreements attached to the Private Resolution as Exhibits "A," "B" and "C" (the "Revised Easements") are different from the proposed agreements in the Existing Notices because, among other things, the Existing Notices do not contain the conspicuous 9-line footnote.

297. The 9-line footnote never before appeared in anything sent to or proposed to or served on Plaintiff or any of the other affected landowners.

298. Upon information and belief, while the Mayor and Town Administrator may or may not have noticed and participated in the Town Attorney's other changes to Exhibit C to the

Publicized Proposed Resolution, they could not have missed the conspicuous 9-line footnote added to each of Exhibits A, B and C, and the fact that there was no way that the footnote or document could have been “proposed to” or “sent” to the three property owners as falsely proclaimed by the resolution.

299. The proposed easement in the October 13, 2020 Private Resolution, was absolutely and clearly not what was served on the property owner in June 2020, and was absolutely and clearly not, as proclaimed in the Private Resolution, previously proposed to and sent to the property owner.

300. The Private Resolution putatively made by or on behalf of Town Council is fraudulent in the above respect, among possible others, and is part of the extensive, continuing series of reckless “mis-steps” at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

301. The Town’s actions with regard to the 9-line footnote later added are strikingly unusual and confounding, and are at odds with the entirety of the public “deliberation,” statements of intention, and “exercise of judgment and discretion” of Council at the actual, open, public, meeting October 12, 2020.

302. The 9-line footnote added after the meeting and appearing in the Private Resolution states in its entirety:

"Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

(Absence of closing quotation marks in original.)

303. The 9-line footnote purports to be a definition of a term used in the easement, but is not.

303. Strangely, the footnote tepidly states that the term “public use” “should” be defined in the manner to follow in the footnote for purposes of this title document.

304. The document in which the footnote is added is a formal, perpetual document proposed by the Town to be included, against the owner’s will and without the owner’s input, in the owner’s chain of title to valuable oceanfront property for purposes of conveyances, sale, inheritance, financing, appraisal, title insurance, improvement and development, and other matters involved in ownership of real property.

305. The footnote does not state that the term “public use” is defined in the manner to follow in the footnote.

306. The footnote then does not define the adjective “public,” nor does the footnote ever define the noun, “public use.”

307. Rather, the footnote does not define the term and then uses the still undefined word “public” in its usual sense in stating an outright assertion of -- in the absence of the explicit grant in the document --what the Town’s rights are and what the quality of the property owner’s title is under stated conditions, regardless of whether the granting document or easement even exists.

308. These stated conditions include factual conditions stated to be present if there has been “continuous use” and legal conditions stated to exist if the Town “retains an easement.”

309. The factual conditions are not defined and are not stipulated by the owner to be extant and have not been otherwise established; and the legal conditions, to the extent even intelligible, are an incorrect statement of law with no citation of authority.

310. The assertion in the footnote, even under the conditions which have not been demonstrated to be present, is an argumentative assertion of legal status and is an incorrect statement of law, with no citation of its source or authority supporting it.

311. The argumentative statement in the footnote is completely out of place in a formal conveyancing document affecting title. The footnote, contrary to the self-laudatory statements of purely benevolent purpose at the October 12, 2020 meeting, is about as singularly unhelpful to the three condemnees and every oceanfront owner on the island as the Town could have cooked up.

312. The strange, tepid preface to the footnote and the argument of other circumstances and incorrect legal principles in the footnote reveal the footnote not to be, or contain, or add, any definition at all.

313. Under the circumstances of the Town's previous multiple falsities, bumbles and putative "misunderstandings" or "oversights," the footnote can only represent an attempt to add a provision the Town can later sell to the Corps of Engineers as meaningless and can simultaneously sell to previously "sold" property owners as meaningful.

314. What is not yet clear is what the Town will claim the footnote means and which meanings will be argued by the Town to which people.

315. The Revised Easement (including the 9-line footnote), was never part of the Existing Notice.

316. However, the Town has publicly and judicially represented the Revised Easement (including the 9-line footnote) to have been part of the Existing Notice.

317. As further alleged below, the Private Resolution also states, “the Town Attorney has served each of the property owners of the three remaining easements [sic] that have not been acquired with a Condemnation Notice and Tender of Payment,” implying the Revised Easement was the subject of the Condemnation Notice referred to.

318. This implication is false: the Revised Easement with 9-line footnote was not part of the papers served in June 2020. As will be further alleged below, the Town nevertheless later created a new Condemnation Notice and Tender of Payment which incorporated the Revised Easement, and falsely dated the new Condemnation Notice June 9, 2020, the same as the Existing Notice.

319. As further alleged below, the Private Resolution was later filed in court by the Town without correction of its inaccuracies.

320. The Private Resolution and the 9-line footnote in the Revised Easement and are legally, logically, and literarily ineffective to ameliorate any of the terms Plaintiff complains in the Existing Challenge Action to be unreasonable, to be unnecessary, to be overreaching, to be without authority, and to be an extraordinary cloud and blight on title to valuable property imposed indifferently through municipal treachery.

321. The Private Resolution and the 9-line footnote in the Revised Easement and are also legally, logically, and literarily ineffective to justify any of the terms Plaintiff complains in the Existing Challenge Action to be unreasonable, to be unnecessary, to be overreaching, to be without authority, and to be an extraordinary cloud and blight on title to valuable property imposed indifferently through municipal treachery.

322. The 9-line footnote of “public use” in the Revised Easement, for example, does not state, as possibly falsely implied by the spoken statements at the October 12, 2020 meeting, that “public use” is defined as “use solely, whether collectively or individually, by workers actively engaged in putting or spreading offshore sand on the beach or installing vegetation or sand fence or other erosion control structures. and by the Town police when on duty incident to such work being in progress.”

323. The inapplicable introductory clause, “‘Public use’ should be defined as follows,” should be deleted to reveal more clearly that the Town is bizarrely simply trying to add a legal argument to an involuntary conveyancing document, and an incorrect one at that.

324. The Town briefing its own hostile, incorrect legal arguments in the conveyancing document’s description of the property interest the Town is trying to take by condemnation, hopelessly confusing the appraiser, the court, and the whole process, and thereafter permanently further polluting the property owner’s title, cannot be tolerated in a condemnation action. It is bad faith.

325. “Public” means public. The Revised Easement grants use and access to the public. Attempting, as the Town appears to do, to state that the Town or the public already has some rights similar to the ones the Town is trying to take from the property owner, provided that certain circumstances are established, does nothing change the scope of the outright grant the proposed document explicitly makes regardless of whether certain conditions are established or rights otherwise exist.

326. Making such a statement when the whole statement is legally incorrect does even less to define “public use,” if less is possible.

327. The incorrect statement of law is itself a blight not only on the title of Plaintiff, but also on the title of every oceanfront owner on the entire island, comprising millions if not billions of dollars in real estate worth.

328. The extraordinarily unconventional placement of a legal argument in a footnote in an easement deed is made all the worse by the failure of the Town to cite any source of authority for the incorrect statement.

329. Even under its errant approach of stating a conditional legal argument about matters if they occurred in the absence of the document instead of defining any term used in the document, the footnote is not even comprehensive in attempting to argue legal statuses and consequences under all conditions: the footnote is completely silent as to what right of “public use” the public allegedly has when, as here, the Town does not “retain” an easement by virtue of continuous public use by the public.

330. The footnote asserts: “where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line.”

331. This assertion from the footnote is not the law in South Carolina.

332. The Town can cite no South Carolina legal authority for this statement because no such authority exists, and the Town cannot change state law by placing a footnote in an exhibit to a municipal resolution.

333. The Town does not “retain” an easement by virtue of continuous public use by the public, has never proven any such easement, and has, upon information and belief, never been

ill-advised enough to assert such an easement against any property owner with an improved lot on Pawleys Island.

334. The 9-line footnote also states that reference to the plat attached to the proposed deed of easement does not create an “implied easement” for “unrestricted” public access.

335. This statement does nothing disclaim the express, rather than “implied,” easement created by the written granting words in the text of the proposed easement. This sleight of hand again does nothing to fulfill the self-laudatory purposes claimed in spoken word at the October 12, 2020 meeting, failing completely to ameliorate the overreaching terms of the printed language of the proposed deed of easement, without reference to the plat, which, still, expressly grant complete, unqualified, perpetual, public access.

336. Echoing the empty statements of the Town Attorney at the October 12, 2020 meeting, the 9-line footnote then states that uses by the public are “limited to the uses set forth” in “the terms of the easement document.”

337. This statement is illusory and meaningless because the easement document does not describe any particular, limited, uses by the public.

338. The document, rather, describes the public’s uses as “public use and access” in general, with no limitation whatsoever to “renourishment purposes,” and does not even “sort of just identify what ‘renourishment purposes’ are,” as the Town Attorney asserted on October 12, 2020.

339. The stated purposes of the October 12, 2020 meeting were thus a ruse, consisting of saying one thing and doing another.

340. The footnote does not state anywhere that the public’s access is limited to the purpose of showing up with shovels to assist in distributing sand pumped from offshore.

341. If this were the limited purpose, it would be a simple matter to state, “The public are granted access for the limited purpose of assisting in the renourishment work and associated work.”

342. However, the Town will not make a clear change to the document stating, as recited at the October 12, 2020 meeting, that public use is limited to renourishment purposes and that renourishment purposes are those 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.

343. The Town will not do so, because the Corps of Engineers makes no such pretense in any of its publications elsewhere that there is any such limitation.

344. The Corps is unabashedly attempting to engage in Congressionally unauthorized transformation and diminution of property titles presently protected by state law. The Town wishes to betray its owners, raise no objection, and insist that things are other than what they are. The Corps would reject any clarity in limiting the easement. Therefore, the Town offers confusing, illusory obscurity and uses among the Town’s tools, keeping the product of the Town’s actual deeds away from daylight by deferring activities until no one is looking or listening.

345. The whole 9-line footnote is a ruse of offering pseudoscholarship to provide a confusing and illusory piece of verbiage the Town may hope to sell to the Corps as meaningless and ineffectual to limit wide open public access to the owner’s private property in any way. This Town Council has simultaneously told its constituent owners, falsely, that it has helped them by limiting the scope of an easement they have already been duped into granting.

346. The Private Resolution also states, “the Town Attorney has served each of the property owners of the three remaining easements [sic] that have not been acquired with a Condemnation Notice and Tender of Payment.”

347. The foregoing statement is intended to imply to a court later reading it, to the Council and to any other reader or viewer, that the thereafterdescribed proposed Beach Renourishment Easement agreements which were attached to the Private Resolution as Exhibits “A,” “B” and “C,” and which were stated to have been previously “proposed” and “sent,” were the same as the proposed agreements which were the subjects of the Existing Notices served months ago in June 2020.

348. This deliberately conveyed implication is false.

349. The proposed Beach Renourishment Easement agreements which were attached to the Private Resolution as Exhibits “A,” “B” and “C,” and which were stated to have been previously “proposed” and “sent” to the property owners were not the same as the proposed agreements which were the subjects of the Existing Notices served months ago in June 2020, and which appear in Exhibit 1 hereto.

350. The Private Resolution was later filed in court by the Town without correction of its inaccuracies.

351. The Private Resolution was filed November 24, 2020 in the Existing Challenge Action as Exhibit B of the Town’s brief opposing Plaintiff’s motion for summary judgment, by attaching the Private Resolution to the Town’s brief without any affidavit or other authenticating or introductory testimony under oath describing exactly and truthfully what the document represented.

352. Following the October 12, 2020 Town Council meeting and the subsequent revision of the resolution which was supposed to be considered publicly there, while the Existing Challenge Action was still pending and all condemnation proceedings under the Existing Notice were stayed, the Town then “issued” a new condemnation notice (the “New Notice”).

353. The Town Attorney formally delivered and presented this New Notice to Plaintiff’s counsel.

354. The New Notice is similar to the Existing Notice, but among other possible differences, the New Notice attempts, without leave of court, to alter the Existing Notice by adding the aforescribed 9-line footnote in the description of the property sought to be acquired.

355. The New Notice is falsely dated June 9, 2020, as if it, including the map and proposed Beach Renourishment Easement forming a part of it, existed on that date. This leaves the Town actors poised to next represent to the public, the Town Council or a court, if need be, that the New Notice (including its constituent parts) is what was served in June 2020 instead of the Existing Notice.

356. The New Notice is dated the same as the Existing Notice, but upon information and belief, did not exist on that date and was not prepared until after the October 12, 2020 Town Council meeting.

357. The New Notice is fraudulent in the above respect, and is an attempt, like other aforescribed activities, to create a false public record and a morass of official-looking paperwork to obscure the delicts and derelictions of the various Town actors involved; the New Notice is part of the continuing series of bumbles at the landowner’s expense, frauds, and coverups alleged in the Existing Action and now this one.

358. Plaintiff's counsel pointed out to the Town Attorney in writing that the caption of the New Notice was the same as the caption of the Existing Notice (neither yet having a case number) and obviously was not the caption of the existing challenge action, and that the New Notice therefore obviously did not purport to be a proposed filing or operative document in the existing challenge action. The question was, what was the New Notice intended to represent?

359. Plaintiff's counsel pointed out that the Existing Challenge Action stays all further proceedings under the Existing Notice, precluding any amendment of the Existing Notice until there has been a disposition of the Existing Challenge Action.

360. Plaintiff's counsel pointed out that, even in the absence of a stay, the Eminent Domain Procedure Act makes no provision for the condemnor's unilateral "amendment" of the scope of the property description in the condemnation notice or a "do-over" of conditions precedent which the notice states were done, but which were not.

361. In the context of the overall required exclusive procedure, no such amendment is possible.

362. Under the EDPA, when served, the notice commences condemnation proceedings of a specifically identified interest in property.

363. The proceedings commenced in this manner, in turn, are predicated on the appraisal of that specifically identified interest in property having already been provided and the negotiations for that specifically identified interest in property having already occurred.

364. The providing of the appraisal and the occurrence of the negotiations, in turn, are based on there first having been an appropriate description of the interest in property sought to be acquired.

365. Obviously, the description of the property interest also cannot be composed without a full and complete discussion and weighing by the condemning authority and a knowing and untainted approval of it.

366. The root of many of the Town's present frauds and the past ones is that the Town Administrator and some others insist on pretending that provisions in the proposed easements are not in the proposed easements.

367. The Town has carried on this pretense in selling the easements to other property owners, covering up the matter afterwards, misrepresenting to the public, the objecting landowner's positions, and even in having the wrong interest in property appraised, and then trying to condemn something entirely more onerous than what was appraised.

368. The Town now takes it a step further, apparently wanting other owners to think that the Town, as a mere municipality, can change the legal effect of past and present executed conveyances by local legislative act and even that the language of a proposed grant by one (or three) landowners can somehow change the legal effect of past executed conveyances by others. The Town cannot. It is legally ineffective. It is preposterous.

369. Plaintiff's counsel asked what the procedural purpose and status of the New Notice is intended to be, but no response was forthcoming; yet, without ever withdrawing the Existing Notice, the Town has simply bucked all law and procedure and has attempted to sue Plaintiff yet again.

370. The Town has attempted to sue in a new proceeding and shoehorn in a putative cure to obvious defects raised in the Existing Challenge Action without acknowledging them in the Existing Challenge Action, all in spite of the existing statutory stay.

371. The New Notice violates Rule 12(b)(8), SCRCP (regarding commencing another action on the same subject when another action is already pending) and principles of subject matter jurisdiction, judicial economy and judicial management, in that the Existing Notice already commenced proceedings on the same subject matter. Even if the Existing Notice is quashed, the New Notice and the Town's acts suffer from many of the same, and from additional, delicts, deficiencies and defects.

372. The Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant additional challenge action after awarding litigation expenses to Plaintiff.

373. If the New Notice is not so quashed, the Court should declare the Existing Notice and the proceedings commenced by it abandoned by Defendant, and award Plaintiff the litigation costs incurred by Plaintiff in the Existing Challenge Action in causing the Town to thus admit it had no right to pursue condemnation under the Existing Notice, for, among other apparent reasons, lack of power because of noncompliance with the Eminent Domain Procedure Act, lack of authorization from Town Council, seeking more than was reasonably necessary, failing to even consider what was reasonably necessary in light of the real burdens imposed, and being misled on the facts and the law, if not participating in a bad faith fraud and sham.

374. The Town has issued a backdated and amended notice without calling it an "amended notice," and has formally presented it to Plaintiff in freestanding fashion as a new matter, and the terms of the document announce an intent to proceed with a new condemnation and a deadline to make a challenge to same.

375. This is that challenge.

WHEREFORE, Plaintiff prays that both the "Existing" and the "New" Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)

Stanton Law Offices, P.A.

PO Box 245

Columbia, SC 29202

Tel: (803) 929-1484

bstanton@stantonlaw.com

Attorney for Sunset Lodge, LLC

1/13/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00602
M. Baron Stanton,	)	
	)	
Plaintiff,	)	STANTON AFFIDAVIT OF
	)	CONDEMNATION NOTICE AND
v.	)	ASSOCIATED PAPERS FIRST
	)	SERVED
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

1. I believe the following facts to be without genuine dispute by the Town.
2. I represent Sunset Lodge, LLC, in the case with file number ending in "600," which is a challenge action to the Town's attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the challenge action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against Sunset Lodge, LLC.
3. I represent Franklin D. Beattie, as trustee, in the case with file number ending in "601," which is a challenge action to the Town's attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the challenge action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against Franklin D. Beattie, as trustee.
4. I represent myself in the case with file number ending in "602," which is a challenge action to the Town's attempted condemnation, and am familiar with the papers served in the matter and the papers served in the matter giving rise to the action, i.e., the condemnation notice and associated papers not yet filed, but served, commencing a condemnation action against me.

5. Of my own knowledge, the following facts are true in all material respects.
6. Attached as Exhibit A are the first condemnation notice and associated papers the Town served on Sunset.
7. Attached as Exhibit B are the first condemnation notice and associated papers the Town served on Beattie.
8. Attached as Exhibit C are the first condemnation notice and associated papers the Town served on me.

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

s/M. Baron Stanton
M. Baron Stanton

Date: 12-6-20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2020-CP-22-
	)	
Town of Pawleys Island,	)	
	)	
Condemnor,	)	
	)	CONDEMNATION NOTICE
v.	)	AND
	)	TENDER OF PAYMENT
Sunset Lodge, LLC,	)	
	)	
Landowner.	)	

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

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

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

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

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

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

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

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL

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

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

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

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

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

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

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

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

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

June 9, 2020

**Exhibit “A”
(Easement Areas)**



LOT 306
SUNSET LODGE, LLC
42-0176-027-00-00
746 SPRINGS AVE

LOT 305
BETH BUMPASS, TRUSTEE
42-0176-026-00-00
744 SPRINGS AVE

LOT 304
PHILLIP ARCHER, TRUSTEE
42-0176-025-00-00
742 SPRINGS AVE

LOT 303
REBECCA C. VENTERS
42-0176-024-00-00
740 SPRINGS AVE

1. THIS PROJECT IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. NO TITLE SEARCH REQUIRED BY THIS OFFICE.

2. THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSONS OR PARTIES APPEARING ON THIS SURVEY. THIS SURVEY DOES NOT EXTEND TO ANY UNDEVELOPED PERSONS OR PARTIES WITHOUT AN EASEMENT OR AGREEMENT BY PARTIES TO AND SURVEYING FIRM.

3. THIS SURVEY IS NULL AND VOID IF SIGNATURE AND EMBOSSED SEAL ARE ABSENT.

4. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM 1983. DISTANCES SHOWN HEREON ARE HORIZONTAL (UNADJUSTED) DISTANCES, NOT GRID DISTANCES.

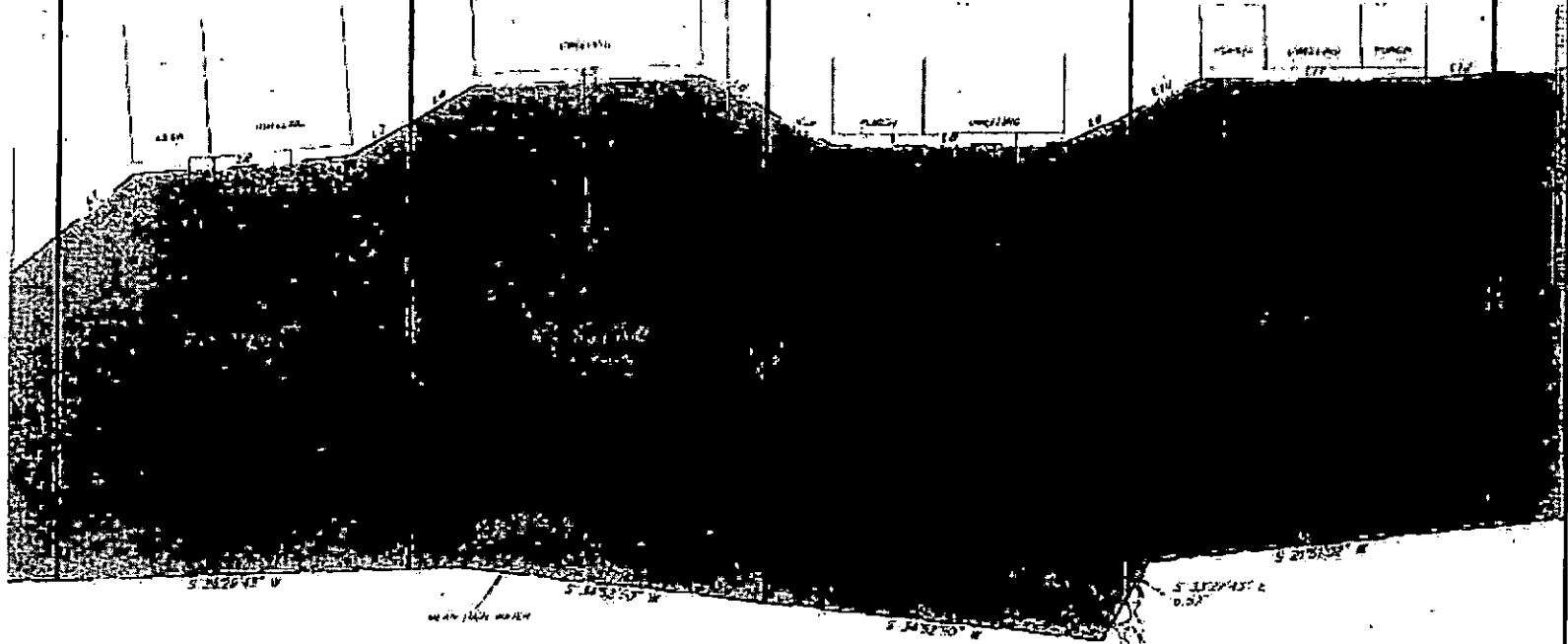
5. PROPERTY LINES WERE ESTABLISHED AS A BEST FIT SCENARIO FROM FIELD EVIDENCE, RECORDED PLATS AND VARIOUS RECORDS.

6. MEAN HIGH WATER WAS ESTABLISHED FROM TIDAL MEASUREMENT NO. 40-4-1970.

7. WESTERN SIDE OF EASEMENT IS 2' FROM EDGE OF ADJACENT LOT.

163

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100



ATLANTIC OCEAN

EASEMENT EXHIBIT
FOR BEACH RENOURISHMENT EASEMENT
ON LOTS 303 THRU 306, BIRDS NEST,
SURVEYED FOR

**THE TOWN OF
PAWLEYS ISLAND**

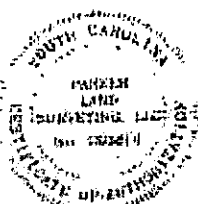
LOCATED ON PAWLEYS ISLAND,
GEORGETOWN COUNTY, SOUTH CAROLINA
DATE: JANUARY 15, 2019



Park Lane Surveying, LLC
1001 S. Highway 17
Georgetown, SC 29144
Phone: (803) 543-7777
Fax: (803) 543-7777

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE ADEQUATE STANDARDS, MAPS, ETC. FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED IN THE

GREGORY A. CUNNINGHAM, P.E., S.C. License No. 17924



ONE INCH = 20'

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

Sunset Lodge, LLC

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

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

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and Seals on this Easement as of this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Sunset Lodge, LLC

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, personally appeared before me this _____ day of
_____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____ of the Town of Pawleys Island, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-027.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:

(a) Place the amount listed in item 4 above here:	\$ _____
(b) Place the amount listed in item 5 above here:	\$ _____
(c) Subtract item 6(a) from item 6(b) and place result here:	\$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____

day of _____, 20____.

(Notary Public)

My commission expires _____

Responsible Person Connected with Transaction_____
Norwood D. DuRant, Jr._____
Print or Type Name Here

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
Town of Pawleys Island,	)	CIVIL ACTION NO.: 2020-CP-22-
	)	
Condemnor,	)	
	)	CONDEMNATION NOTICE
v.	)	AND
	)	TENDER OF PAYMENT
The Franklin D. Beattie Preservation Trust,	)	
	)	
Landowner.	)	

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

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

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.
2. The Franklin D. Beattie Preservation Trust is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated October 9, 2007 and recorded on October 17, 2007 in Book 723, at Page 7 in the Register of Deeds for Georgetown County.
3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as

shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

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

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF FIFTY-FOUR THOUSAND FIFTY EIGHT DOLLARS (\$54,058) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

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

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

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

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

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

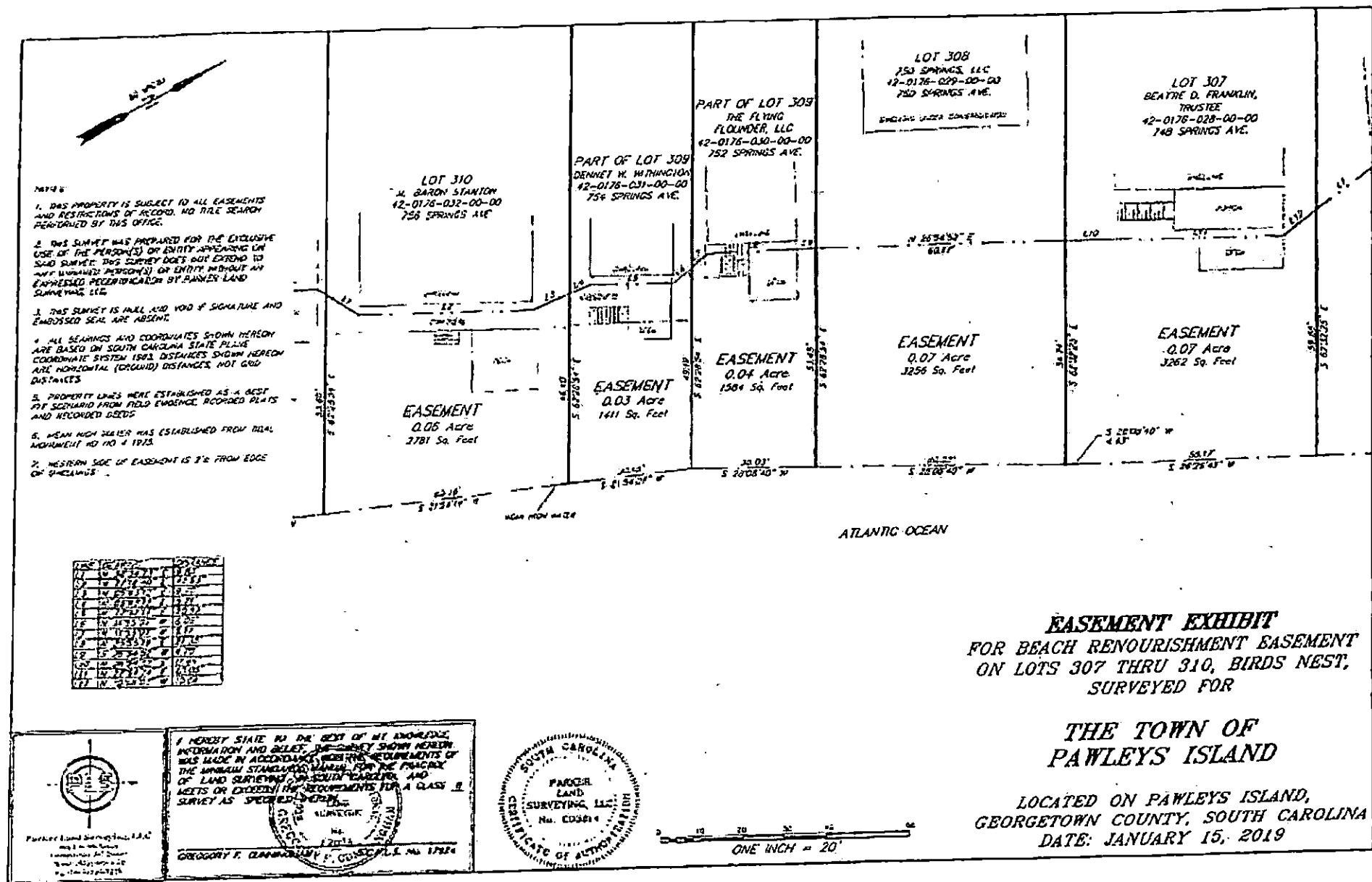
15. In the event the Landowner accepts the tender hereof, the attached Agreement should be signed and returned to the Condemnor within thirty (30) days of service of this Condemnation Notice.

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

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

June 9, 2020

Exhibit "A"
(Easement Areas)



STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

The Franklin D. Beattie Preservation Trust

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and Seals
on this Easement as of this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

The Franklin D. Beatties Preservation Trust

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, personally appeared before me this _____ day of
_____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, _____ of the Town of Pawleys Island, personally
appeared before me this _____ day of _____, 20____ and acknowledged the due execution
of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

AFFIDAVIT

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-028.00.00.
3. Check one of the following: The Deed is
 - (a) Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00 (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
 - (c) Subtract item 6(a) from item 6(b) and place result here: \$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____
day of _____, 20_____.

(Notary Public)
My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.
Print or Type Name Here

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2020-CP-22-
	)	
Town of Pawleys Island,	)	
	)	
Condemnor,	)	
	)	CONDEMNATION NOTICE
v.	)	AND
	)	TENDER OF PAYMENT
M. Baron Stanton,	)	
	)	
Landowner.	)	
_____	)	

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

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

1. The Town of Pawleys Island is the condemnor herein and seeks to acquire an easement on the real property described herein ("the Property") for public purpose.
2. M. Baron Stanton is named as Landowner by virtue of their claim of title or interest in the Property as shown by that certain Deed dated March 27, 1998 and recorded on April 14, 1998 in Book B862, at Page 17 in the Register of Deeds for Georgetown County.
3. The following is a description of the Property subject of this Condemnation Notice and a description and map of the property interest sought to be acquired in and to the Property by the Condemnor:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as

shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

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

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a perpetual and assignable easement and right-of-way in, on, over and across (the land described in Exhibit "A" for use by the (Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit said; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store, and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Pawleys Island Coastal Storm Damage Reduction Project, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvement within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Project Sponsor) and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the easement shown in the shaded areas on Exhibit "A" attached hereto.

4. The Town of Pawleys Island is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 *et seq.*

5. The property interest sought to be acquired herein is intended for public purpose, more particularly for the Condemnor's beach renourishment project in conjunction with the Army

Corps of Engineers to improve, repair and/or reconstruct rapidly-eroding shorelines for the protection of people, homes, and businesses beyond the beach.

6. This Condemnation Notice is served on the Landowner pursuant to S.C. Code Ann. § 28-2-240 (Condemnation by Trial).

7. The Condemnor has complied with the requirements set forth in S.C. Code Ann. § 28-2-270(a), by having the Property appraised and making the appraisal available to the Landowner where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the service of this Condemnation Notice and commencement of condemnation action.

8. Project plans may be inspected at the Office of the Town Administrator located at 321 Myrtle Avenue, Pawleys Island, SC 29585.

9. THE CONDEMNOR HAS DETERMINED THAT JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, INCLUDING ALL DAMAGES, TO BE THE SUM OF ZERO DOLLARS (\$0.00), THE REASON BEING THAT THE PROPERTY STANDS TO GAIN A NET BENEFIT OF SIXTY THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$60,750.00) UPON COMPLETION OF THE PROJECT, AND HEREBY TENDERS PAYMENT OF ZERO DOLLARS (\$0.00) TO THE LANDOWNER.

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

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

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

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

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

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

s/N. David DuRant, Sr.

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

P.O. Box 14722

Surfside Beach, SC 29587

Telephone: 843-650-7800

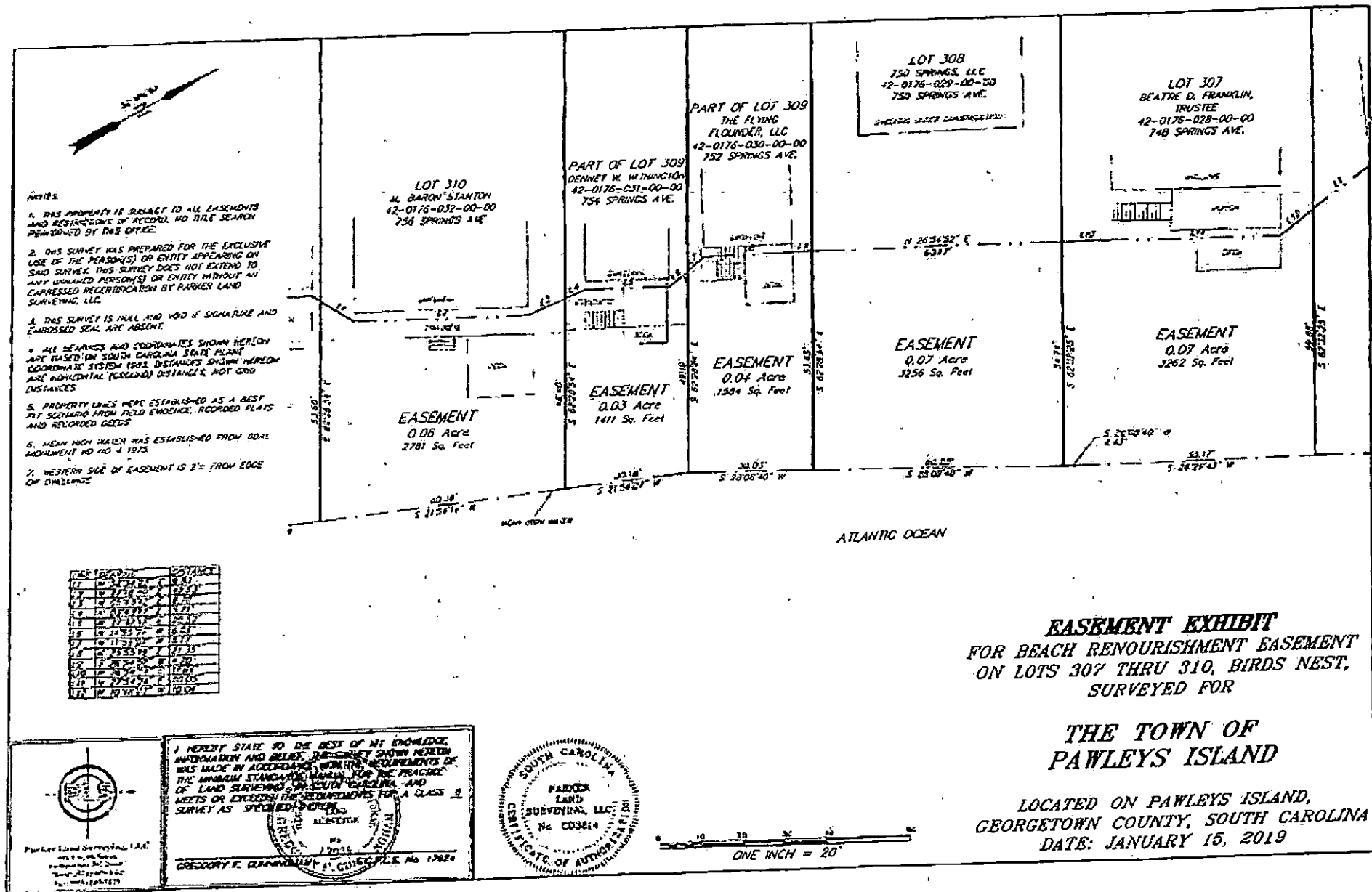
Facsimile: 843-650-8090

Email: ddurant@lawofficesofdurant.com

Attorney for the Condemnor

June 9, 2020

Exhibit "A"
(Easement Areas)



STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a perpetual and assignable easement and right-of-way in, on, over and across (the land described in Exhibit "A" for use by the (Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit said; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store, and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Coastal Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvement within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the Grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations,

provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Project Sponsor) and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the easement shown in the shaded areas on Exhibit "A" attached hereto.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be

used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and Seals on this Easement as of this ____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

M. Baron Stanton

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron Stanton, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name:_____

My Commission Expires:_____

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, _____ of the Town of Pawleys Island, personally
appeared before me this _____ day of _____, 20____ and acknowledged the due execution
of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

AFFIDAVIT

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 756 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-032.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
 - (c) Subtract item 6(a) from item 6(b) and place result here: \$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____
day of _____, 20____.

(Notary Public)
My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.
Print or Type Name Here

RESOLUTION NO. 2020-07
TOWN OF PAWLEYS ISLAND
PAWLEYS ISLAND SOUTH CAROLINA
October 12, 2020

Addendum to Resolution 2020-06 Authorizing Condemnation for easement acquisition for Beach Renourishment Project

WHEREAS, on May 18, 2020, the Town of Pawleys Island passed Resolution No. 2020-06 ("Resolution"), identifying four property easements necessary for the Town's Beach Renourishment Project in conjunction with the Army Corps of Engineers;

WHEREAS, the Resolution authorized the Town Attorney to commence condemnation actions for acquisition of the easements if the property owners do not accept an offer of the appraised value of the easement areas within thirty days from the offer, or if the landowners reject the offer;

WHEREAS, the Town of Pawleys Island had successfully negotiated and acquired one out of four property easements since then;

WHEREAS, the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council this 12th day of October 2020, that upon acquisition of the property easement, either by eminent domain or by easement agreement, the title to the property shall remain with the property owner, and that the terms of the use of the easement shall be pursuant to and as set forth in the Beach Renourishment Easement agreement that the Town had previously proposed to the property owner. A copy of the Beach Renourishment Easement agreement sent to each of the three property owners is hereto attached as Exhibit "A" (Sunset Lodge, LLC), Exhibit "B" (The Franklin D. Beattie Preservation Trust); and, Exhibit "C" (M. Baron Stanton).

MOVED, APPROVED, AND ADOPTED ON THIS 12TH DAY OF OCTOBER 2020, AS FOLLOWS:

Those in favor:

Those opposed:

APPROVED: _____
BRIAN HENRY, MAYOR

DATE:

ATTEST: _____
RYAN FABBRI, ADMINISTRATOR

DATE:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

Sunset Lodge, LLC

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

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

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and Seals on this Easement as of this ____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Sunset Lodge, LLC

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, personally appeared before me this _____ day of
_____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, _____ of the Town of Pawleys Island, personally
appeared before me this _____ day of _____, 20____ and acknowledged the due execution
of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

AFFIDAVIT

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-027.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:

(a) Place the amount listed in item 4 above here:	\$ _____
(b) Place the amount listed in item 5 above here:	\$ _____
(c) Subtract item 6(a) from item 6(b) and place result here:	\$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____

day of _____, 20____

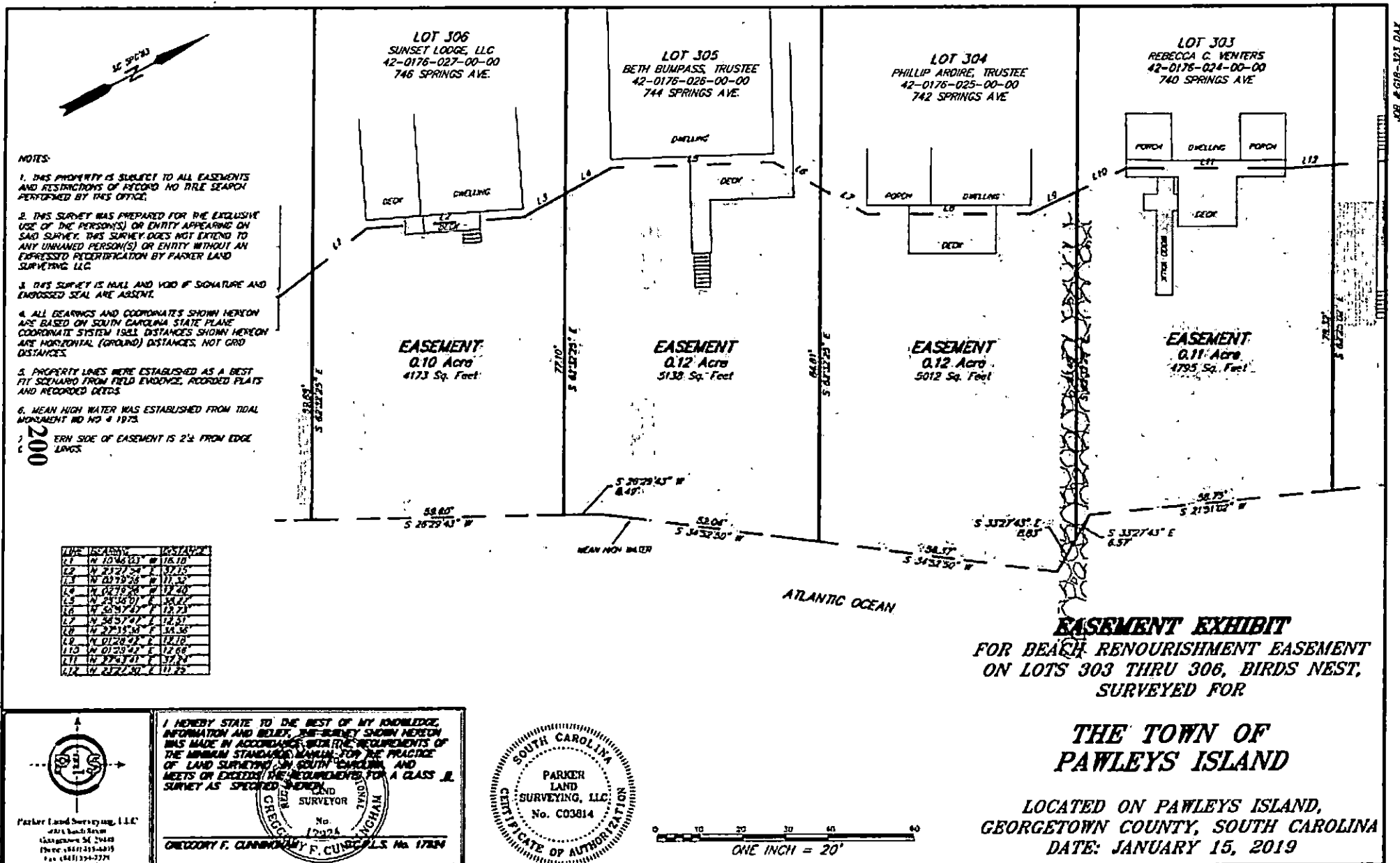
(Notary Public)

My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.

Print or Type Name Here



STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

The Franklin D. Beattie Preservation Trust

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easements is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns; to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other

work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and Seals
on this Easement as of this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

The Franklin D. Beatties Preservation Trust

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20_____.

Notary
Printed Name: _____

My Commission Expires:

THE TOWN OF PAWLEYS ISLAND

By: _____
_____ of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____ of the Town of Pawleys Island, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-028.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00 (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
 - (c) Subtract item 6(a) from item 6(b) and place result here: \$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____
day of _____, 20____.

(Notary Public)
My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.
Print or Type Name Here

EXHIBIT "B"

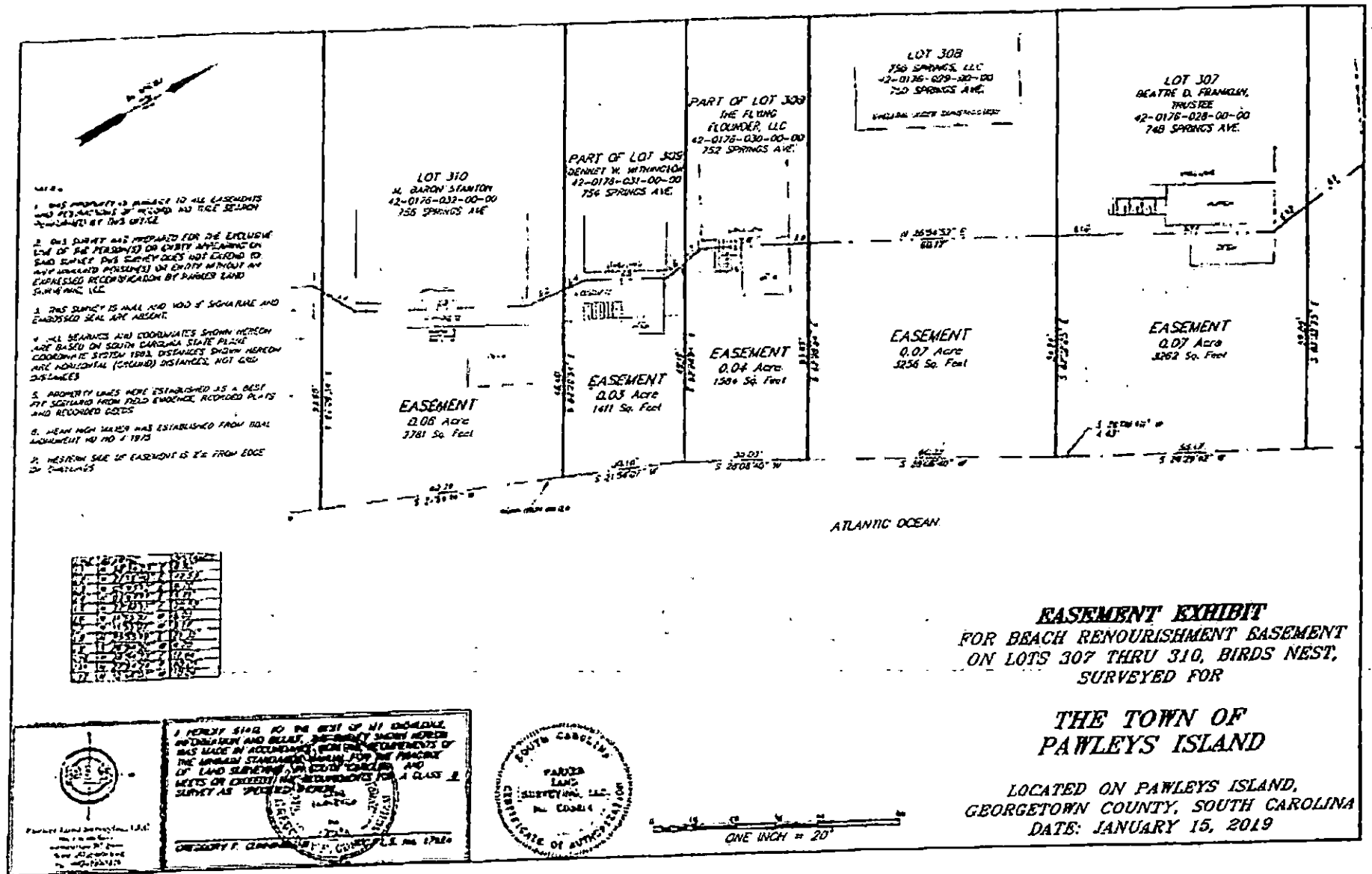


EXHIBIT "C"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S. Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat; to the East by the high water mark of the Atlantic Ocean; to the South on Lot #311, as shown on said plat; and to the West on the high water mark of said creek as shown on said plat. Saving and excepting on the West side a twenty-five (25') foot width for street and utility lines.

The easement granted herein is the 0.06 Acre portion of Lot 310 (Easement Exhibit) shown as the shaded area on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019, revised May 6, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-032.00.00. This easement does not cover the entire Lot 310 as described above, but only as to the portion of the premise shown in the shaded areas on Exhibit "A" attached hereto.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above and shown in the shaded areas on Exhibit A, for use by the Town of Pawleys Island, its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system, and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and

renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Pawleys Island Coastal Storm Damage Reduction Project, together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of public access to dune areas; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, excepting personal owned improvements within the easement area (i.e. elevated decks, stairs, walkways) as shown on attached Exhibit A, reserving, however, to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the designated representative of the Town of Pawleys Island and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this

Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and
Seals on this Easement as of this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

M. Baron Stanton

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron Stanton, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____



RESOLUTION NO. 2020-07
TOWN OF PAWLEYS ISLAND
PAWLEYS ISLAND SOUTH CAROLINA
October 12, 2020

Addendum to Resolution 2020-06 Authorizing Condemnation for easement acquisition for Beach Renourishment Project

WHEREAS, on May 18, 2020, the Town of Pawleys Island passed Resolution No. 2020-06 ("Resolution"), identifying four property easements necessary for the Town's Beach Renourishment Project in conjunction with the Army Corps of Engineers;

WHEREAS, the Resolution authorized the Town Attorney to commence condemnation actions for acquisition of the easements if the property owners do not accept an offer of the appraised value of the easement areas within thirty days from the offer, or if the landowners reject the offer;

WHEREAS, the Town of Pawleys Island had successfully negotiated and acquired one out of four property easements since then;

WHEREAS, the Town Attorney has served each of the property owners of the three remaining easements that have not been acquired with a Condemnation Notice and Tender of Payment;

NOW, THEREFORE, BE IT RESOLVED, by the Town Council this 12th day of October 2020, that upon acquisition of the property easement, either by eminent domain or by easement agreement, the title to the property shall remain with the property owner, and that the terms of the use of the easement shall be pursuant to and as set forth in the Beach Renourishment Easement agreement that the Town had previously proposed to the property owner. A copy of the Beach Renourishment Easement agreement sent to each of the three property owners is hereto attached as Exhibit "A" (Sunset Lodge, LLC), Exhibit "B" (The Franklin D. Beattie Preservation Trust); and, Exhibit "C" (M. Baron Stanton).

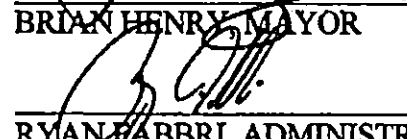
MOVED, APPROVED, AND ADOPTED ON THIS 12TH DAY OF OCTOBER 2020, AS FOLLOWS:

Those in favor: BRIAN HENRY, SARAH ZINNERMAN, Rocky Holliday, GUEY GREEN

Those opposed: NONE

APPROVED: 
BRIAN HENRY, MAYOR

DATE: 10-13-2020

ATTEST: 
RYAN ABBRI, ADMINISTRATOR

DATE: 10-13-2020

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

Sunset Lodge, LLC

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern End of Pawley's designated as Lot No. 306 on a plat made by George S. Ward, Engineer, dated January 1954, recorded in the Office of the Register of Deeds for Georgetown County in Plat Book J, Page 15, and on a Plat made by Samuel M. Harper, dated 15 January 1955, recorded in Plat Book J at Page 72; and shown on plat made by J. Luckey Sanders, RLS, dated July 21, 1998 and recorded in Plat Book 17 at Page 332 and having such metes and bounds as shown on said plat. This description in lieu of metes and bounds as permitted under Section 30-5-200 of the 1976 Code of Laws of South Carolina.

Lot 306 (Easement Exhibit) recorded Data, referenced and shown as 0.10 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-027.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and

incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use¹ and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary

¹ "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and
Seals on this Easement as of this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Sunset Lodge, LLC

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed
_____, personally appeared before me this _____ day of
_____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____
_____ of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____ of the Town of Pawleys Island, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

AFFIDAVIT

PERSONALLY appeared before the, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 746 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-027.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
 - (c) Subtract item 6(a) from item 6(b) and place result here: \$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____
day of _____, 20____.

(Notary Public)
My commission expires _____

Responsible Person Connected with Transaction

Norwood D. DuRant, Jr.
Print or Type Name Here



EXHIBIT "B"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

The Franklin D. Beattie Preservation Trust

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

All that certain piece, parcel or lot of land situate, lying and being on the Southern end of Pawley's Island, being and constituting Lot 307 as shown on a plat made by George S. Ward, Engineer, dated January 1954, and recorded in the Office of the Clerk of Court for Georgetown County, in Plat Book J at Page 15, and also on a plat made by Samuel M. Harper, dated January 15, 1955, and recorded in said Clerk's Office in Plat Book J at Page 72; said lot butts and bounds as follows: to the North on Lot 306 as shown on said plats; to the East on the high water mark of the Atlantic Ocean; to the South on Lot 308; and to the West on the high water mark of the Salt Creek as shown on said plats.

Lot 307 (Easement Exhibit) recorded Data, referenced and shown as 0.07 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 307 through 310, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-028.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construction; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform

any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use¹ and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the **Town of Pawleys Island** and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its, successors, heirs and assigns forever.

The above described easement and covenants shall run with title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described

¹ "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and
Seals on this Easement as of this _____ day of _____, 20_____.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

The Franklin D. Beatties Preservation Trust

A schematic diagram of a horizontal beam of length L . A coordinate system (x, y) is shown at the left end, with x along the beam and y perpendicular to it. A force P is applied at the right end, perpendicular to the beam. The beam is supported at the left end by a pin support and at the right end by a roller support. The beam is divided into two segments of length $L/2$ each by a point A . The beam is labeled with L at the right end and P at the point of application of the force.

Age Group	Percentage of Respondents
18-29	95%
30-39	90%
40-49	85%
50-59	80%
60-69	75%
70-79	70%
80+	65%

By: _____
Its Authorized Agent

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20_____.

Notary
Printed Name:

My Commission Expires: _____

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____ of the Town of Pawleys Island, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 748 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-028.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____.
 - (b) Place the amount listed in item 5 above here: \$ _____.
 - (c) Subtract item 6(a) from item 6(b) and place result here: \$ _____.
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____

day of _____, 20____

(Notary Public)

My commission expires _____

 Responsible Person Connected with Transaction

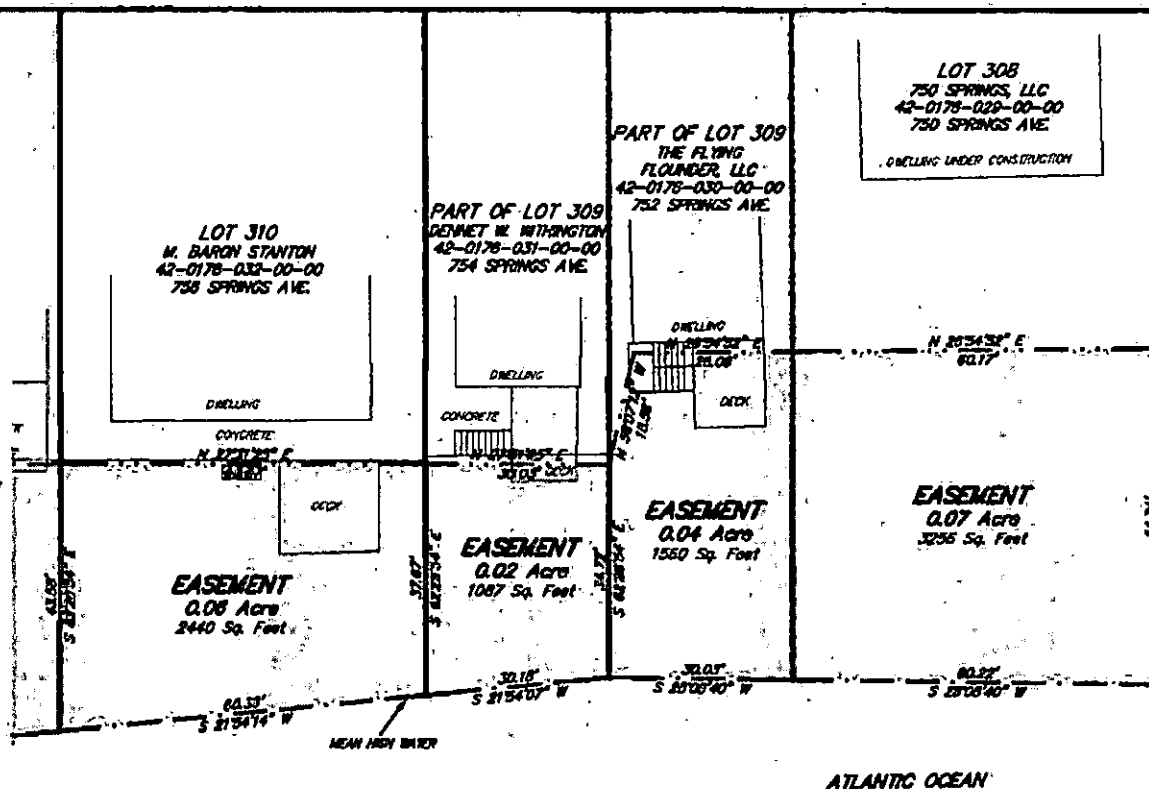
Norwood D. DuRant, Jr.

Print or Type Name Here



NOTES:

1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. NO TITLE SEARCH PERFORMED BY THIS OFFICE.
2. THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON(S) OR ENTITY APPEARING ON SAID SURVEY. THIS SURVEY DOES NOT EXTEND TO ANY UNPAID PERSON(S) OR ENTITY WITHOUT AN EXPRESSED REAFFIRMATION BY PARKER LAND SURVEYING, LLC.
3. THIS SURVEY IS NULL AND VOID IF SIGNATURE AND EMBOSSED SEAL ARE ABSENT.
4. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM 1983. DISTANCES SHOWN HEREON ARE HORIZONTAL (GROUND) DISTANCES, NOT GRID DISTANCES.
5. PROPERTY LINES WERE ESTABLISHED AS A BEST FIT SCENARIO FROM FIELD EVIDENCE, RECORDED PLATS AND RECORDED DEEDS.
6. MEAN HIGH WATER WAS ESTABLISHED FROM TIDAL MONUMENT NO 4 1973.
7. WESTERN SIDE OF EASEMENT IS 2' FROM EDGE OF DWELLINGS.



LINE	BEARING	DISTANCE
1	N 89°54'32" E	60.17'
2	N 89°54'32" E	60.17'
3	N 89°54'32" E	60.17'

**FOR BEACH
ON LOTS**

**LOCAL
GEORGETOWN
DA**

Parker Land Surveying, LLC
490 Church Street
Georgetown, SC 29140
Phone: (803) 462-1462
Fax: (803) 524-7779

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MARIAN STANDARD SURVEYING ACT, THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS 1 SURVEY AS SPECIFIED THEREIN.

LAND SURVEYOR
No. 17024
GREGORY F. CUMMINS, PLS. No. 17024



EXHIBIT "C"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

BEACH RENOURISHMENT EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor(s)

M. Baron Stanton

does hereby grant, bargain, sell and convey to the Grantee, the Town of Pawleys Island, County of Georgetown, State of South Carolina, a municipal corporation, and its assigns, a perpetual easement and right of way, in over, upon, through and under the following described premises:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being on the south end of Pawley's Island, State of South Carolina, County of Georgetown, and being known and designated as Lot Number Three Hundred Ten (310) on a plat made by George S Ward, Engineer, dated January 30, 1954, and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book J at Page 15, reference to which is craved as forming a part of these presents. Said lot butting and bounding as follows: To the North on Lot #309 as shown on said plat, to the East by the high water mark of the Atlantic Ocean, to the South on Lot #311, as shown on said plat; and to the West on the high. water mark of said creek as shown on said plat. Saving and excepting on the West Side a twenty-five (25') foot width for street and utility lines.

Lot 310 (Easement Exhibit) recorded Data, referenced and shown as 0.06 Acre on a map by Parker Land Surveying, LLC, showing a Perpetual Easement for Beach Renourishment on Lots 311 through 314, Birds Nest, Surveyed for The Town of Pawleys Island, dated January 15, 2019 and recorded in the Office of the Register of Deeds for Georgetown County, SC records, attached hereto as Exhibit "A". Said Easement is a portion of Georgetown County Tax Map Parcel Number 42-176-032.00.00. This Easement applies only to the shaded areas as shown on Exhibit "A" and not to the entire lot.

This easement is a perpetual and assignable easement and right-of-way in, on, over and across the land described above, for use by the **Town of Pawleys Island**, its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish

any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies, to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the **Pawleys Island Hurricane and Storm Damage Reduction Project**, together with the right of public use¹ and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell, and remove said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement; reserving, however, to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the (designated representative of the Town of Pawleys Island and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the grantor(s), (his)(her)(its)(their)(heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired, subject however to existing easements for

¹ "Public use" should be defined as follows: in cases where the town retains an easement by virtue of continuous use by the public, the public has a right over the dry beach extending from the seaward boundary, marked by the high tide line, to the landward boundary delineated by the vegetation/dune line. Reference to the Plat in this Deed and all other related deeded easements does not create an implied easement for unrestricted public access to property. Vegetation/Dunes are to be defined as "any accumulation of plant life, sand in ridges or mounds landward of the beach, whether formed by natural or by beach renourishment manmade forces. Any use by the public is limited to the shaded area on the recorded Plat and the uses by the public are limited to the uses set forth and described within the terms of this easement document.

public roads and highways, public utilities, railroads and pipelines.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Town, its successors, heirs and assigns forever.

The above described easement and covenants shall run with the title to the real property subjected to this Easement and shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Easement.

IN WITNESS WHEREOF, _____ have hereunto set their respective Hands and Seals on this Easement as of this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

M. Baron Stanton

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed M. Baron

Stanton personally appeared before me this _____ day of _____, 20____ and
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary

Printed Name:

My Commission Expires:

THE TOWN OF PAWLEYS ISLAND

By: _____

of Pawleys Island

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above-signed _____ of the Town of Pawleys Island, personally appeared before me this _____ day of _____, 20____ and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 20____.

Notary
Printed Name: _____

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

AFFIDAVIT

PERSONALLY appeared before me, the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 756 Springs Avenue, Pawleys Island, SC 29585, bearing Georgetown County Tax Map Number 42-176-032.00.00.
3. Check one of the following: The Deed is
 - (a) _____ Subject to the Deed recording fee as a transfer for consideration paid or to be paid in money's worth.
 - (b) _____ Subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity and a stockholder, partnership or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the Deed recording fee because (See Information section of Affidavit): Less than \$100.00. (If exempt, please skip items 4-7 and go to item 8 of this Affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this Affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is \$ _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The Deed recording fee is composed as follows:

(a) Place the amount listed in item 4 above here:	\$ _____
(b) Place the amount listed in item 5 above here:	\$ _____
(c) Subtract item 6(a) from item 6(b) and place result here:	\$ _____
7. The deed recording fee is based on the amount listed in item 6(c) above and the deed recording fee due is: \$ _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Town Attorney.
9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand Dollars or imprisoned not more than one year, or both.

SWORN to before me this _____

day of _____, 20____.

(Notary Public)
 My commission expires _____

 Responsible Person Connected with Transaction

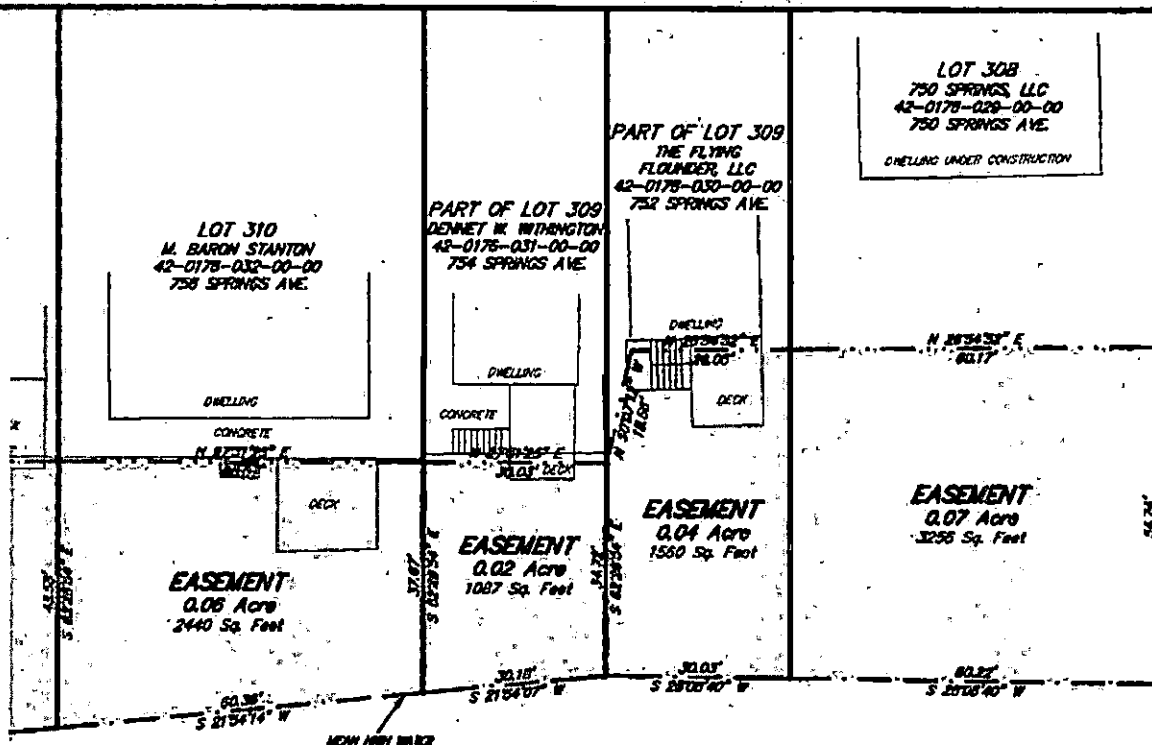
Norwood D. DuRant, Jr.
 Print or Type Name Here



NOTES:

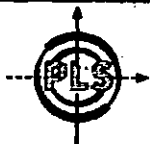
1. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. NO TITLE SEARCH PERFORMED BY THIS OFFICE.
2. THIS SURVEY WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON(S) OR ENTITY APPEARING ON SAID SURVEY. THIS SURVEY DOES NOT EXTEND TO ANY UNNAMED PERSON(S) OR ENTITY WITHOUT AN EXPRESSED RECDERIFICATION BY PARKER LAND SURVEYING, LLC.
3. THIS SURVEY IS NULL AND VOID IF SIGNATURE AND EMBOSSED SEAL ARE ABSENT.
4. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM 1983. DISTANCES SHOWN HEREON ARE HORIZONTAL (GROUND) DISTANCES, NOT GRID DISTANCES.
5. PROPERTY LINES WERE ESTABLISHED AS A BEST FIT SCENARIO FROM FIELD EVIDENCE, RECORDED PLATS AND RECORDED DEEDS.
6. MEAN HIGH WATER WAS ESTABLISHED FROM TIDEAL MONUMENT NO 4 1973.
7. WESTERN SIDE OF EASEMENT IS 2'-6" FROM EDGE OF DWELLINGS.

LINE	BEARING	DISTANCE
1	N 87°54'31" E	111.00'
2	N 87°54'31" E	111.00'
3	N 87°54'31" E	111.00'
4	N 87°54'31" E	111.00'



ATLANTIC OCEAN

FOR BRACK
ON LOTS



Parker Land Surveying, LLC
488 Clouds Drive
Georgetown, SC 29140
Phone (803) 463-4400
Fax (803) 554-7777

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE ANNUAL STANDARDS PRACTICE AND THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED HEREIN.



GREGORY A. CUNNINGHAM, P. CUNNINGHAM, L.L.C. No. 17824



0 10 20 30 40 50 60 70 80
ONE INCH = 20'

LOCAL
GEORGETOWN
DA
R

Answer to Amended Complaint in Sunset* Challenge II action,
dated March 3, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER TO
	)	AMENDED COMPLAINT
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

DEFENDANT, TOWN OF PAWLEYS ISLAND, BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S AMENDED COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

FOR A FIRST DEFENSE

1.) Each and every allegation of Plaintiff's Amended Complaint which is not hereinafter specifically admitted, modified or qualified, is denied, and strict proof thereof is demanded.

FOR A SECOND DEFENSE

2.) The Defendant admits the allegations contained in Paragraphs 1, 7, and 8 of the Amended Complaint.

3.) The Defendant denies the truth of the allegations contained in Paragraph 2 of the Amended Complaint, except admits that the Defendant is a municipal corporation.

4.) Answering Paragraphs 3, 4, 5, 6, 9, 10 and 11 of the Amended Complaint, Defendant admits that it operates under a council form of government consistent with Defendant's Code of Ordinances and the South Carolina Code of Laws, and subject to the South Carolina

Freedom of Information Act, and denies any allegation contained in such paragraphs inconsistent therewith.

5.) Answering Paragraph 182 of the Amended Complaint, which purports to incorporate by reference the allegations of the pending matter identified as the "Existing Challenge Action," Defendant incorporates by reference the defenses and allegations asserted in its Answer to such Amended Complaint in the Existing Challenge Action.

6.) Answering Paragraphs 12 through 375 of the Amended Complaint:

- a. Defendant admits that Town Council held public meetings in 2020 on or about the dates referenced in the Amended Complaint;
- b. Defendant admits that at all meetings at which Town Council took action in relation to this matter it did so through a properly constituted quorum, with Councilmembers in attendance and engaged in discussion with Town staff and the Town Attorney as indicated in the minutes for the same;
- c. Defendant admits that Town Council properly approved resolutions authorizing the challenged condemnation, and that Defendant delivered the document identified in the Amended Complaint as the New Notice to Plaintiff or Plaintiff's representatives in October 2020;
- d. Defendant craves reference to the Condemnation Notice, Resolution, and other document referenced in the Amended Complaint and denies any allegation inconsistent with the terms thereof;
- e. Defendant admits that, through counsel, it has made certain arguments and taken certain positions in this litigation and the pending litigation referred to as the Existing Challenge

Action, craves reference to the filings in and other records of the same, and denies any allegation of the Amended Complaint inconsistent therewith;

- f. Defendant admits that the U.S. Constitution and S.C. Constitution included the provisions cited in Paragraph 268 of the Amended Complaint;
- g. Defendant admits, in response to Paragraph 353 of the Amended Complaint, that the Town Attorney delivered a new condemnation notice to Plaintiff's counsel in October 2020; and
- h. Defendant admits, in answering Paragraph 362 of the Amended Complaint, that service of a condemnation notice commences a condemnation action.

7.) Subject to the admissions and qualifications stated above, Defendant denies the allegations of Paragraphs 12 through 375 of the Amended Complaint.

FOR A THIRD DEFENSE

8.) The single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Defendant's February 10, 2021 filing of a Notice of Abandonment of Condemnation Action (attached as Exhibit A) relating to a Condemnation Notice delivered to the Plaintiff on or about October 15, 2020 (referenced in the Amended Complaint in this action as the "New Notice"). As such Condemnation Notice has been abandoned and withdrawn, any condemnation action it initiated has been extinguished, and therefore warrants no challenge, and the subject action should be dismissed as moot.

FOR AN FOURTH DEFENSE

9.) To the extent that the Amended Complaint seeks to challenge or obtain any relief in connection with a prior pending condemnation action, another action is pending between the

same parties for the same claim (identified in the Amended Complaint as the “Existing Challenge Action”) and this action should be dismissed pursuant to Rule 12(b)(8), SCRCP.

FOR A FIFTH DEFENSE

10.) The Amended Complaint, in whole or in part, fails to state a cause of action upon which relief may be granted.

FOR AN SIXTH DEFENSE

11.) The Defendant is vested with the power of eminent domain pursuant to S.C. Code Ann. § 5-7-50 and § 28-2-10 et seq. Furthermore, the determination that an acquisition is necessary to accomplish a project for a public purpose lies within the sound judgment and discretion of the entity, in this case, the Defendant, exercising the power of eminent domain.

FOR A SEVENTH DEFENSE

12.) The easement sought to be acquired by the Defendant was intended for the public purpose of beach renourishment that would benefit both residents and visitors of the Town of Pawleys Island.

FOR AN EIGHTH DEFENSE

13.) The easement sought to be acquired by the Defendant was a requirement by the United States Army Corps of Engineers (the “Corps”) in connection with a 45-year beach renourishment project for the Town of Pawleys Island.

FOR A NINTH DEFENSE

14.) If the Defendant complies with the easement requirements by the Corps, the Town’s beach renourishment project will be federally protected. Thus:

- a. The Corps will be responsible for an estimated cost of \$300,000.00 for erecting sand fence and planting beach grass, at no cost to the Town;
- b. The Corps will periodically renourish the Town's beach every nine (9) years in the next forty-five (45) years, and be responsible for 50% of the forecasted total renourishment costs of \$129,522,533.00; and,
- c. The Corps will repair all beach damage resulting from a significant storm for the next forty-five (45) years, irrespective of federal declaration, at no cost to the Town.

FOR AN TENTH DEFENSE

15.) Pursuant to S.C. Code Ann. § 27-3-10 et seq, the Plaintiff would not be liable to the general public by granting the easement sought by the Defendant.

WHEREFORE, having answered the Plaintiff's Complaint, the Defendant hereby respectfully asks the Court for the following relief:

- a. Dismissal of the Complaint with prejudice;
- b. An award of attorney's fees and costs to the Defendant; and
- c. Such other and further reliefs as this Court deems just and proper.

BELSER & BELSER, P.A.

s/ William C. Dillard, Jr.
 William C. Dillard, Jr. (S.C. Bar No. 78986)
 Post Office Box 96
 Columbia, SC 29202
 (803) 929-0096
 will@belserpa.com
 Attorneys for Town of Pawleys Island

March 3, 2021

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF ABANDONMENT
v.	)	OF CONDEMNATION ACTION
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	

TO: PLAINTIFF SUNSET LODGE, LLC

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, please be notified that the Town of Pawleys Island hereby abandons and withdraws the Condemnation Notice underlying this challenge action, which Notice was delivered to the Plaintiff and/or representative of the Plaintiff on or about October 15, 2020 and is referenced in the Amended Complaint in this action as the "New Notice." To the full extent that such Condemnation Notice and/or its delivery or service initiated a condemnation action, such action is hereby abandoned and withdrawn.

BELSER & BELSER, P.A.

s/ William C. Dillard, Jr.

William C. Dillard, Jr. (S.C. Bar No. 78986)

Post Office Box 96

Columbia, SC 29202

(803) 929-0096

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Attorneys for Defendant Town of Pawleys Island

Also for Defendant:

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

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

LAW OFFICES OF N. DAVID DuRANT

AND ASSOCIATES, P.A.

P.O. Box 14722

Surfside Beach, SC 29587

February 10, 2021

Transcript of Circuit Court hearing of motions
(including motions to dismiss and for protection
from discovery) occurring April 1, 2021

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF GEORGETOWN) CASE NOS. 2020-CP-22-00932
3 2020-CP-22-00931
4 2020-CP-22-00930

5 -----
6 April 1, 2021

7 BEFORE: The Honorable Ben H. Culberston
8

9 -----
10 Sunset Lodge, LLC; Franklin D. Beattie, as trustee of The
11 Franklin D. Beattie Preservation Trust; M. Baron Stanton,
12 Plaintiffs,
13 vs.
14 Town of Pawleys Island,
15 Defendant.

16 -----
17 APPEARANCES:

18
19 M. Baron Stanton, Esq.
20 Attorney for the Plaintiffs.

21 William C. Dillard, Esq.
22 Attorney for the Defendant.

23 Official Court Reporter,
24 Cynthia D. Weaver
25

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Thank you very much. Please be
3 seated. All right. As I understand it, we can do all of
4 these together, or somewhat the cases together; is that
5 correct?

6 MR. DILLARD: Yes, Your Honor.

7 THE COURT: All right. This is Case Number
8 2020-CP-22-00600, Sunset Lodge, LLC, versus Town of Pawleys
9 Island. As well as 2020-CP-22-00601, Franklin D. Beattie as
10 Trustee of the Franklin D. Beattie Preservation Trust
11 versus; Town of Pawleys Island. Also 2020-CP-22-00602, M.
12 Baron Stanton versus Town of Pawleys Island.
13 2020-CP-22-00930, M. Baron Stanton versus Town of Pawleys
14 Island. 2020-CP-00931, Frank D. Beattie as Trustee of the
15 Franklin D. Beattie Preservation Trust versus Town of
16 Pawleys Island. 2020-CP-22-00932, Sunset Lodge, LLC, versus
17 Town of Pawleys Island.

18 According to my roster the matters are before the
19 Court are Motions for Protection from Discovery as well as
20 Motions to Dismiss.

21 Are any of these dispositive -- first, before we
22 go on, please stand give the court reporter your name and
23 who you represent.

24 MR. DILLARD: Good afternoon. My name is Will
25 Dillard. I represent the Town of Pawleys Island.

1 MR. STANTON: Good afternoon. I'm Barry Stanton,
2 otherwise known as M. Baron Stanton, and I represent all of
3 the plaintiffs and the two that mention me, I'm also
4 representing myself.

5 THE COURT: All right. Now, are any of these
6 motions dispositive of the other?

7 MR. DILLARD: Yes, sir. I believe in the second
8 set of cases, the 930 cases, the Motion to Dismiss would be
9 dispositive of the Motion for Protection from Discovery.

10 THE COURT: Okay. In all cases or just in those
11 930, 931, and 932?

12 MR. DILLARD: Just in those, Your Honor.

13 THE COURT: Okay.

14 MR. DILLARD: And then the 600 cases have separate
15 Motions for Protection from Discovery.

16 THE COURT: Okay. All right.

17 Well, let's go ahead and hear the Motions to
18 Dismiss first. Those are defense motions?

19 MR. DILLARD: Yes, sir..

20 THE COURT: All right, sir.

21 Let me hear from you, Mr. Dillard.

22 MR. DILLARD: Thank you, Your Honor.

23 Can you hear me with my mask on?

24 THE COURT: I can. Can the Court Reporter, can
25 you hear him all right?

1 THE COURT REPORTER: Yes.

2 MR. DILLARD: Let me know if you need me to speak
3 up or anything else.

4 THE COURT: All right.

5 MR. DILLARD: Thank you, very much for hearing
6 these motions, Your Honor.

7 Just to give you some very general factual
8 background so you can piece everything together. These are
9 condemnation challenge actions involving attempts by the
10 Town of Pawleys Island to condemn beach renourishment
11 easements.

12 This -- it goes back, my understanding, about
13 20 years. Conversations between the Town and the Army Corps
14 of Engineers set up a partnership, whereby, federal funds
15 could be used for beach renourishment on a periodic basis
16 and in cases of emergency damage to the beaches after a
17 hurricane or similar catastrophic event. It's been in the
18 works a long time. The Town and the Army Corps have gone
19 back and forth about how it would be set up.

20 Most recently it appeared that the Town wanted to
21 move forward and do some beach renourishment without the
22 Corps' involvement based on the Corps, for whatever reason,
23 not being able to commit on the same timeline as the Town.
24 And so the Town proceeded to put more sand on the beach, up
25 and down the beach.

1 At some point, during or maybe before that
2 process, the Corps came back to the Town and said that we in
3 fact could participate in this, and if the Corps
4 participates you'll be eligible for these federal funds for
5 a portion of the remaining work now, also for future
6 emergency and period renourishment work.

7 When the Corps commits to this type of project,
8 the Corps requires certain easement language. And that
9 easement language has been found objectionable by the three
10 plaintiffs in these sets of cases. So that's the general
11 issue. The general dispute.

12 So let me clarify that the general objections that
13 the three property owners have are there's one procedural
14 set of objections and there's the substantive set of
15 objections.

16 Procedurally, they say that when the Town, this
17 past June, initially went to try to condemn these three
18 beach renourishment easements that the Town failed to serve
19 the appraisal at the proper time. Failed to specifically
20 discuss the full scope of the easement in the appraisal and
21 the council resolution -- a number of things like that, that
22 are sort of procedural issues, to which they've objected.

23 And then there's a set of substantive objections
24 that generally involve claims of lack of necessity, no real
25 public use, and just sort of general -- well, specific, but

1 broad allegations of bad faith on the part of the Town. So
2 those are the two sets of objections, procedural and
3 substantive.

4 As you see we've got six different cases here. We
5 submitted a memo yesterday afternoon. And I've got a copy
6 for Your Honor, if you don't have it.

7 THE COURT: I've got it.

8 MR. DILLARD: Okay. I think it would be helpful
9 for me to just quickly go through the procedural steps that
10 have gotten us to this point across the six cases.

11 As I mentioned, this past June of 2020, the Town
12 served condemnation notices on the three plaintiffs. And
13 then in July the three plaintiffs filed the first set of
14 challenge actions. We've been calling those Challenge 1 --
15 Challenge Cases 1, just to refer to those. And those are
16 the 600, 601, and 602 cases. And in those cases the
17 plaintiffs raised those objections that I just discussed.

18 As that was pending, in I believe it was October
19 of 2020, the Town decided -- and this was before my
20 involvement, David Durant, the Town attorney is also counsel
21 of record, I got involved about two months ago. But back in
22 October the Town decided, I believe, to try to address some
23 of the procedural issues that were raised in that first set
24 of challenge cases.

25 So they delivered a new set of condemnation

1 notices to Mr. Stanton, intended to serve them on
2 Mr. Stanton and his other two clients. These are referred
3 to in this second set of cases where the Motion to Dismiss
4 has been heard, as the new notices. We've got the existing
5 old notices and the new notices. So those really were in
6 October.

7 In November the three plaintiffs filed a second
8 set of challenge actions on the basis of that new set of
9 notices. They generally raise the same procedural and
10 substantive objections. They also objected based on the
11 argument that there was a statutory stay on the condemnation
12 action because of the first set of challenge actions. And
13 it was therefore improper to serve a new condemnation notice
14 without seeking leave from the Court to lift the stay.

15 So on January 20th, Judge Nettles issued an order
16 granting the plaintiffs summary judgment in the first set of
17 cases. And essentially he declined to grant relief based on
18 the substantive objections about bad faith and things of
19 that nature. And instead found that the Town had failed
20 procedurally to serve the appraisal at the right time and
21 several other things like that.

22 So that was in January. I got involved shortly
23 thereafter. February 10th we filed Notice of abandonment of
24 the three new sets of condemnation actions -- or the three
25 new notices. And the reason for that was the same

1 procedural objections that were discussed in Judge Nettles
2 summary judgment order, many of those or some of those
3 arguably applied to this second set of condemnation notices.
4 And we did not want to litigate the question of whether the
5 Town should have first sought a lift of the stay before
6 filing this new notice. We wanted to try to clear out the
7 procedural issues so the parties, if necessary, could move
8 forward and address the substantive questions. So we filed
9 the notice of abandonment in this second set of cases.

10 Subsequently, I attempted to discuss -- I did
11 discuss with Mr. Stanton whether that would enable us to
12 agree to dismiss the second set of cases preserving his
13 right to assert any claim he may have to attorney fees based
14 on the abandonment. We were not able to reach an agreement
15 on that. I think we had different views on that.

16 In any event we filed the Motion to Dismiss on
17 March 5th and that's what we're here for today.

18 So -- and I'll say my goal, or part of our goal,
19 is to avoid the parties having to engage in time consuming,
20 expensive litigation, on issues that are at the present
21 moment entirely moot and academic, because those
22 condemnation notices have been withdrawn and abandoned in
23 these three cases.

24 To give you an example of what this litigation
25 involves and will involve, if we continue to move forward,

1 the amended complaint in these three cases, and each of the
2 three, it's approximately 60-pages long. I believe it's 375
3 paragraphs of very, very detailed allegations on a broad
4 variety of things. Certainly, at least in my experience,
5 beyond what's typical in a case of this nature.

6 The discovery requests include, for example, this
7 is Number 13 of the Interrogatories, and this is part of the
8 Motion for Protective Order. The interrogatory from the
9 plaintiffs states: If the Corps had stated to you, the Town
10 or its Council, that in order to have Federal assistance
11 with the southern portion of the renourishment project, you
12 would need to included in all easements a provision
13 perpetually allowing one public parking space in each
14 owner's driveway and allowing you or the Court to kill all
15 family dogs found in the easement area, would you have
16 included these provision in the easement document, as well?

17 And it goes on.

18 We're trying to avoid engaging in all of this
19 until it's absolutely necessary. Right now, it's not.
20 We've withdrawn the second set of condemnation notices and
21 we believe the issues are entirely moot at the present time.

22 It says, Specifically we've requested judgment on
23 the pleadings on the basis of the mootness. The abandonment
24 is not a mere allegation. We filed in the case, we attached
25 it to our answer. And so it's an action by the Town that

1 effects the parties legal rights. It withdraws the
2 condemnation notices that are the entire basis for this
3 second set of challenge actions.

4 The only -- and the challenge action is the only
5 cause of action asserted in the cases. Looking at my memo,
6 it refers -- it quotes the amended complaint, Page 58,
7 Paragraph 372, the plaintiff states that, quote, The Court
8 should quash, strike, and dismiss the new notice forthwith,
9 thus allowing the dismissal of the instant challenge action
10 after awarding litigation expenses to plaintiff.

11 And that's what we're here for, Your Honor. We've
12 withdrawn it. That condemnation notice is no longer in
13 play. So this case can be dismissed. As I've said at the
14 outset, without prejudice, one, to the rights to either of
15 the parties to assert other claims later, including a new
16 condemnation action, if needed. But also, without
17 prejudice, to whatever rights the plaintiffs have to
18 petition for attorney fees.

19 One of the arguments that the plaintiff makes is
20 that this -- the present situation is something that's
21 capable of repetition but evading review and therefore
22 qualifying as an exception to mootness considerations.

23 South Carolina case law, Your Honor, and this is
24 discussed in our brief, it's clear that in order for
25 something to evade review it has to be something that

1 usually by its nature becomes moot before it can possibly be
2 reviewed. And so an example from the Byrd case, that we
3 both cite, is temporary in-school suspensions, or school
4 suspensions, maybe lasting 10 or 20 days, that by it's very
5 nature, it becomes moot before it could get ever get to the
6 court for review. That's something that the Supreme Court
7 found to be capable of repetition and evading review.

8 An example of something that is more on point with
9 this situation, a condemnation initiative, is the Sloan v.
10 Friends of Hunley case involving requests for documents
11 pursuant to the Freedom of Information Act. In that case
12 documents were requested, initially denied, a lawsuit was
13 filed, and at some point in there the documents were in fact
14 turned over rendering the situation moot. The Court said
15 that, Yes, that's capable or repetition, but it's not
16 evading reviews, because if they denied production of
17 documents again, that's inherent and capable of review, you
18 file a new action under FOIA.

19 Here, if we file -- if we purse a new condemnation
20 action, addressing, for example, some of the procedural
21 issues he's raised, then that is also inherently capable of
22 review. Review would not be evaded, he could file a new
23 challenge action. And the Town has absolutely no interest
24 in continuing to have multiple condemnations and somehow
25 evading review. These are subject to attorney fees, if we

1 abandon, or if we lose. The Town wants to get this right.
2 We don't want to start new actions just to withdraw. We
3 have no interest in that. We just want to do it in the most
4 efficient and correct manner as possible. And that's what
5 I'm trying to get us closer to here.

6 So our motion is based on Rule 12(c) and so we're
7 limited to what's within the pleadings. I would say it's a
8 practical matter. The Town is still very interested in
9 acquiring these easements and obtaining full participation
10 from the Army Corps for the beach renourishment project.
11 And that's for the good of the community including the three
12 plaintiffs.

13 And so the Town is -- we're not able to negotiate
14 or otherwise work things out. The Town may well and wants
15 to reserve full rights to initiate a new condemnation
16 action. I didn't want the Court to think that I had
17 misrepresented that. But at present, like I said, I believe
18 it is entirely a moot issue.

19 The other -- just very briefly, the other basis
20 for our motion to dismiss is based on Rule 12(b)(8) that
21 another action is pending involving the same issues. As
22 included in the complaints in this action, we have the prior
23 set of cases, the first three cases, where Judge Nettles
24 issued a summary judgment order. He recently ruled from the
25 bench denying our motion to alter or amend. We don't have

1 that order yet. That case is still plugging along in that
2 regard. And Mr. Stanton has a significant fee petition
3 pending.

4 So my point on all of this is that to the extent
5 that this second set of cases involves anything other than
6 the three new condemnation notices and those issues are
7 already part of that other litigation and should be
8 dismissed as part of this case based on Rule 12(b)(8).

9 And because of that, with the three new notices
10 being withdrawn, there's nothing left in this case at all
11 other than he's planning he might want assert to attorney
12 fees.

13 So, Your Honor, thank you for your patience. I'll
14 defer on addressing the Discovery Motions if that suits the
15 Court.

16 THE COURT: That will be fine.

17 MR. DILLARD: Okay. Thank you.

18 THE COURT: All right. Mr. Stanton.

19 MR. STANTON: Thank you. May it please the Court.

20 As I stated initially, I'm Barry Stanton, and I
21 represent the plaintiff, Frank Beattie, as a trustee of the
22 Frank Beattie Preservation Trust, and also Sunset Lodge,
23 LLC, and then also myself pro se, in what are now all six of
24 these cases, three for each of the people I just mentioned.
25 And to stay with what Mr. Dillard said we have been sort of

1 following some convention of calling the first group the
2 Challenge 1 cases and the second one the Challenge 2 cases.

3 I would like to revise Mr. Dillard's factual
4 account of things, but in an effort, first to speed things
5 up a little bit, I wanted to make sure the Court got both of
6 our briefs.

7 THE COURT: Yes, I did.

8 MR. STANTON: We filed one on March the 30th and
9 then upon receipt of a March 31st brief from the Town, we,
10 last night, filed a March 31st response to that. If I may
11 incorporate my arguments in those briefs, it might make my
12 verbal argument a little bit shorter, at least I'll attempt
13 to.

14 I guess I should cut to the chase, technically,
15 because there's a technically dispositive -- I don't want to
16 say "technically," but there's just a pretty hard, bright,
17 legal principle that disposes of their motion and requires
18 it to be denied. But I would like to address some of the
19 factual background after I mention this.

20 The motion is grounded or made pursuant to Rule
21 12(c) of the South Carolina Rules of Civil Procedure, which
22 is the Subsection of Rule 12 that refers to motions for
23 judgments on the pleadings. And as we noted in our brief
24 filed yesterday, the standard for the decision of that
25 motion is virtually identical to the standard for a Rule

1 12(b)(6) motion, which is the motion that one makes before
2 answering, stating that there's -- the complaint states no
3 facts that could possibly support relief on any theory
4 regardless of whether prayed for in the complaint or not.

5 The Rule (12)(c) judgment on the pleadings is the
6 same standard and it simply applies most ordinarily when a
7 defending party has gone ahead and answered, so they're
8 referring to both pleadings, but the standard still is
9 focused on the complaint. The standard is not focused on
10 anything that the defendant moving party has filed, mainly
11 on their answer, none of that is deemed true. None of that
12 requires the plaintiff to come through with anything. All
13 this Court is required to do to dispose of the motion before
14 the Court is to look at all 375 paragraphs of the amended
15 complaint and take them all as true for the purposes of the
16 Town's motion. And, in fact, also indulge in any reasonable
17 inferences that can be drawn from those facts. And then,
18 looking at those facts, determine whether there is any
19 relief on any possible basis regardless of whether prayed
20 for in the complaint that could be granted based those facts
21 and those inferences. And if the answer is "Yes" the motion
22 must be denied. And here I might revise the history a
23 little bit in it will probably help with some of those 375
24 paragraphs.

25 First of all, I will point out that Mr. Dillard's

1 experience is not the governing principle that sets how long
2 a pleading can be. You know, we've all seen pleadings that
3 have chapters and exhibits and so forth. And we've all
4 seen, you know, car wreck cases where it's a page and a
5 half.

6 In this case, the pleadings are governed by Rule
7 (9) (b), which requires that when you're pleading matters of
8 mistake and misrepresentation and fraud and things like
9 that, the pleader is supposed to do it with particularity as
10 to time, place, and circumstances. What we've done is laid
11 out the circumstances, which it took Mr. Dillard even a
12 pretty good long while just now to go through. But we've
13 gone through and in those pleadings and we've laid out the
14 chapters of misrepresentation and bad faith and failure to
15 comply with statutes, a failure to comply with rules of
16 procedure, and all sorts of things. And the progression of
17 the complaint in the chapters, if you will, starts with the
18 Town in 2019, giving, on short notice, all of the property
19 owners only on the south end of the island, not the whole
20 island, only on the south end of the island, short notice
21 that they were going to -- the Town was going to send out
22 easements to be signed and that they needed to be signed and
23 sent back and not changed in any way. And they needed to be
24 done right then. And, in fact, that they needed to
25 encourage all of their neighbors to do it. And if their

1 neighbors wouldn't do it, to stop just short of showing up
2 at their door steps with torches and pitch forks. Those are
3 the words of the Town administrator.

4 When they made these announcements they stated the
5 easements were for what they referred to as a renourishment
6 project, which was dumping, what has become 1.1 million
7 cubic yards of sand on the entire island beach, and only
8 part of that is on the south end. The whole island has been
9 done. None of this concerns the middle part of the island,
10 all that is going to be paid for by the Town and any money
11 it can get by the State, if any.

12 What the town fathers, if you will, and I guess
13 one mother on the council, have basically proposed is to try
14 to sacrifice the titles of the people on the south end to
15 try to get some federal money to make it easier to spend all
16 the rest of the money on the people who have property in the
17 middle of the island, which has nothing to do in it.

18 So when Mr. Dillard -- and I understand he's
19 trying to go through a lot of facts quickly, but I don't
20 want Your Honor to misunderstand when they're talking about
21 the 20 years of discussions with the Corps of Engineers,
22 that was all a south-end thing. And I'm probably digressing
23 too much or I'll never get there, but it's the south end
24 that they're talking about. And, incidentally, of the five
25 people on the council, not a single one of them has been

1 asked to sign one of these easements, because none of them
2 have property that's affected by it.

3 So what they did in 2019 was they told everybody,
4 Hey, it's a bum's rush, it's a stampede here. You got to
5 sign these easements or you're going to let your fellow
6 landowners down. And they're just to put sand on the beach
7 and plant some sea oats and put up some sand fence.

8 Now, who can argue with that? Except for the fact
9 that when they dump sand on there, it turns out to be not
10 sand, but shells and dirt and mud balls as big as a
11 baseball, where you used to have a nice white sand beach.
12 But who can argue with -- you know, if you're going to do,
13 grant them an easement to do it.

14 When the easement comes, though, it has this
15 language in it that Mr. Dillard stated was required by the
16 Corps of Engineers. That fact has not been established. We
17 both acknowledge that the Corps of Engineers has prescribed
18 some of the language, but the language is not all what the
19 Corps of Engineers prescribed. The problems are not all
20 what the Corps of Engineers prescribed. And, in fact, you
21 would find that there were discussions with the Corps of
22 Engineers about changing some of that and the Town
23 ultimately, probably, got in the way of changing it because
24 they had already duped over 100 people into signing the
25 easements.

1 So you have a misrepresentation at the beginning
2 as to what's going to be in the easement. What are some of
3 these objectionable terms? The easement is two feet from
4 the door of the house, okay. The easement grants public
5 access to the landowner's land. Public access. Not the
6 right of the public to pick up shovels and help renourish
7 the beach, this is just a completely separate thing that has
8 not a thing to do with renourishment, but they stick this
9 Trojan horse in there to basically transform the title of
10 all these owners on the south end into public beach where it
11 was private beach before. It gets worse though. It comes
12 with the right of the Town then to restrict the owner's
13 access to the so-called dune area of that easement.

14 So you've got something where the landowner is
15 asked to sign up for free on short notice to be restricted
16 to access of his own property and to not be allowed to
17 exclude anybody else from his own property.

18 Furthermore, within that easement area that's two
19 feet from the door of the house, it allows the easement
20 holder to tear down anything in the way with impunity.
21 Remove decks, steps, concrete walls, pilings, any of that
22 stuff, outdoor shower. It's -- there's more and it's
23 detailed in our brief. So you get the flavor of it that
24 there's some objectionable things in the easement.

25 The complaint then goes on through the progression

1 of the public misrepresentations of the Town where every
2 single message they put out on the airwaves to everybody
3 else was that some of the people weren't granting an
4 easement, implying they weren't granting an easement at all,
5 when these three people have all offered an easement and had
6 offered a reasonable easement.

7 So they're painted as the outliers who are
8 noncooperative. Then the Town continues its threats, steps
9 up its threats. And then gets to June, I believe, late July
10 of 2019 and then the Corps leaves them standing at the alter
11 again. So the Corps has been doing this for 20 years. The
12 last time they did it they were at 2018 they showed up and
13 said the Town is getting ready to do it without them. And
14 in 2018 the Corps shows up and says, It looks like we can do
15 it again, but you need to wait until 2019.

16 The Town rung its hands. Thought very carefully
17 about losing another year to these people they couldn't
18 trust. Waited for the Corps. Then they did what I just
19 described about soliciting these easements. And then when
20 they get to July of 2019, the Corps again says, We're going
21 to have to put on the brakes and reevaluate whether we can
22 do this.

23 The Town, furious, says, Well, why don't we go
24 back to our other plan? Which they had already done. They
25 had done the fiscal analysis and everything and had already

1 engaged a contractor, or found one, and they said, Let's go
2 ahead with the contractor we had, let's go ahead with the
3 plan we already had. They announced publically, No
4 easements will be necessary. And they announced that
5 they're going to put the maximum amount of sand on the beach
6 and have scientists verify that likely the sand will last
7 over 22 years, and at that point it there would still be
8 more than there was before the renourishment.

9 Then they do the renourishment with no easement.
10 And after that the Town then discloses that they have this,
11 what we call a program, where Mr. Dillard used the correct
12 word the Town would be eligible for federal assistance.

13 There's no proof that they would ever be -- that
14 there ever would actually be federal assistance, and you can
15 look at the last 20 years for proof of that. And now it
16 looks like our President and our Congress are considering
17 spending another two trillion dollars on infrastructure for
18 the country. In addition to the, what, two or
19 three trillion that we spent on Covid relief. I'll leave it
20 to the Court to surmise what the likelihood of dumping sand
21 in the ocean would be in the next five to ten years.

22 So based solely of this prospect of being, as
23 Mr. Fabbri the Town Administrator puts it, being in the
24 quote, Club -- and let me do an aside here -- he said it
25 doesn't guarantee us anything, we don't know that we can

1 take it to the bank, it just puts us in the club, if we
2 don't join the club, we're not in the club.

3 So to be in what we'll call "The club," they then
4 say, Now we want these easements again, after they've
5 already done the work. Then they continue the same
6 misrepresentations. In soliciting them, they say, It's just
7 for sand on the beach, it's just for sea oats and sand
8 fence. They don't negotiate. They give a little bit of lip
9 service, and when they get down to four people, which is
10 their magic number, they can't wait to pull the cord to
11 condemn.

12 So they have a fraudulent Town Council meeting on
13 May the 18th 2020 and it's recorded, it was live streamed,
14 and it's still preserved, where they go through this
15 charade -- and may be a charade for some of them, and some
16 of them may be ignorant -- but what they have is the Town
17 Administrator telling them hard he's worked on all of this.
18 Still, never mentioning once for their consideration, what
19 the concerns of the landowners were. Never mentioning once
20 that the landowners had actually offered easements.
21 Representing it as though these landowners were just people
22 who bought and wouldn't grant anything.

23 So then the Town Council says -- literally, legal
24 advice on the record: Is this just for putting sand on the
25 beach? The answer is, Yes. There's a further legal advice

1 on the record that these easements involve nothing more than
2 what would leave these people in the exact same position
3 they were in if they hadn't given the easements.

4 But based on this, never looking at the language
5 of the easements, never having read the easements, never
6 indicating they had even read them, the Town Council then
7 rubber stamps, We'll, go -- go get a renourishment easement
8 by condemnation. So they have over generalized permission
9 to go get a, I put in quotes, renourishment easement, which
10 is defined as just putting sand on the beach. They didn't
11 say, Go condemn something where you're granting the public
12 access to people's property and those kinds of things.
13 Letting the public use your shower, your outdoor shower.
14 Letting the public use your deck. Letting the Corps of
15 Engineers tear down your deck, none of that.

16 And then -- then the Town sets about the actual
17 condemnation process where -- and this is where I take issue
18 with Mr. Dillard, I know it's a convenient conceptual device
19 to say some things are procedural and some things are
20 substantive, but all the things here are substantive. All
21 these things are real. All these things involve people's
22 rights.

23 What they did was they had to get an appraiser as
24 part of the process. So they go to the appraiser and they
25 get him to appraise what the value of the easement would be,

1 what they would have to pay if they're going to condemn it.
2 They don't give the -- the sole task of this appraiser is to
3 put a value on an easement and they don't give him the terms
4 of the easement. And all of this is in the record and it's
5 in the complaint. The appraiser proceeds to appraise the
6 easements based on his own assumptions and solely on verbal
7 information given to him over the phone by the Town
8 Administrator.

9 He assumes in the appraisal that the easement will
10 only be active when there's work going on. He doesn't even
11 seem to understand that it involves putting sand on the
12 beach and leaving it. He seems to think it's just for
13 bringing equipment in. He doesn't know anything about
14 public access. He doesn't know anything about any of the
15 things I just told you.

16 So they get this false appraisal and that's the
17 basis for the condemnation action. So, you know, it's more
18 than just a procedure misstep to, you know, forget to send
19 somebody the appraisal. But when the appraisal is false and
20 it results in a false number and that's the number they're
21 supposed to use under the statute to negotiate before they
22 ever start the condemnation. They skip all of that. They
23 give no due notice to the property owners until the property
24 owners are served and an action is commenced and they have a
25 30-day deadline running to decide what to do. And even when

1 they serve them with the condemnation papers, they still
2 don't serve the appraisal, which was supposed to be provided
3 before then.

4 Now, at that point the property owners have 30
5 days to file a challenge action or not. So they filed a
6 challenge action. As soon as they get the appraisal and
7 look in there and they see that there's a whole lot wrong
8 with it.

9 In the condemnation papers themselves, however,
10 there's a certification, not just a statement, but a
11 certification that they have provided the appraisal before
12 serving those papers, which is false. So they commence a
13 false -- using false papers they commence a proceeding
14 skipping over a major substantive step. And I would submit
15 to you that that's not a mere procedural issue. And it goes
16 on and on.

17 So, by then we have a challenge action. And, Your
18 Honor, I think in that challenge action ruled on the Town's
19 12(b)(6) motion last year where they moved to throw that
20 complaint out and that was denied. And then we moved for
21 summary judgment. Judge Nettles granted summary judgment.
22 And Mr. Dillard said something about the history of this
23 thing that's a little off, too. He said that the Town in
24 October served another set of condemnation notices
25 commencing a second set of condemnation actions.

1 To clear up -- I think he said he was -- I can
2 barely -- my glasses are fogged up here from this mask -- he
3 said that they wanted to clear up procedural issues so the
4 parties could -- no that's the abandonment.

5 But it basically said that the -- oh, there is it
6 is -- October 2020, the Town decided to address procedural
7 issues in the new notices. They didn't address a single
8 procedural issue in the new notices. They -- if anything,
9 they had a second fraudulent Town Council meeting on October
10 the 12th of 2020. That, if I may say so, if you read about
11 it, it's almost more fraudulent than the May 18th, 2020 Town
12 Council meeting, in that they go on and on about all the
13 stuff that they're doing and what's in front of them, and
14 the papers that they're looking at don't say any such thing.
15 But it appears, to a bystander, that if they were trying to
16 correct anything it was the one out of numerous defects in
17 the first proceeding where they didn't have a proper Town
18 Council meeting and didn't properly consider what they were
19 supposed to consider in authorizing the condemnation.

20 So they have an October 12th Town Council meeting,
21 I guess for that purpose, and it fails more miserably than
22 the first one. And in the course of doing that they create
23 a resolution that is false. It has falsities in it. It's
24 clear that it's -- it approaches the bizarre. That meeting
25 is also recorded, live streamed, where in the age of Covid

1 where things were done by Zoom or whatever sort of
2 videoconferencing, so there's videos of that stuff
3 available.

4 So then the Town -- but what they didn't do is --
5 I don't think they did anything except authorize a -- now,
6 I'll take that back -- I left out what they did in there.
7 But soon afterwards, October 16th, four days later, they
8 served a new set of condemnation notices, which under the
9 law, kicks off another condemnation action with a 30-day
10 fuse for the landowner to react.

11 Now, one might guess that they maybe want to catch
12 the landowners with their pants down, the 30-days would run
13 and somehow they would slip up, because the Town would not
14 respond to requests to explain what it was they wanted us to
15 do, would not explain what was the purpose of serving this
16 thing again.

17 So all this part about wanting to address
18 procedural stuff there was nothing communicated to the
19 landowners whatsoever. So the landowners file what we're
20 now calling the Challenge 2 actions. So those Challenge 2
21 actions have this whole rich history of frauds and
22 misrepresentations and oversteps that take you all the way
23 through the first challenge action. And then further
24 wrongdoing for the second challenge action starting at least
25 as early as the October 12th Town Council meeting.

1 THE COURT: Excuse me for interrupting, but what
2 relief are you seeking in the second challenge actions?

3 MR. STANTON: In the -- in the -- in the second
4 challenge action the complaint says what Mr. Dillard says to
5 the Court, the complaint says ---

6 THE COURT: I mean, what relief are the plaintiffs
7 seeking? What do they want?

8 MR. STANTON: It's to quash these notices, is what
9 it says. But here we are back in the legal standard. The
10 question is: If we could quash these notices permanently
11 and not be sued a third time, we might be on our way to
12 having this case over with. But the Town doesn't want that.
13 The Town wants ---

14 THE COURT: But, I mean, what you -- I guess what
15 you're asking to do is put it where they can never seek
16 condemnation like they're seeking now in perpetuity forever?

17 MR. STANTON: I would like that, Your Honor. But
18 I want -- I want -- I want to put a qualifier in here.

19 The perspective on this is there's been a heavy
20 focus on that first set of cases trying to wind them up.
21 This case has been sitting there, it's fairly new. We've
22 sought some discovery in this case, but we haven't gotten
23 any. The Town has recently answered the amended complaint.
24 We're not coming in and asking the Court right now, unless
25 the Court would do so, we'd be tickled right now if the

1 Court would like to order this thing over with prejudice,
2 mainly the Town's condemnation attempt order with prejudice.
3 But what we want is the opportunity to control our own
4 action. We filed this complaint ---

5 THE COURT: But I mean -- excuse me for
6 interrupting again. Let's say I deny their motion.

7 MR. STANTON: Right.

8 THE COURT: This thing is scheduled for trial, you
9 go to trial, you win lock, stock, and barrel.

10 MR. STANTON: Right.

11 THE COURT: What are you going to get and what's
12 it going to prevent them from doing? Why can't they turn
13 around next week, file another condemnation action, because
14 I don't know of any law that keeps a government entity
15 prohibits them from ever seeking condemnation again.

16 So let's say, for the sake of argument, you win
17 lock, stock, and barrel. There's a final judgment. It's in
18 favor of the plaintiffs and it's going to say what and it's
19 going to keep the defendants from doing what?

20 MR. STANTON: Right. If -- if and when we get to
21 that trial, if we're in that trial, we're going to be
22 seeking, either categorical across the board, barring of any
23 further condemnations on this same subject matter. Or we're
24 going to seek permanent -- we're going to seek resolution on
25 various subissues within that on a preclusive basis going

1 forward.

2 For example, you heard Mr. Dillard say, and it was
3 his characterization, I don't necessarily agree with it, he
4 was characterizing Judge Nettles's order saying that
5 Judge Nettles just granted some relief on some of the
6 procedural things. He said that he didn't grant any relief
7 on the substantive things.

8 Well, first of all, it's pretty substantive when
9 you have a false appraisal and you don't describe the
10 correct property in the condemnation notice. But
11 Judge Nettles's order was on summary judgment and it went
12 through and it said, Here are the facts that aren't
13 contested. And some of those facts are pretty damning
14 facts.

15 And then his order went through and recited what
16 the alternate sustaining grounds were that had been
17 submitted by the plaintiff. And then he ruled on these two
18 or three things alone there's enough to go ahead and kick
19 this thing out.

20 THE COURT: And what were those two or three
21 things?

22 MR. STANTON: He -- his main focus, which was
23 bright line, easiest answer to get to, was that they failed
24 to serve the appraisal on the landowners before commencing
25 the condemnation action. And that the appraisal itself was

1 not an appraisal of what the Town sought to condemn, mainly
2 the appraisal was an appraisal of this sort of bland
3 unoffensive easement. Whereas, then the Town sought to
4 condemn one that had all these completely bad things in it.

5 So his order tracked the fact that under the act
6 the appraisal has to be on the same thing that you're
7 condemning.

8 THE COURT: Well, I mean, but even though he did
9 that, the Town can still turn around, do it procedurally
10 proper, get their appraisal, serve the appraisal, and if you
11 don't get a resolutions, file a condemnation action, can't
12 they? Notwithstanding ---

13 MR. STANTON: Well, they've already taken one shot
14 at that with this second set of actions and they -- and
15 they've blown that. The question is how many times can they
16 be allowed? And we've addressed this in our motion.

17 To get back to answering Your Honor's question,
18 we've addressed in that first we filed on March the 30th,
19 some of the things that could lead to preclusive -- a
20 complete barre. And that is the South Carolina Case Law,
21 there's a case -- I always remember the word "golf" in it, I
22 think it's Southeastern Golf and it was against Santee
23 Cooper where the Court of Appeals ruled on a similar problem
24 with the Town Council meeting where they didn't go through a
25 multi-factored analysis before they jumped the gun, and the

1 Court of Appeals kicked the condemnation. But then it went
2 up to the South Carolina Supreme Court and the
3 South Carolina Supreme Court said, We don't need to mess
4 with that, they are permanently estopped from seeking this
5 condemnation. They ended it forever at the Supreme Court
6 level, because the Supreme Court found that Santee Cooper
7 was estopped to even go after what they were seeking to
8 condemn, because they made previous statements that they
9 weren't going to need anything on that landowners's
10 property. And in that case the landowner had relied on that
11 in going forward with the golf course development or
12 whatnot. So there's an estoppel issue. There are other
13 equitable issues.

14 The question is, At what point does equity step in
15 and tell somebody, you know, you can sue once, you can sue
16 twice, but two strikes you're out. We're not going to let
17 you keep suing somebody three times.

18 THE COURT: Well ---

19 MR. STANTON: You know, granting attorney fees is
20 an inadequate remedy to law, if anything, because one, we
21 moved for our attorney fees in January and the Town wants to
22 argue over it for four months.

23 THE COURT: Well, I mean, is there anything that
24 says a government entity has two bites at the apple, three
25 bites at the apple, four bites at the apple? Or is there

1 any appellate decision or statute that says, Town, you've
2 got three times to get it right, and if you don't get it
3 right those three times, you're forever barred.

4 MR. STANTON: That's what I was getting to my
5 qualification, Your Honor, is I don't -- I've been trying
6 not to get the cart before the horse. Mr. Dillard referred
7 to the fact that he and I had spoken. What he didn't talk
8 about, and I understand why, because we're not supposed to
9 talk about a settlement and all. But when two lawyers are
10 talking about something and they decide to put on the
11 breaks, it's not just about the things he said that we were
12 talking about, it involves some other things the Town has
13 never followed through on since January.

14 And what I was trying to do was, believe it or
15 not, be efficient about this and not come in and, you know,
16 throw out all these theories and go through all this stuff.
17 What we'd like to do is have some discovery in the case,
18 which is a live case, which we -- we served the discovery,
19 where we had to file the case because they brought us into
20 court, and then let us get some discovery and then let me
21 find, Your Honor, that authority for when do you shut them
22 down.

23 You know, I haven't found a statute that says you
24 get three strikes. But a Court of Equity has great power,
25 Anderson versus Purvis and Anderson versus Purvis II, in our

1 State's history, the Court of Equity can do a lot of
2 wonderful things. The another thing is they've denied
3 probably 95 percent of the 375 paragraphs of that complaint.

4 THE COURT: And I understand that.

5 MR. STANTON: And that's sanctionable if -- if we
6 show you that a hundred of those paragraphs are absolutely
7 true and they knew it.

8 THE COURT: But, I mean ---

9 MR. STANTON: You can sanction that and throw them
10 out of court.

11 THE COURT: --- notwithstanding that, again, I
12 don't think I've gotten a clear answer. The fact that they
13 have voluntarily withdrawn a condemnation action for which
14 you oppose, what relief are you seeking in this case?

15 MR. STANTON: The relief I'm seeking today is to
16 leave the case open, allow us to pursue some discovery, and
17 decide whether we want to amend to seek further relief. I
18 don't want to jump the gun, but if we seek that further
19 relief, it will be not what the Town has done, which is to
20 try to get out without prejudice, but to preclude the Town
21 either on various issues or across the board on doing this
22 again.

23 THE COURT: Well, I mean, but if you ---

24 MR. STANTON: And maybe sue them for damages.

25 THE COURT: --- if you -- if it's a dismissal

1 without prejudice and you can still conduct your -- not
2 through discovery, but you can conduct your investigations,
3 and do whatever you need to do, and if you find out
4 something -- I guess, what I'm trying to find out, I still
5 have not gotten from you what your final -- I know you
6 conduct discovery. You want to take depositions. You want
7 to serve interrogatories. You want to do subpoenas duces
8 tecum. You want to get in every Town record. Talk to every
9 council member. Do everything you can do with a pending
10 lawsuit. Let's say you're given everything you want.

11 MR. STANTON: Right.

12 THE COURT: Let's say it shows what you want it to
13 show. When you get to trial, you prevail at trial, you win
14 lock, stock, and barrel, what order -- what is the court
15 order going to say?

16 MR. STANTON: That the Town's condemnation attempt
17 and it's action are dismissed with prejudice. Period. With
18 prejudice.

19 THE COURT: So that the condemnation action that
20 has already been withdrawn by the Town is dismissed with
21 prejudice. That condemnation action is dismissed with
22 prejudice. But what's to keep them from not bringing
23 another condemnation action next week?

24 MR. STANTON: Well, I guess I would have to
25 articulate it better that it's not just that notice that's

1 dismissed. It is -- it is -- if they brought an action and
2 the action is for condemnation and the action is dismissed
3 with prejudice, to me, that is a barre to everything that
4 could and should have been brought in that suit.

5 So I can -- you know, if we're looking at what the
6 final order would look like, we might have to give it a
7 little attention to make sure that that concept is clear,
8 but what we would be seeking is something that says, Look,
9 you know, you've done this all wrong. It is so infused with
10 bad faith you'll never be able to make a proper decision.

11 You've -- you've already stated to these people
12 that an easement wasn't necessary. The things you've
13 sought, some of them on a more granular lever, you've
14 already agreed previously they weren't necessary, and then
15 you sued to condemn those things anyway and go through the
16 whole thing and say, You're done.

17 THE COURT: So you're seeking an order that says
18 the Town can never condemn any property for beach
19 renourishment?

20 MR. STANTON: Well, that would be the ideal, Your
21 Honor, but that wouldn't be the sole thing. If we couldn't
22 that, what we would want would be where Mr. Dillard was
23 characterizing Judge Nettles's order saying that it didn't
24 rule on certain things. We want to get rulings on those
25 things that would have a preclusive effect in any subsequent

1 action if they brought another one.

2 THE COURT: But, I mean, you're admitting you want
3 it where the Town can never condemn property for beach
4 renourishment? That's what these plaintiffs and these
5 lawsuits want?

6 MR. STANTON: Never condemn this property for
7 beach renourishment. This property they've already sought
8 to condemn twice.

9 THE COURT: Okay. So if that property starts
10 washing away then it's going to be up to the homeowner --
11 well, they would just lose their property. I don't remember
12 who it was, Dr. Blaylock, had a lot -- hurricane came
13 through, just washed it through. Can they come back ---

14 MR. STANTON: When I swam across that new ditch,
15 Your Honor, I walked up on Dr. Blaylock's roof. I climbed
16 out on his roof.

17 THE COURT: So, what you're asking is if something
18 like that happens to one of these plaintiff's properties,
19 they just lose the property?

20 MR. STANTON: As it always has been.

21 THE COURT: Okay.

22 MR. STANTON: I mean, there's never been a
23 renourishment in the history of Pawleys Island before in the
24 sense of pumping offshore sand on the beach. This is not --
25 this is not Nag's Head.. This is not North Carolina. This

1 isn't Hilton Head. This is the stable -- geologists call
2 this the Stable Strand, by the way, you know, we call it the
3 Grand Strand, and on the maps it says Long Bay.

4 But, you know, it's -- the Town's own plan shows
5 an actual negative erosion rate on that part of the beach,
6 mainly that it's accreting. You know, whether that's true
7 or not, you know, at a given time of the year or time of a
8 decade, is another matter.

9 But the point is, it's always been that way. The
10 beach has never depended upon renourishment before, and now
11 we can all talk about climate change, that beach up in Avon
12 in the Outer Banks is washing away.

13 THE COURT: And I guess what I'm trying to wrap my
14 head around is if they -- if the Town of Pawleys Island
15 says, We will voluntarily dismiss this condemnation as to
16 these three parcels of land with prejudice, then your client
17 would be happy -- your clients would be happy?

18 MR. STANTON: Yeah. And we're not suit happy,
19 Your Honor, but I had to add in our brief, as we did,
20 there's probably that 375 paragraphs of the complaint taken
21 as true, would warrant some damages claims on various
22 theories. And, again, going through and parsing all of that
23 out on under the Tort Claims Act or Section 1983 of the
24 Federal Statute, or other things.

25 You know, we don't want to get the cart before the

1 horse. What we don't want is -- but what we don't want
2 today is the Town coming in on some kind of emergency basis
3 and saying, Please dismiss this suit before they can get
4 enough discovery, you know, to keep us from doing this the
5 third time.

6 THE COURT: Well, the third time. Why can't you
7 get your discovery in that one? I think that's their
8 argument is ---

9 MR. STANTON: Well, we're on suit number two and
10 we still haven't the Town Administrator's deposition. We
11 went through the first suit. And the first thing out of the
12 gate we got were emergency motions from the Town that the
13 whole beach was washing away this year and all kinds of
14 unfounded stuff. But they moved for a bond -- to make each
15 one of us put up a 10-million dollar bonds, moved to dismiss
16 the case ---

17 THE COURT: Make each property owner put up a
18 10-million dollar bond?

19 MR. STANTON: That was one of the motions they
20 made was they wanted a 10-million dollar bond from each
21 property owner. That was in the Challenge 1 cases, Your
22 Honor.

23 THE COURT: And that was that granted by the
24 Court?

25 MR. STANTON: No. That was heard by you and

1 denied by you.

2 THE COURT: Okay. All right.

3 MR. STANTON: And the -- so before we ever got
4 started in the Challenge 1 cases, we get that, and we get
5 started with discovery right away. And what does the Town
6 do? Filed a motion to protect themselves from discovery,
7 just like they're doing now.

8 THE COURT: A legislative privilege?

9 MR. STANTON: No. They just said -- they just
10 said we got motions pending and if our motions are granted
11 then you won't need the discovery. So we're delayed for
12 some period of time. And we didn't go and ask for sanctions
13 and all of that stuff. When all of that stuff washed over
14 we said, Now, let's get started.

15 So we got some documentary discovery. And then we
16 finally after carrying it over several times got the
17 deposition of the appraiser, I mentioned, which was an
18 important deposition. That's the only deposition we got
19 before we got summary judgment.

20 So we noticed the Town Administrator's deposition
21 in this case I think in January, setting a date of
22 February 19th to depose him, and here we are in the second
23 case where they're saying, again, Well, if you could just
24 dismiss this case before they get the discovery, we'll be
25 good.

1 Well, you know what's going to happen when they
2 sue us a third time, by then you get people at the
3 deposition table saying I don't remember or the documents
4 are missing or I just don't know about all of that.

5 So I think they've called the tune here and I
6 think it's fair to make them at least do one dance with us
7 and let us take the Town Administrator's deposition. Let us
8 get some answers interrogatories. And then let us decide
9 what we want to pursue it, whether we want to amend, or
10 whether we even need to amend in this case.

11 But the point is the Town is saying the case is
12 moot, but they're saying it's moot because they've --
13 because they've run off, as they would call it, without
14 prejudice. They might have an argument that it's moot if
15 they would -- if they would dismiss -- if they would abandon
16 their condemnation with prejudice. Then they might say,
17 Look, what else can the plaintiff ask for except maybe some
18 damages for defaming people and holding up their
19 improvements on the property and dumping, you know ---

20 THE COURT: So you've got a defamation -- there's
21 a defamation cause of action?

22 MR. STANTON: It's -- the allegations are in ---

23 THE COURT: I mean, what are your causes of
24 action?

25 MR. STANTON: There's not a count set out in there

1 for that. It's -- the main prayer for relief in the case is
2 please quash this thing.

3 THE COURT: Okay. Which they are voluntarily
4 doing?

5 MR. STANTON: Correct.

6 THE COURT: Okay.

7 MR. STANTON: But the standard of decision for a
8 Rule (12)(c) motion is the same as a 12(b)(6) motion is, if
9 all the allegations of the complaint, taken as true, and all
10 the reasonable inferences that you can make from those,
11 would make out any plan for relief on any theory regardless
12 of whether prayed for in the complaint, that the motion must
13 be denied.

14 And Rule 54(c) dealing with judgments says, In
15 granting a judgment this court shall grant all the relief to
16 which a party is entitled regardless of whether prayed for
17 in the pleadings.

18 So the fact that we had 30 days to file a
19 condemnation -- excuse me -- 30 days to file a challenge
20 action while the Town wouldn't tell us why they served us
21 again and got all that out there, then we got a response
22 from them to that that denied, wholesale, almost everything
23 in the complaint. Then we amended the complaint and broke
24 it down into nice little pieces so they could answer each
25 one of them. And they've denied almost all of that.

1 So we don't really even -- I mean, the deposition
2 of the Town Administrator could be, Let's go through the 375
3 paragraphs and find out what do you admit or what do you
4 deny.

5 THE COURT: All right. So what is the relief -- I
6 mean, what are the distinctions between this and the first
7 condemnation action? What are you seeking in the second one
8 that you're not seeking in the first?

9 MR. STANTON: We're ---

10 THE COURT: I mean, the second part of his
11 argument is there's another ongoing case that's going to
12 grant you the same relief you're seeking.

13 MR. STANTON: Well, in the first action we said,
14 Please quash these notices. Judge Nettles's order says,
15 These notices are quashed..

16 THE COURT: Right.

17 MR. STANTON: And that's the first set of notices,
18 that's for the notices that were served in June of 2020.

19 So the first action filed I believe in July of
20 2020 says, Please quash these notices and Judge Nettles's
21 order says, These notices are quashed.

22 THE COURT: Got you.

23 MR. STANTON: And it says, They're quashed without
24 prejudice to the Town taking another crack at it but subject
25 to any of the applicable defenses. And Judge Nettles's

1 order goes through and says, Look you got a false ---

2 THE COURT: And, I'm sorry, you kind of left me.

3 My question is: What relief are you seeking in
4 the second condemnation contest that you are not seeking in
5 the first condemnation contest?

6 MR. STANTON: And the answer would be preclusive
7 relief on anything and everything that Judge Nettles did not
8 rule on in his order. And, preferably, something across the
9 board that barres them or stops them from pursuing the
10 condemnation on this same subject matter again against these
11 three properties. And, potentially, although it has not
12 been plead yet, potentially some damages.

13 The question is not what we have sought, or what
14 we are seeking right now, the question is what relief could
15 be afforded based on those 375 paragraphs? And any of the
16 relief could be afforded based on those 375 paragraphs.

17 Damages across the board, barring of another
18 attempt, or preclusive rulings on a number of those issues
19 in there, including their fraud, their bad faith, their
20 abusive discretion, the lack of necessity of some of the
21 granular things they're asking for, the lack of necessity of
22 the easement overall, the completely speculative nature of
23 the program that they're seeking to condemn for, which again
24 makes it an unnecessary easement under the law.

25 So any of those Chinese menu-type things,

1 preclusive relief on as many of those as we can get. But,
2 ideally, based on those 375 paragraphs, to barre them from
3 suing for these people for a third time using public funds
4 when these people have to defend themselves with private
5 funds.

6 THE COURT: All right. Anything else? Anything
7 in reply?

8 MR. DILLARD: Yes, sir. I'll try to be as brief
9 as I can. A lot of ground has covered.

10 I would say, first, I just want to put on the
11 record that we obviously disagree fundamentally with a lot
12 of the statements about the Town's conduct, fraudulent
13 council meetings, false appraisals. I know that we're
14 taking the pleadings on their face, but we think that's
15 inaccurate and totally unnecessary.

16 I think that, although we dispute factual issues,
17 I think that Mr. Stanton has sort of helped to make my
18 point, Why is it in anyone's interest to get into all of
19 this, all of this stuff? And we don't even have a live
20 condemnation notice. A live condemnation action.

21 If we initiate a new condemnation action, it may
22 well change in some regard. The location maybe further
23 discussion can be had to see if we could tweak the language
24 or do something. It may well and probably would not be the
25 same exact acquisition attempt.

1 So I don't think it's in anybody's interest to go
2 through all of this before we even have a ripe condemnation
3 action to deal with. And then the Town would be in the
4 position, I guess, of needing to possibly move the Court for
5 leave to try to start a new condemnation action while we're
6 going through all this stuff, all this discovery on all
7 these issues that Mr. Stanton is speculating about. And if
8 we're not able to do that, and we still feel like we need
9 the easements, then he gets the relief that he wants.

10 Then the Town's in a position, we've got to appeal
11 that preclusive relief, that partial preclusive relief, and
12 spend the next ten years dealing with this stuff. When we
13 don't even have -- in that scenario, we would not have a
14 full record of, Here's the easement that the Town is
15 currently seeking to condemn. And so we would spend a lot
16 of time -- you can tell this would be a very
17 time-intensative process. We'd spend a lot of money on both
18 sides. He wants us to not only pay for our attorney fees,
19 but pay for all of his attorney fees as well. And
20 Mr. Stanton is thorough, as he, you know, stated himself, he
21 spends a lot of time with things.

22 You know, I just think that where we've got
23 clearly a moot condemnation in the second set of actions,
24 there's no reason to go forward. All this stuff about
25 estoppel, defamation, that's purely speculative.

1 Mr. Stanton cannot articulate today what theories
2 he might pursue or what facts would underline those
3 theories. He's gotten some discovery. He's got enough
4 facts he thinks to draft a 60-page complaint that he says is
5 demonstratively provable.

6 And so, you know, I think -- I think the best
7 thing really for all parties is to allow us to essentially,
8 if we're going need to continue this litigation, to do it
9 from a clean slate where all of the issues can be addressed
10 as we go through, instead of spending a significant of time
11 and money piece mealing it.

12 He talked about a case with estoppel, this
13 Southern Land Development case, it's cited in his brief.
14 That was a very unique case where essentially, I believe it
15 was Santee Cooper that said, We're never going to put power
16 lines on this land and then somebody opened a whole golf
17 course there. And the Supreme Court found on that basis
18 they were estopped. That has nothing to do with these beach
19 renourishment easements. And so I don't see how that would
20 apply at all. And I don't think that, -- I don't think that
21 there's any legal basis for the assertion that a court has
22 broad equitable powers to enjoin a governmental -- a local
23 governmental entity's condemnation powers of perpetuity
24 without some real specific basis. There's no statute that
25 says that and there's no case law that says that either.

1 And, again, just to touch on it, the idea that he
2 wants to go forward specifically to obtain what he calls
3 preclusive relief on various subissues, I'm not aware of any
4 basis for him to do that. What cause of action is that? I
5 think that, again, those are moot academic issues until we
6 have a live condemnation notice, a live condemnation action.

7 Thank you.

8 THE COURT: All right. Well, I'm going to take it
9 under advisement. I'm going to have look at the pleadings
10 and see what he's asking for and see how that fits into the
11 voluntary withdrawal of the condemnation action. I'll take
12 a look at the pleadings. How about let me get both of
13 you -- each of you to submit proposed orders. I guess
14 within 14 Days.

15 Mr. Dillard, yours would be granting the Motion to
16 Dismiss.

17 Mr. Stanton, yours would be denying the Motion to
18 Dismiss. All right.

19 Now, on the Motion for Protective Orders.

20 MR. DILLARD: Yes, sir, Your Honor, if I may touch
21 on one more issue on the Motion to Dismiss?

22 THE COURT: I've heard enough.

23 MR. DILLARD: Well, it relates to attorney fees.

24 THE COURT: Well, I've still heard enough.

25 MR. DILLARD: Yes, sir.

1 THE COURT: I mean, we've been an hour and
2 15 minutes on that one motion. All right. Let's go on to
3 the next one.

4 MR. DILLARD: Essentially, Your Honor, it's pretty
5 straight forward in the Challenge 2 cases. It's predicated
6 on our Motion to Dismiss. We think the case is moot and
7 therefore no discovery is necessary. I imagine you would
8 need -- you may decide to take that under advisement, as
9 well, while you consider the Motion to Dismiss.

10 Obviously, if the Motion to Dismiss is denied, the
11 case will continue, he'll be entitled to some discovery, as
12 would we. I would say that the ---

13 THE COURT: Well, let me ask you this: What's
14 subsequent to Judge Nettles' ruling, what's still pending in
15 the first action?

16 MR. DILLARD: The only thing pending is his
17 attorney fee petition.

18 THE COURT: Okay.

19 MR. DILLARD: And we've gone though a -- we have
20 not seen eye to eye on how they're going to produce and
21 redact fee statements. And so we've spent a number of weeks
22 going back and forth with that and working with
23 Judge Nettles on that over a series of hearings. So that is
24 still in progress, Your Honor.

25 THE COURT: Okay. But I guess your motion in the

1 first case -- I understand if I deny the Motion to Dismiss
2 you've got to do discovery in the second action. And so
3 I'll deny the Motion for Protective Order.

4 In the first set of cases you've got a Motion for
5 Protective Order from Discovery. That is based upon -- I
6 mean, is that something that Judge Nettles should deal with
7 or is that something y'all ---

8 MR. DILLARD: I believe that we proposed that and
9 mister -- well, we were not able to structure it that way.

10 THE COURT: Okay. Then I'll deal with it. So
11 your argument is he's granted summary judgment, the only
12 thing outstanding is attorney fees?

13 MR. DILLARD: Yes, sir. He hasn't even deposed
14 the Town Administrator. We're only dealing with attorney
15 fees at this point, there's no purpose.

16 THE COURT: Okay. All right, sir.

17 MR. STANTON: I think Your Honor has already
18 addressed the Challenge 2 questions of their Protection from
19 Discovery, and their Motions for Protections for Discovery
20 overlap a little bit into the first case.

21 Just to put it into perspective, the only pending
22 discovery that we've served in the Challenge 1 actions, that
23 they're asking for protection from right now is the Notice
24 of Deposition of the Town Administrator. And that's the
25 same deposition, literally, we sent out six notices all for

1 the same day with a cover note that said, Look, we want the
2 deposition of this guy, we don't care which case it's in,
3 you know, but if there's anything left in this case, it's in
4 this one, if there's anything left in this case, it's in
5 this one. So that's the thing that they want protection
6 from in Challenge 1.

7 THE COURT: Well, my question is: I've never
8 known a party, and I haven't seen an appellate decision,
9 educate me if I'm wrong, where a party is entitled to
10 discovery after the party has prevailed on a motion for
11 summary judgment granting the relief that they were seeking
12 to start with.

13 MR. STANTON: I follow you.

14 THE COURT: Is there -- is there a right to
15 discovery when you've already prevailed on a summary
16 judgment motion granting you the relief that you're seeking?

17 MR. STANTON: Well, up until we just had the
18 ruling -- let me back up. Judge Nettles just heard and
19 ruled on their Motion to Reconsider. They asked that
20 summary judgment be reconsidered and denied. He just heard
21 that, ruled on it from the bench, and an order is expected
22 on it shortly denying their Motion to Reconsider, except
23 that he changed one sentence in his order to clarify
24 something.

25 So up until that point, we already -- like I said,

1 we were already wanting to depose the fella in the second
2 set. Up until that point, it was game on. What if he --
3 what if he says summary judgment got reconsidered and it's
4 denied.

5 But I agree with Your Honor that once he has
6 prevailed, right the further need for merits discovery,
7 we're not pushing to do anything unreasonable in that case.
8 But I want to point out, when we filed our fee petition in
9 January asking for our fees in that case, which Mr. Dillard
10 implies to this Court, totally protect us from being sued
11 all these times, the Town's response was that they wanted
12 four months to conduct discovery on the fees and then to
13 have a full-blown evidentiary trial with witnesses on the
14 fees.

15 So for us to stipulate that we're not going to
16 need any discovery if we're heading into that, you know, I'm
17 not going to go off and fire off a bunch of deposition
18 notices and load them up with interrogatories or anything
19 like that. The only thing that's pending right now is the
20 Notice of Deposition, which is also noticed in the Challenge
21 2 cases. And if they want protection from that in the
22 Challenge 1 cases, I would agree they can have protection
23 from that deposition in those cases, but not in the
24 Challenge 2 cases and then that is pretty much disposed of.

25 And I suppose if I were to do something like ---

1 THE COURT: But I mean is there any other
2 discovery that you're seeking in the Number 1 case?

3 MR. STANTON: I haven't propounded any. And if I
4 did, they could move and say this is ridiculous. But I
5 don't tend to do ridiculous things.

6 THE COURT: All right. I mean, is that the only
7 outstanding discovery is the request for the deposition,
8 which they're saying they'll consent to the protective order
9 on that.

10 MR. DILLARD: Yes, sir. And our motion was
11 specifically for protection from any additional merits
12 discovery as Mr. Stanton phrased it. I mean, I think it
13 would make sense for the order to say that we're protected
14 from discovery, and if he does seek discovery related to the
15 fee petition, we can address that with Judge Nettles.

16 MR. STANTON: Let me be clear. They're reserving
17 the right to conduct discovery against us on the fee
18 petition, and I'll have to seek relief from Judge Nettles to
19 get discovery back if they start doing that. Why don't we
20 just -- why don't we just say that we won't take the
21 deposition in Challenge 1, and if we serve any other merits
22 discovery on you, you can object to it then.

23 THE COURT: Now, what I think what I'm going to do
24 on this first one, I'm going to grant the protection from
25 discovery except as to the plaintiff's claim for attorneys

1 fees, because that's the only thing still pending in that.
2 All right. So whatever discovery needs to be conducted for
3 attorney fees you can do it.

4 MR. STANTON: Yes, sir.

5 THE COURT: But everything else I'll grant it in
6 the first case. So, as matter of fact, since the protective
7 order kind of goes hand-in-hand in your second case, just
8 kind of include in that -- I mean, the fact of the matter
9 is, if I sign your order it's going to say that your Motion
10 to Dismiss is granted, your Motion for Protection from
11 Discovery is granted due to the dismissal.

12 Yours, if I say the Motion to Dismiss is denied,
13 then the Motion for Protection from Discovery is likewise
14 denied, because you've got to prepare for a case.

15 MR. STANTON: Right.

16 THE COURT: And you've got to prepare for a trial
17 and get ready for a trial where name your witnesses and what
18 evidence you're going to produce and things like that.
19 Okay?

20 MR. STANTON: Your Honor, I just might be a little
21 foggy here, I just want to make sure we understood. We're
22 addressing all of these six cases together here today for
23 convenience, because all the arguments are very similar, but
24 they're still separate cases and they haven't been
25 consolidated.

1 So with the -- I don't think you would -- I don't
2 think we would issue an order in one case referring ---

3 THE COURT: Yeah. You're going to have a
4 separate -- well, you're going to have to have one order for
5 2020-600, one order for 2020-601 -- really, I can do the
6 Form 4. For 2020-600, for 2020-601, and for 2020-602, I can
7 just do a Form 4 that says the Motion for Protection from
8 Discovery is granted except as to the discovery that is
9 necessary for the plaintiffs pending claims for attorney's
10 fees.

11 MR. STANTON: That sounds like that would take
12 care of that.

13 THE COURT: Now, y'all -- each one of you is going
14 to submit a proposed order for 2020-930, and then another
15 proposed order for 2020-931, and another one for 2020-932.
16 I imagine they'll all say the same thing, but it is
17 addressing the Motion to Dismiss and the Motion for
18 Protection from Discovery. Because I can tell you, I'm
19 going to grant Protection from Discovery, if I dismiss the
20 case. I'm going to deny Protection from Discovery, if I
21 deny the motion to dismiss. All right?

22 MR. DILLARD: Very well.

23 MR. STANTON: Thank you for hearing us, Your
24 Honor.

25 THE COURT: Thank you.

CERTIFICATE OF REPORTER

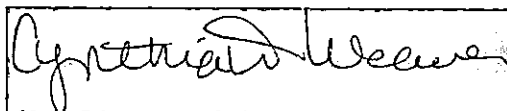
State of South Carolina)

County of Georgetown)

I, Cynthia D. Weaver, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas for Georgetown County, South Carolina, on the 1st day of April, 2021

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 30, 2021



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

Transcript of Circuit Court hearing of motion
to reconsider occurring June 3, 2021

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF GEORGETOWN

4 -----x

5 M. BARON STANTON,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2020-CP-22-930

8 TOWN OF PAWLEYS ISLAND,)

9 Defendant.)

10 -----x

11 FRANKLIN D. BEATTIE TRUST,)

12 Plaintiff,)

13 vs.)

Transcript of Record
2020-CP-22-931

14 TOWN OF PAWLEYS ISLAND,)

15 Defendant.)

16 -----x

17 SUNSET LODGE, LLC,)

18 Plaintiff,)

19 vs.)

Transcript of Record
2020-CP-22-932

20 TOWN OF PAWLEYS ISLAND,)

21 Defendant.)

22 -----x

23 June 3, 2021

24 B E F O R E:

25 The Honorable Benjamin Culbertson, Presiding Judge

1 A P P E A R A N C E S:

2 M. Baron Stanton, Esq.

3 Attorney for the Plaintiffs

4 William Clayton Dillard, Jr., Esq.

5 Attorney for the Defendant

6
7
8 Court Reporter: Bobbi Fisher, RPR
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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
MOTION FOR RECONSIDERATION AND CONSOLIDATION	
Argument by Mr. Stanton	4
Argument by Mr. Dillard	30
Further Argument by Mr. Stanton	38
RULING	40
CERTIFICATE OF COURT REPORTER	43

E X H I B I T S

None.

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:35 a.m.)

THE COURT: All right. On the motion roster, the first one, 2020-CP-22-00011, Watson versus Nesmith has been resolved. And so for the morning that just leaves 2020-CP-22-00930, Stanton versus Town of Pawleys Island; 2020-CP-22-00931, Beattie Trust and others versus Town of Pawleys Island; and 2020-CP-22-00932, Sunset Lodge, LLC, versus Town of Pawleys Island.

All matters are before the Court on a motion to reconsider. Please give the court reporter your names and who you represent.

MR. STANTON: Thank you. May it please the Court, I'm Barry Stanton, otherwise known as M. Baron Stanton, and I'm representing myself in one of the cases, and I'm representing the plaintiff Beattie in the other case and the plaintiff Sunset Lodge in the other case.

THE COURT: All right.

MR. DILLARD: Good morning, Your Honor. I'm Will Dillard here for the Town of Pawleys Island in all three cases.

THE COURT: Mr. Stanton, this is your motion?

MR. STANTON: Yes. Your Honor, it's -- as we have done in most of the hearings we have had in this and the other case, we have pretty much agreed, I think, even though there are three cases on the roster, both parties have made most of

1 their filings read the same in all three. So I assume we'll
2 just make -- unless there's some reason to make a difference,
3 we'll make one argument for all three cases.

4 THE COURT: I assumed that's what we were going to do,
5 just like we had in the past; is that correct?

6 MR. DILLARD: Yes, sir. We agree with that.

7 THE COURT: All right. That's fine.

8 MR. STANTON: And that brings me pretty quickly to one of
9 the things I wanted to cover first. Your Honor was gracious
10 in giving us a good hearing earlier when it was Mr. Dillard's
11 motion, and he was moving to dismiss the case as moot, which
12 we opposed, and you ended up granting his order. And so this
13 is our motion to reconsider, and we're aware of the fact that
14 often courts don't grant motions to reconsider if they have
15 already considered things the first time, but we genuinely
16 think there are some errors and some things that were
17 overlooked, for our own sake and our honor bound to the Court
18 to see if the Court would like to change its ruling.

19 But on the notion of the three cases, one of the things
20 we also asked for in our motion to reconsider is could we go
21 ahead and consolidate these three cases and that way, if we're
22 on an appeal, the plaintiffs, who here are the people against
23 whom the Town first filed these condemnation actions, won't
24 have to incur multiple filing fees, put together multiple
25 briefs, put together three of the same record on appeal. It's

1 just excessive expense, which is going to fall on one party or
2 the other.

3 And I understand we filed our brief in support of this
4 motion as part of the motion on April the 28th. I trust Your
5 Honor got that. It is the motion itself but we went ahead and
6 briefed the law and the facts.

7 THE COURT: Has that issue been before the Court before
8 to consolidate the cases?

9 MR. STANTON: It has not been, but in our motion, we also
10 asked if that could be done, and then, yesterday at about 4:09
11 p.m., I saw on my email that Mr. Dillard had filed a
12 memorandum opposing today's -- you know, our motion to
13 reconsider, but in his brief said they did not have any
14 opposition to our request to consolidate the three cases.

15 THE COURT: All right.

16 MR. STANTON: Which I think wouldn't be a bad idea
17 anyway.

18 THE COURT: Any objection to the consolidation?

19 MR. DILLARD: No, sir. We think that's a good idea.

20 THE COURT: Okay. But, I mean, how do we do that if that
21 was not part of the original -- I mean, is this just granting
22 a separate motion to consolidate?

23 MR. STANTON: I think you would just look at it that way,
24 Your Honor. In fact, I'll just move for that now in open
25 court with the court reporter present.

1 THE COURT: Okay. So the motion to consolidate, I'll go
2 ahead and I'll grant with consent of all the parties. All
3 right.

4 MR. DILLARD: Thank you, sir.

5 MR. STANTON: And, you know, I hadn't looked back at that
6 rule in a while, but the Rules of Civil Procedure pretty much
7 outlines what status that gives the case. I don't think
8 there's any particular variance to that that we need to
9 stipulate to. I mean, they still are separate cases with
10 their own identities, but they'd be handled together for all
11 other purposes.

12 THE COURT: Simultaneous. My understanding was that you
13 proceeded under the last case number, but with these being
14 sequential, I don't know that it's really going to matter in
15 this case.

16 MR. STANTON: And I have to admit, I'd have to look back,
17 if we filed something and we still file in all three or do we
18 file it in one of them. If Your Honor wants us to look at
19 that and maybe send an email or a short order or something.

20 THE COURT: Well, every time I have done a consolidation,
21 if it is a complete consolidation, then they consolidate all
22 of the cases under one case number. If it's consolidated for
23 purpose of discovery, they keep their own case number, their
24 own identity, their own trial separate date, but it's just one
25 set of discovery.

1 If this one I'm assuming that it's for -- you're
2 consolidating for purposes of the motion to reconsider and for
3 purposes of any potential appeal; is that correct?

4 MR. STANTON: And I guess anything that comes beyond
5 that. So it would make sense to maybe just put them all under
6 the Sunset case number, which is the lowest case number.
7 That's the one ending in 600.

8 THE COURT: Okay. Is that agreeable?

9 MR. DILLARD: Well, that was the first set of cases.

10 MR. STANTON: Oh, oh, I'm sorry.

11 MR. DILLARD: This is the second --

12 MR. STANTON: You're right. I'm sorry. Sunset ends in
13 930.

14 MR. DILLARD: Or Stanton ends in 930.

15 THE COURT: Sunset Lodge is 932.

16 MR. DILLARD: Which is the highest number.

17 MR. STANTON: Okay.

18 MR. DILLARD: Which is fine. We have no preference.

19 MR. STANTON: Okay. Let's do Sunset. I have been
20 typically pulling that one out usually when we lead with
21 something, so...

22 THE COURT: All right. So we'll consolidate the cases
23 from this point forward. They'll operate under Case No.
24 2020-CP-22-00932. All right.

25 MR. STANTON: The rest of it, Your Honor, I'll attempt to

1 be brief. As I mentioned, we filed our motion on April the
2 28th of 2021, and included in that our arguments including
3 enumerating grounds for reconsideration. If I might
4 incorporate that brief by reference as my argument, then I'll
5 try to keep my verbal comments as short as I can.

6 THE COURT: All right. That's fine.

7 MR. STANTON: The motion that the Town filed to dismiss
8 these cases is based on the assertion that these cases were
9 made moot by the Town essentially dismissing the cases the
10 Town filed that these cases were challenging. But the Town --
11 when I say "essentially dismissed its case," we have to
12 remember that we're under a peculiar procedural situation here
13 where we're dealing with the Town's case, a condemnation
14 proceeding which goes according to the Imminent Domain
15 Procedures Act as the procedure, which can vary some from the
16 Rules of Civil Procedure to the extent that there's any
17 conflict between the two.

18 And in a normal civil case, if a party, after the
19 other -- if a party sues one party and then that other party
20 responds to the suit, there are limits and strictures on the
21 ability of the party who started the matter to then just say,
22 "Well, I'm going to temporarily step back and discontinue
23 this." It's a nonsuit in a civil case, and when one takes a
24 nonsuit, one has to do it before the other party responds, and
25 if one ever does it again, there can be conditions on whether

1 that can be done again without paying for the first try. And
2 if the other party has responded, if there's going to be a
3 withdrawal of the contentions of the party who started it,
4 that's a withdrawal and very often with prejudice where that's
5 the end of the matter forever so that the party who is
6 defending against it doesn't have to then wait and find out
7 when it's going to happen again.

8 And, in this case, the Town didn't file a notice of
9 dismissal under Rule 41. They just filed a document called a
10 Notice of Abandonment. And under the Imminent Domain
11 Procedures Act, there is not much guidance on what their
12 ability to abandon is nor what abandonment means. In lay
13 terms, abandonment means you forever relinquish something.
14 You're finished. You're done.

15 In the common law of condemnation, across the 50 states,
16 for the last 50 to 80 years, abandonment has generally meant
17 that they're abandoning not only the proceeding but any
18 attempt to claim ^{a right} ~~or~~ write in the property or any future
19 attempt to go after the property at all.

20 What the Town basically said was, "Well, we're going to
21 stop for the time being." You'd never do that in a normal
22 civil case. I mean, if Mr. Dillard personally sued me and
23 then I counterclaimed against Mr. Dillard, Mr. Dillard can't
24 say, "Well, you know, I'm going to temporarily desist from
25 whatever is going on so I change my mind." I get to go

1 forward with my counterclaim or I get to go forward with the
2 declaratory relief, don't let this man do this again.

3 It would be like -- I mean, this is worse than if you
4 were trying to stop a wife-beater from beating his wife and he
5 doesn't say, "Trust me, I won't do it again"; he actually
6 says, "I'm not beating her presently and I plan to do it again
7 but there's nothing you can do about it now."

8 And so, in those general common sense ways, this thing is
9 the antithesis of moot. The Town sued the property owner for
10 condemnation of what they represented to be a renourishment
11 easement but which had other objectionable terms in it, such
12 as public access up to two feet from the people's doors.

13 Under the procedure, instead of responding with a
14 counterclaim or a motion in that case, they have to file a
15 separate case back against the Town and say, basically, the
16 equitable powers of this court should be brought to bear upon
17 these people to stop this. So they did that.

18 In the first case, summary judgment was filed early on
19 explaining the numerous reasons why they should be stopped,
20 everything they had done wrong; the fact they fraudulently
21 obtained an appraisal; the fact that the appraisal had nothing
22 to do with the easement they were trying to condemn; that they
23 had they misrepresented the purposes of the easement publicly
24 and privately; that they misrepresented -- that they never
25 even considered the factors involved when they had a meeting

1 to determine whether to condemn. All those things and all
2 that's on the table. While that's on the table, the Town sued
3 the same people again with another condemnation case. And in
4 response to that under the statute, those people, the
5 landowners here who are the plaintiffs in the present case,
6 filed challenge actions again saying this needs to be stopped,
7 not just temporarily stopped but permanently stopped.

8 That brings us to the point where then, only after
9 summary judgment gets granted in the first case, then the Town
10 files a notice of abandonment and then asks that the challenge
11 cases that are brought in the second cases, the ones we're
12 here for today, be dismissed as moot, and in every single
13 thing they filed, in every oral argument we have had, they
14 have indicated clearly they plan to do this a third time.

15 THE COURT: But I mean, what is it you're trying to
16 permanently stop the Town from doing?

17 MR. STANTON: From trying to condemn oceanfront easements
18 on this oceanfront property for the purposes that they stated
19 they're doing it and if not completely and globally then to
20 enjoin them permanently from certain features that they are
21 including in that attempt, which have now been included in two
22 lawsuits in a row.

23 THE COURT: But what is that? I mean, what I'm getting
24 from your argument is you're trying to permanently stop the
25 Town of Pawleys Island from ever condemning any property.

1 Period.

2 MR. DILLARD: No, from condemning easements on the
3 oceanfront part of these three oceanfront parcels.

4 THE COURT: So even if the south end of Pawleys Island
5 starts eroding and washing away again and it's going to go out
6 into the ocean, you're trying to stop them. If they need an
7 easement to renourish the beach, you're basically saying, If
8 you need an easement to renourish the beach, you're never
9 going to be able to renourish the beach on the south end or on
10 any -- on these particular properties.

11 MR. STANTON: Well, there are ways to do that, Your
12 Honor. The 1.1 million cubic yards of sand that they placed
13 on the beach, i.e. the renourishment project, which is
14 completed and done, they did that without an easement.

15 THE COURT: And I understand that.

16 MR. STANTON: Right.

17 THE COURT: But that doesn't mean that they're always
18 going to be able to do it.

19 MR. STANTON: Right. And do you understand also, for
20 clarity, they're only seeking these easements on the south end
21 of Pawleys Island, on the southernmost 1.2 miles. The next
22 mile and a half that goes from there all the way up past the
23 pier, they sought no easements whatsoever. None of the people
24 on the Town council who have land up there have had to sign
25 one of these easements much less even read one.

1 THE COURT: I mean, was that renourished up there?

2 MR. STANTON: Yes. That's what the Town spent Town money
3 to renourish all the way from the south end all the way to a
4 block north of the pier, but they only want to subject the
5 southernmost 1.2 miles to an easement that's not just
6 permission to put sand on the beach but it's a land grab in
7 which they say, "We want your private land to be now dedicated
8 to public use. Up to two feet from your door, we want to the
9 ability to tear down anything of yours that's in that area and
10 we want to be able to restrict your access to that part of
11 your own property."

12 And they're not doing that for the middle part of the
13 island, and there's not a single person on the five-person
14 Town council who has any property that required them to sign
15 much less even read this thing that they're foisting on the
16 people on the south end.

17 So when the hurricane comes and it damages the middle of
18 the island, they're not going to get the Corps of Engineers to
19 fix anything; they're just going to spend Town funds on it,
20 just like they have already spent on the entire island.

21 This is a sacrifice of the people on the south end to
22 subsidize the people in the middle and to capitulate to
23 whatever type of arrangement they think they have with the
24 Corps of Engineers, which they have had on and off for 20
25 years, which has failed numerous times. And every time it's

1 come up, the Corps of Engineers has changed its mind, turned
2 tail, run, or Congress wouldn't give funding and -- to the
3 point where, what we've just mentioned, that they have done
4 the renourishment all the way from the south end all the way
5 up to -- I think it's about a 2.7, 2.8-mile stretch of beach
6 from the south end all the way past the pier, that, when they
7 decided to go ahead and do that without the Corps of Engineers
8 and without any of the easements they're talking about now --
9 I'll come back to that -- they got some easements before from
10 people who signed the thing, but whatever the loose ends were,
11 whichever ones they had not gotten, just declared publically
12 we don't need the easements, we're not going to go with the
13 Corps, we're going to do what we originally planned and that
14 is to do it without the Corps.

15 So if something happens, the south end would then be in
16 the exact same boat as the middle of the island. And don't
17 confuse the Corps of Engineers with FEMA or with the State or
18 with the Town. There are various people who, in the past,
19 have taken measures after hurricanes to fix things. It's not
20 always the Corps of Engineers. And when they do come, they
21 don't necessarily come riding in in time to do it. It may be
22 a year and a half later that say, Well, now we're mobilized to
23 fix the hole in your island, and, by the way, we're going to
24 change everything.

25 I had to address that, but, you know, that's not really

1 what's relevant here. What's relevant here is the law and
2 what they're doing and what's wrong with what they're doing.
3 You know, they send out a letter and they tell everybody
4 verbally in a video-recorded meeting and in a letter, we're
5 just going to need you to sign an easement to put sand on the
6 beach. And then you look at the easement and it says, We want
7 an easement across your entire property, not just the
8 oceanfront part, and they say, Oh, well, that's a scrivener's
9 error; that's not what that means. And you say, "Well, that's
10 what it says."

11 So, six months later, they finally start changing that
12 for some but not all of the people. And you say, "This says
13 public access on private property." This says the owners'
14 access to his own property is limited. On his own property.

15 THE COURT: And I -- excuse me for interrupting. I
16 understand all that.

17 MR. STANTON: Right.

18 THE COURT: And the impression I get is, because they
19 completed the renourishment without the necessity of the
20 easements and because they saw the errors, they went ahead and
21 dismissed the condemnation actions. They basically said,
22 You're right, we're not going to do this anymore. We're
23 dismissing the condemnation actions. And that's the end of
24 it.

25 MR. STANTON: That's not what they said. They said, We

1 reserve the right to do this again.

2 THE COURT: But they know, if they do it again the same
3 way they did it this time, that they're going to lose the
4 summary judgment motion again. I mean, that's where I'm kind
5 of confused as to when you say you want to proceed with your
6 action.

7 Let's say I reconsider and I let you proceed with your
8 case and you win at trial lock, stock, and barrel. What is
9 the order going to say?

10 MR. STANTON: I can take a shot at it, Your Honor, and
11 I'm not avoiding your question; I want to be realistic. What
12 the order says might depend on the discovery we get between
13 now and then and what happens in that trial. What we have got
14 right here is equivalent of a -- we filed it under Rule 12(c)
15 and it's the same standard as a 12(b)(6) motion. It's to
16 throw the whole case out without any discovery or anything.

17 If somebody wanted to go in and pinpoint particular
18 theories to pick on, the time to do that is on summary
19 judgment after there's adequate time for discovery. But let's
20 say, hypothetically, that we go through discovery, and I take
21 the Town administrator's deposition, and I ask him to -- you
22 know, since y'all didn't answer any of the paragraphs -- since
23 you denied 95 percent of the paragraphs of the complaint, we
24 know most of which are true, let's go through these 300
25 paragraphs and let's see what it is that you say is untrue

1 about it. And he admits that, at just about every juncture
2 and every phase, they have lied about everything they have
3 done, and he admits that the thing says they want to put sand
4 two feet from your door or that they might change it and make
5 it 6 feet or 8 feet from your door, but they're still going to
6 tear up your deck, part of your foundation, whatever.

7 Let's say we go through that, and he admits that he
8 fraudulently filed a different document than the one he was
9 authorized to file for one of the landowners, and let's say he
10 admits that he was at the Town council meeting where the Town
11 council never even considered the objections of the owners to
12 these objectionable features, that it's a complete abuse of
13 discretion in that they don't even consider the things that
14 they're lawfully required to consider before they go try to
15 take another man's land.

16 And you go through all of this, we could get to an order
17 where for example -- there's an Iowa case in the matter of
18 *Luloff*. It's not cited in my brief. And I can give you the
19 citation. It's 569 N.W.2d 118. It's an Iowa Supreme Court
20 case from 1997 where the Iowa Supreme Court told the
21 condemnor, "Look, you had a chance to fix this. You have done
22 this twice. You're permanently enjoined. Go home."

23 THE COURT: Permanently enjoined from what?

24 MR. STANTON: From seeking the -- in that case, the
25 condemnor was seeking a private roadway -- excuse me, to

1 establish a public roadway across private property to get to
2 other property. And they did it wrong, had deficiencies in
3 it, was told by the Court "Go back and fix this, you have got
4 this much time to fix it." He didn't do it. If you read the
5 case, it was a lot of misbehavior on his part.

6 Then the trial court finally just said, "Okay, we gave
7 you your chance. You're permanently enjoined from doing this
8 at all." And the Iowa Supreme Court affirmed and explained
9 why.

10 Now, that's just an example. The Town could go in and a
11 brief and distinguish the facts and the procedure all day long
12 and talk about how different they are from these facts, but
13 their whole motion to dismiss this thing as moot depends on --
14 for one thing, they assert that, categorically, a permanent
15 injunction against condemnation is unattainable, and it's
16 exactly the opposite. All of the case law that talks about
17 the remedies in challenge actions for condemnation talk about
18 the remedy of a court in equity to grant a permanent
19 injunction.

20 As Your Honor knows, equity responds to peculiar
21 situations when there's no other remedy. It's almost absurd
22 to say that, as a matter of law, a court of equity can't
23 provide any relief, particularly when you haven't been through
24 the discovery, because that's the very purpose of a court of
25 equity is to provide relief when there's not an adequate

1 remedy at law. All the condemnation cases and the challenge
2 actions look at the remedy of permanent injunction. And in
3 our brief, we cited several South Carolina cases where they
4 would recount that this is the usual remedy, this is the usual
5 way of proceeding, and there are cases in other jurisdictions
6 as well that all clarify -- you know, some of them talk about
7 a temporary injunction. Well, they're talking about that
8 while the challenge action is going on, and the only issue is
9 do they enjoin it temporarily or do they wait until the end of
10 the trial to permanently enjoin it?

11 One order that the Court could issue at the end of the
12 trial, depending on the issues and the law and facts, is a
13 permanent injunction against the Town. Look, you have had two
14 tries. You have done this -- and to boot, you have done this
15 in bad faith, you haven't made a good effort, you have put
16 these people through two sets of lawsuits.

17 And, you know, I'm not just here automatically paid by
18 the government to say, Well, they'll get summary -- if you're
19 right on the third try, you'll get summary judgment. What if
20 we're out of money, Your Honor? They haven't paid for the
21 fees in the first case, and we haven't even asked for the fees
22 in this case yet.

23 In the first case, summary judgment was granted. By
24 statute, we're entitled to fees. We only asked for two-thirds
25 of the fees that were incurred, and we did that on January the

1 21st, and today, we're into the first week of June, and we
2 haven't even gotten the arguments from the Town about the fees
3 other than they are, quote, "unreasonable."

4 THE COURT: So you filed a motion in January and it
5 hasn't been heard yet?

6 MR. STANTON: January the 21st we filed a fee petition in
7 the first case after winning summary judgment. Then we went
8 through their motion to reconsider, and their first thing out
9 of the gate from them when we filed the fee petition was, "We
10 need a delay of at least four months to conduct discovery on
11 fees and have a full-blown trial on fees."

12 So then there was back and forth on that, and that has
13 gotten winnowed down, and now where we are right now was my
14 taking hours and hours of my time to go through and try to
15 protect my clients' confidentiality by blacking out parts of
16 our actual bills that we have sent out to the plaintiffs in
17 these cases, and the judge is reviewing them in camera and
18 deciding what can be shown to the other side and what can't
19 be, and we're not even to the point yet where they make their
20 argument as to whether the fees -- whether we should get the
21 amount of fees we're asking for, when we have only asked for
22 two-thirds of what was incurred.

23 My point is, you know, they made these arguments in their
24 brief that the right to fees is an adequate deterrent for
25 them. Well, it's not an adequate remedy for us when I'm only

1 asking for two-thirds of what we're incurring. And we haven't
2 gotten those yet. To say that private parties should be
3 subjected to a third suit when this one was properly brought,
4 if there's an objection there should be -- if they want to
5 cherry-pick through this thing and say, Look, here's a legal
6 theory that doesn't fly or what have you, the time to do is on
7 summary judgment after there's been some discovery because one
8 of the orders that could occur after a trial in this case is,
9 all right, we're not going to prevent you from condemning an
10 easement to put sand on the beach, but we're not going to
11 require these people to dedicate that to public use
12 perpetually.

13 You do understand the easement that they're seeking is
14 not for ten years, it's not for 12 months of work, it's not
15 for a 40-year project. It's perpetual. It's forever. It's a
16 land grab, and they want to turn private property into public
17 property, which is an exaction that's not necessary in order
18 to put sand on the beach.

19 And so you could end up with an order saying, all right,
20 I'm not going to enjoin you from putting sand on the beach,
21 but I'm not going to allow you to condemn and make this
22 private property public, or I'm not going to allow you to
23 condemn the part where you tear down parts of these houses
24 that have been there over for 50 years, and I'm not going to
25 let you condemn something that tells the owner that they have

1 to stay off their own property or that they have to go with
2 Ryan Fabry, with no standards at all, to see what kind of
3 walkway he would like for them to have as opposed to what kind
4 of walkway the neighbor has. All that's in this document.
5 And it's been in both cases.

6 I get a little worked up about this. Let me bring myself
7 down and back to a point. In the first case, all that was in
8 there, it was in there from the beginning, it was in there
9 before the first case. We wrote to them and said, Here's
10 what's wrong with this thing. Let's talk about it. They
11 don't want to talk about it.

12 It was in there when they moved to dismiss. It was in
13 there when we moved for summary judgment, which was in -- oh,
14 gosh, it was early in the case, and then -- I think in August,
15 and then the summary judgment motion came up in October to be
16 heard but got postponed at the Town's request so that somebody
17 could go to a football game.

18 And then summary judgment was heard in December and
19 granted. So they had all that time to know the issues. Well,
20 it was in October that they filed the cases we're challenging
21 here, knowing all those issues, and they did all the same
22 stuff wrong.

23 They have argued before that they filed those actions,
24 quote, "in order to correct some procedural deficiencies."
25 There wasn't a single procedural deficiency that they

1 corrected. All they did was heap more illegal stuff on top of
2 what they had already done.

3 So the private parties have had to go through this twice.
4 Everything I have just said is the antithesis of mootness. If
5 they were coming in here and said, "Look, we're done forever,"
6 you know, they might have a little better argument for
7 mootness. But mootness is normally argued in an appellate
8 court where everything is restricted down to an issue, and
9 there's nothing you can do to change it. Here, we have got
10 the ability to amend, we have the ability to engage in
11 discovery, and this Court is required to grant all the relief
12 to which a party is entitled regardless of whether they've
13 prayed for it in their pleadings.

14 So for them to come in and say that a 300-plus-paragraph
15 complaint that talks about defamation and unconstitutional
16 behavior and lying and misrepresentation and numerous
17 different features that particularly should be enjoined, that
18 that's a single cause of action is absurd.

19 And so if I might wrap up -- and I do want to respond to
20 any questions Your Honor has, but the one you had was, if we
21 were to go forward, what would we ask for? I want to also be
22 realistic. We get into the discovery, we may go forward.
23 Like any good lawyers, you know, we may see that something
24 doesn't pan out. And you say, Look, we thought this,
25 discovery says something else. Or here's a legal theory; this

1 one doesn't look as good. You know, maybe they can't be
2 enjoined from the whole thing, even though there's case law we
3 have cited where they can. That's within the realm of
4 possibility and that's not something that should be dismissed
5 right now.

6 You may get an order that says, Look, you're permanently
7 enjoined from doing this closer than 20 feet to these people's
8 houses.

9 Do you know where some of this stuff comes from, this
10 public access stuff comes from? Some of it may be -- you
11 know, this is speculative. Some of it may be some secret
12 agenda of the Town because, in fact, on your docket today
13 later is a case where the Town is being sued for violating the
14 public meeting law requirements in FOIA. And I looked on
15 there and saw that case and I pulled up one the affidavits
16 from one of the former mayors of the Town -- a former mayor --
17 who said that, long before all this started, they were
18 violating the executive session laws by engaging in
19 discussions on a subject that wasn't the subject of the
20 executive session, and one of those subjects was how to raise
21 more money and create more public access.

22 So how much of that is the Town, we don't know, but
23 ostensibly, they say that this requirement is something the
24 Corps of Engineers wants in there. Well, good luck finding
25 that in anything the Corps of Engineers has ever officially

1 legally promulgated.

2 The Corps of Engineers is so secretive, they used to have
3 regulations in the Code of Federal Regulations that told how
4 they were going to do easements and certain things, but I
5 think it was last year, they took all that out of the Code of
6 Federal Regulations and said, You know, we don't need a
7 regulation for that; that's our -- we just do that privately.

8 So for something like 15 years, there was supposed to be
9 a regulation coming out that was going to be approved
10 according to the Administrative Procedures Act, i.e.
11 constitutionally and legally. For 10 or 15 years, they said,
12 We're going to come out with this regulation that deals with
13 Standard Estate 26, and it's coming soon and it will be in
14 subpart J. It never came out, it never came out, and it never
15 came out.

16 And then they decided to delete all the regulations.
17 Instead of completing them, they deleted them all, and said,
18 We'll just handle this in a manual somewhere. So this thing
19 they're saying the Corps of Engineers requires is just -- all
20 we can treat it as is just something some bureaucrat sent over
21 and said, Put this in there.

22 So there's a lot of stuff going on here, Your Honor, and
23 it's -- some of it's an example of the worse the government
24 can be on a federal and a local level. So what I want to say
25 is dismissing this case as moot on a 12(c) motion is a

1 violation of the standard of decision because the standard of
2 the decision is you construe everything we have alleged as
3 true, and if we have stated any cause for any relief on any
4 theory, the motion should be denied.

5 What have they alleged -- what has anybody alleged in the
6 pleadings that makes this case moot? The only thing they have
7 alleged in their pleadings is they have alleged that they have
8 filed something called a Notice of Abandonment. They haven't
9 alleged that they have abandoned the attempt to condemn. They
10 have only alleged, in essence, that they're going to dismiss
11 this particular proceeding and an attempt to condemn for the
12 time being. Doing something for the time being doesn't
13 make -- desisting for the time being doesn't make it moot.

14 They seem to argue that a permanent injunction is not
15 available when, instead, that's the usual remedy and the usual
16 target of these proceedings, and we have pled facts that
17 support it and we have made prayers that ask for it.

18 This is not a single cause of action. There's over 300
19 paragraphs of allegations, all of which they have denied in
20 bulk in violation of Rule 8, I think it is.

21 If this Court does want a rule that this thing is moot, I
22 would like for this Court to rule that the abandonment is a
23 permanent relinquishment of their attempt to condemn. I'd
24 like a clean record, if we're going to have to appeal it, that
25 the decision to declare this as moot was made knowing or

1 acknowledging that their abandonment is not an abandonment but
2 is only a temporary -- temporarily desisting from what they
3 were doing.

4 We raised in our brief, they may not even have the power
5 to abandon because, while the challenge action is pending, all
6 proceedings are stayed, and the filing of the notice of
7 abandonment is a proceeding. That's not a light argument,
8 Your Honor. Abandonment is only mentioned twice in the entire
9 Imminent Domain Procedures Act, and one of those simply says
10 is, when there's an abandonment, they have to pay our fees.
11 The only other mention of abandonment is that they cannot
12 abandon under certain circumstances.

13 There's nothing that affirmatively says that they can't
14 abandon under others nor anything that defines what
15 abandonment is. And in common law, abandonment is permanent
16 perpetual relinquishment of what they're after.

17 If you dismiss this action and we have something in these
18 pleadings that might afford relief under a tort theory, we're
19 going to have a statute of limitations problem. If they argue
20 that attorney's fees is somehow going to make up for putting
21 private parties through the same thing three times, maybe this
22 whole thing should be revisited after you see what is awarded
23 on the attorney's fees in both cases and what and when is it
24 paid. Nothing has been awarded and nothing has been paid.

25 We're still trying to figure out what allegation in our

1 complaint, which is all that matters, makes this thing moot.

2 And, finally, if their motion is denied on
3 reconsideration, we should be allowed to go forward with
4 discovery from right then. The discovery that was put off was
5 discovery-we had already sought or propounded, not something
6 where we said we're going to get around serving it some day.
7 We had a Notice of Deposition of a Town administrator that we
8 continued as cooperative lawyers do again and again because we
9 had all these motions pending, but we had noticed it way back
10 and we had -- I forgot whether it's interrogatories or
11 requests for production pending, and we had granted basically
12 a hiatus on that too because we had all these motions pending
13 and it seemed like a right thing to do.

14 But we're pursuing the discovery that we didn't get to in
15 the first case because of the delays. And so now we're in the
16 second case, we get all that teed up at our expense, at lawyer
17 time to draft things and send things and send notices of
18 deposition and make arrangements and block calendars. We have
19 done that now twice. That's the second false start. So what
20 do we do when they do this again? Start it all over again
21 only to have them file a motion to block the discovery?

22 The theme seems to be apparent here. You know, you've
23 got a motion later today for them violating the public meeting
24 laws too. They don't want to seem to want to give out
25 information and have daylight shown on what they're doing.

done

1 And I think we're entitled to go forward until there's a
2 legitimate reason to stop it.

3 THE COURT: All right. Mr. Dillard?

4 MR. DILLARD: Yes, sir. Thank you, Judge Culbertson, for
5 your time and your patience this morning. There's a lot to
6 respond to. I'm going to try to be as orderly as possible and
7 stay on point.

8 We obviously think that Your Honor got the order correct
9 the first time. I want to address a couple of background
10 issues that came up during Mr. Stanton's presentation. First,
11 the withdrawal and abandonment of the condemnation notice is
12 underlying these cases. That was filed not based on the idea
13 that the sand was already on the beach so we don't need the
14 easements anymore. I wanted to respectfully correct your
15 understanding with regard to that.

16 The purpose of these easements generally is to allow the
17 Town to engage in a long-term partnership with the Army Corps
18 of Engineers for a long-term program of beach renourishment,
19 federal funds to help the Town. There's no pretext. There's
20 no scheme. It's just doing what the federal government,
21 through the Corps of Engineers, says they require in order to
22 partner with the Town on a long-term renourishment program.
23 But the purpose of the abandonment was that, look, we lost
24 summary judgment in the first case.

25 Mr. Stanton also, in this case, raised the issue of a

1 statutory stay that he argues should have prevented us from
2 ever serving a second set of condemnation notices. I take
3 note of that argument. We filed the abandonment because, if
4 anything, I think it would be problematic if, in light of all
5 that, we kept trying to proceed under this second set of
6 condemnation notices. I think we did what we needed to do in
7 good faith by trying to reign things in.

8 As to the -- and it's not relevant to today but this
9 whole attorney fee issue from the first set of cases, the
10 initial request from the plaintiff for attorney's fees was --
11 it was somewhere 90- to \$100,000. The Town takes that very
12 seriously. Our initial response was, Well, we're going to
13 need some discovery or something because no fee statements
14 have been produced. We have been fighting over getting those
15 fee statements since that time. That's why it's taken so
16 long. I just wanted to correct the record on that issue.

17 This was not a bad faith abandonment. We're not trying
18 to play games. We're trying to minimize the time and expense
19 burden for all parties. And so if you look at South Carolina
20 case law, it is not unclear as to whether a condemnor has the
21 right to abandon a condemnation. There's old good common law
22 case law, South Carolina Supreme Court saying a condemnor can
23 abandon a condemnation.

24 There are limits if, you know, you get to the point where
25 the verdict is due and title is already vested in the

1 condemnor, you can get to a point where it's too late to do
2 that, and the procedures act addresses that. We're nowhere
3 close to that. So just in case there's any confusion, South
4 Carolina law clearly states a condemnor has the unilateral
5 right to abandon and withdraw condemnation notice.

6 It is not a Rule 41 dismissal. We didn't file a lawsuit.
7 We initiated the condemnation proceeding, which is a legal
8 action in a sense, but it's not a Rule 41 issue.

9 As to the effect of the abandonment, Mr. Stanton stated
10 outright, as he did in his brief, that the law across all 50
11 states for many years is that abandonment means permanent
12 relinquishment, you can never do it again. That's just not
13 true. And he says that -- he cites no authority for that
14 proposition in his brief. None whatsoever. And it's not
15 true.

16 There's a good bit of case law that I'll just generally
17 describe saying that, generally, abandonment does not mean
18 that you're permanently barred from doing anything. You can,
19 in situations like I just described, where if a condemnor
20 abandons, after the verdict is rendered, for example, and in
21 bad faith to just try to get a better jury verdict, there are
22 some cases from other states that have said that can be a bar
23 on future action, but as a general matter, it's not.

24 And South Carolina is -- the Supreme Court has recognized
25 the broad authority of imminent domain that's constrained by

1 the Constitution and the statutory law but is generally a very
2 broad authority that's been delegated to local governments for
3 purposes such as this.

4 THE COURT: Excuse me, but -- excuse me for interrupting,
5 but what about his argument that says you're just doing
6 this -- you say it's a long-term plan for the Corps of
7 Engineers but you're only getting easements from the south
8 end. You're not getting easements from the middle. You're
9 not getting easements from the north end. You're using public
10 funds to renourish their beaches without any assistance from
11 the Corps of Engineers.

12 MR. DILLARD: Well, I'll be honest: That's the first
13 time I have heard that argument this morning. It may have
14 been raised before. That's --

15 MR. STANTON: Two years, Your Honor.

16 MR. DILLARD: He may have discussed it with others.
17 That's the first time I have heard that specific argument. I
18 honestly don't have the factual background on that.

19 MR. STANTON: I think it's in the pleadings.

20 MR. DILLARD: I would say -- well --

21 THE COURT: Let him finish his argument. Go ahead.

22 MR. DILLARD: I would say, most fundamentally, there's
23 nothing wrong with that. If the Town wants to dedicate
24 resources here but then obtain federal funds on this end for
25 whatever policy reasons, that's not a judicial issue.

1 That's --

2 THE COURT: Well, I mean, his policy reasons are the
3 people on the north end control Town council, and they don't
4 want to give an easement. They want to use government funds.
5 They're don't have to get an easement across the south end
6 because the south end doesn't have anybody on Town council,
7 and we're not going to give up an easement. They're going to
8 give up an easement, and we're going to get funding from the
9 federal government without us losing anything but with them
10 losing their easement -- their rights to their property.
11 We're going to renourish ours without giving up anything by
12 using Town funds.

13 MR. DILLARD: Well, Your Honor, I think -- again, that's
14 the first time I have heard that theory. I contend that's not
15 in the pleadings. But if it were -- if that were alleged, it
16 also goes back to the even more basic question that we do not
17 have a pending condemnation notice now.

18 And so what he's essentially asking for is not an
19 injunction but an advisory opinion under the declaratory
20 judgment act, because any future action the Town might take
21 would be based on a new decision-making process, new factors,
22 the circumstances available for consideration at that point
23 under that condemnation notice.

24 And so any specific factual conclusions that a court
25 might make about this now-abandoned condemnation notice would

1 really just be an advisory opinion that may or may not have
2 any relevance to future efforts.

3 So nothing -- along the same lines, nothing alleged gives
4 rise to any permanent prohibition on condemnation -- on this
5 general class of condemnation of a beach renourishment
6 easement. There are older cases before the Imminent Domain
7 Procedures Act that talk in terms of permanent injunction
8 being a remedy, being a remedy. This case really should be
9 read to be addressing permanent injunction of proceeding under
10 the condemnation notice at issue.

11 And the cases that Mr. Stanton cites, none of them
12 actually grant that relief. The two that sort of look at the
13 merits say that relief is not appropriate here because the
14 government's authority is so broad. What those cases talk
15 about -- and it's the *Timmons* case and one other that were
16 discussed in both briefs.

17 What they say, Your Honor, is that the -- any kind of
18 permanent -- any kind of preclusive relief based on bad faith
19 or fraud, it's not about sort of the administrative behavior
20 and how people act as they go through the process. It's about
21 the underlying reason for the decision. Is it a scheme to --
22 and these are the words of the Supreme Court. Is it some
23 sinister scheme to benefit a private interest?

24 There's no indication here -- I mean, notwithstanding his
25 argument about how resources are allocated in different

1 places, but there's no indication that -- no allegation that
2 the purpose of this easement, whether it's a good idea or a
3 bad idea as a policy matter, there's no indication that it's a
4 scheme to benefit someone else, to benefit a private
5 interest.

6 THE COURT: Well, I mean, he's saying that it is a scheme
7 to benefit the people who own property in the middle of the
8 island and the northern part of the island who are on Town
9 council to get government funding at the expense of the
10 property owners of the south end.

11 MR. DILLARD: Your Honor, but the purpose of the proposed
12 easement, as a general matter, is for renourishment of the
13 south end. And I believe 110 -- more than a hundred of the
14 other owners have already signed off on these easements.

15 And so, I mean, respectfully, it's -- that's more a
16 matter -- and, again, it's not in the pleadings, but that,
17 hypothetically, would be a more of matter of allocation of
18 resources as opposed to trying to benefit one party as opposed
19 to another. And the purpose of all this is to protect the
20 beach on the entire island.

21 THE COURT: Well, to get funding.

22 MR. DILLARD: Yes, sir.

23 THE COURT: The purpose of it is to get funding to
24 renourish the beach on the entire island.

25 MR. DILLARD: In a broad sense, yes, Your Honor, from

1 different pots of money, I believe that's correct.

2 THE COURT: Okay.

3 MR. DILLARD: So the -- it ultimately comes down to a
4 question of ripeness. What he's asking for is totally -- it
5 would be relief that's totally contingent on how the Town may
6 or may not proceed in the future. Yes, they do still want to
7 work to try to get this easement. We want to try to talk to
8 them when this stuff settles down and there's time to do it.
9 But, ultimately, it's unclear exactly how the Town would go
10 about pursuing the easement.

11 So any decisions that could be made in this action about
12 what is or is not in bad faith or anything like that would
13 ultimately just be hypothetical, because we don't know exactly
14 what the circumstances will be of any future attempt, if there
15 is one, to condemn property.

16 And I have cited the case law on that issue, but
17 generally, you know, declaratory judgment is not a means to
18 fish for legal advice on some contingent hypothetical issue,
19 and that's ultimately what he would be pursuing.

20 We have addressed other issues in the brief, Your Honor.
21 I think that I have hit on the key points. If Your Honor --
22 we would ask that, if you do reverse your prior order, allow
23 the case to move forward, we think that we should be entitled
24 to know what claims are being asserted against us before we
25 have to engage in discovery or do anything else because none

1 of it would be efficient, and I think that we would request
2 that, one, we would be protected from any pending discovery
3 and that new discovery could only be initiated after a second
4 amended complaint setting forth specifically what causes of
5 action they would like to allege has been filed, and also
6 that, instead of the standard 15 days, that we would have 30-
7 days to answer, given that it will probably be a lengthy
8 pleading in that circumstance, Your Honor.

9 And just to reiterate on this question of the north end
10 of the island versus the south end of the island, it's not in
11 the complaint, to the best of my understanding. And, again,
12 that's a policy matter of how funds are allocated and not a
13 matter of bad faith or anything along those lines. And, two,
14 since the condemnation notice has been withdrawn, abandoned as
15 we're allowed to do, it would be entirely hypothetical and
16 advisory for any of the prior issues to govern what would
17 happen moving forward. Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 Anything in reply?

20 MR. STANTON: I'm not being facetious when I say that, if
21 you grant all this custom protection from discovery, which is
22 basically what we have endured through two cases, that's kept
23 us from getting the discovery, you should give us leave to
24 propound 400 requests for admissions so that we can get actual
25 answers to the allegations in the complaint.

1 Mr. Dillard focuses on trying to persuade the Court that
2 there is an ability to abandon under the Imminent Domain
3 Procedures Act. If there is, the question that he's not
4 addressing is, when one does abandon, what does it mean? Or
5 in order to abandon, what does one have to be doing? He's
6 never addressed whether -- he says, in South Carolina, you can
7 abandon at any time. What he doesn't say is, when you do
8 abandon, what does it mean?

9 In our brief, we cited Collegiate Dictionary that says
10 abandon means to give up forever, essentially. We have cited
11 South Carolina case law in other areas of property law that
12 says it means to give up forever. We have cited cases in
13 other jurisdictions, which he says don't stand for the
14 proposition that we have alleged, in which, case after case
15 where they're looking deeply at this question of abandonment
16 and the only fight is whether the condemnor should be allowed
17 to abandon something forever or not. He hasn't cited cases
18 where the condemnor is allowed, as a mere expedient, to say
19 they're abandoning something but to really say all they're
20 going to do is temporarily desist.

21 So to declare our whole case moot on the grounds that
22 they filed a piece of paper that has the word "abandonment" on
23 it and they have never alleged in their responsive pleading or
24 in that piece of paper that they're not going to do this again
25 doesn't render the case moot.

1 I could go on. If he did say anything that Your Honor
2 has any questions about, I'll be glad to answer them.

3 RULING

4 THE COURT: All right. Well, I'll take it under
5 advisement. I have got to look at the pleadings again to see
6 exactly what relief is requested and whether or not it is a
7 moot issue or whether or not you did plead anything that is no
8 longer -- I mean, that is not moot and that needs to be
9 answered.

10 You say they have never pled about the disparity or --
11 you know, between the easements on the south end and not
12 easements on the north end. I don't know whether that's in
13 the pleadings or not but I'll take a look and see what it says
14 in there.

15 MR. STANTON: I apologize, Your Honor. I mean, I did
16 mean to mention that one little thing. If you start off
17 looking at the amended complaint in any of these three cases,
18 you don't get past paragraph 14 or paragraph 17 before it
19 explains that they're only doing this on the south -- that
20 they're doing it to the south end people.

21 THE COURT: Well, and I have got to look at the overall
22 pleadings to see, not just what the allegations are but the
23 relief --

24 MR. STANTON: It tells the whole story that -- the scope
25 of the project, how many -- you know, how many miles of beach.

1 THE COURT: I understand that. The biggest problem I
2 have got, Mr. Stanton, from your point of view, is that the
3 prayer for relief prays that both the existing and new
4 condemnation notices be quashed and that the Town be forever
5 barred and enjoined from filing with either of them or
6 proceeding under -- with either of them.

7 Well, they have withdrawn the existing and new
8 condemnation notices. So you're asking me to quash something
9 that they have already abandoned. That's -- now I'm just
10 looking at the prayer for relief. I've got to look back
11 through the pleadings --

12 MR. STANTON: But, in the body, there are requests for
13 permanent relief.

14 THE COURT: Well, that's what I have got to look to see.
15 And then, once I take a look and see what it says in the body
16 and look at the entire pleading -- but I'm not going to pick
17 one single paragraph and let it distort the whole intent of
18 the pleading and the action. I have got to look at the action
19 to see if there is any requested relief that is not moot or
20 whether it is entirely moot.

21 MR. STANTON: And, again, in our brief we --

22 THE COURT: I'll take a look at the briefs. I'll take a
23 look at the pleadings --

24 MR. STANTON: We mention --

25 THE COURT: I understand. You have made your response.

1 All right. Thank you-all.

2 MR. DILLARD: Thank you, Your Honor.

3 MR. STANTON: Thank you, Your Honor.

4 (At 10:35 a.m., the above hearing concluded.)

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CERTIFICATE OF COURT REPORTER

State of South Carolina)
)
County of Georgetown)

I, Bobbi J. Fisher, Registered Professional Reporter
(RPR) and Official Court Reporter for the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the proceedings
had and evidence introduced in the hearing of the captioned
case in the Common Plea for Georgetown County, South Carolina,
on the 3rd of June, 2021.

July 14, 2021

Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
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OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT
BFISHER@SCCOURTS.ORG.

Notice of abandonment in Sunset* Challenge II action, dated
February 10, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF ABANDONMENT
v.	)	OF CONDEMNATION ACTION
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	

TO: PLAINTIFF SUNSET LODGE, LLC

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, please be notified that the Town of Pawleys Island hereby abandons and withdraws the Condemnation Notice underlying this challenge action, which Notice was delivered to the Plaintiff and/or representative of the Plaintiff on or about October 15, 2020 and is referenced in the Amended Complaint in this action as the "New Notice." To the full extent that such Condemnation Notice and/or its delivery or service initiated a condemnation action, such action is hereby abandoned and withdrawn.

BELSER & BELSER, P.A.
s/ William C. Dillard, Jr.
 William C. Dillard, Jr. (S.C. Bar No. 78986)
 Post Office Box 96
 Columbia, SC 29202
 (803) 929-0096
 will@belsarpa.com
 Attorneys for Defendant Town of Pawleys Island

Also for Defendant:

N. David DuRant, Sr., Esquire (SCB# 1803)
 Norwood D. DuRant, Jr. (SCB #101723)
 LAW OFFICES OF N. DAVID DuRANT
 AND ASSOCIATES, P.A.
 P.O. Box 14722
 Surfside Beach, SC 29587

February 10, 2021

Motion in Sunset* Challenge II action for protection from discovery,
dated March 3, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Sunset Lodge, LLC,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-22-00932

**DEFENDANT'S MOTION FOR
PROTECTIVE ORDER
REGARDING DISCOVERY**

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

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island ("Town"), by and through its undersigned attorneys, will move this Court the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for issuance of a Protective Order relieving Town of any obligation to participate in certain discovery in this action, on the general ground that the single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Town's February 10, 2021 filing of a *Notice of Abandonment of Condemnation Action* relating to a Condemnation Notice delivered to the Plaintiff on or about October 15, 2020 (referenced in the Amended Complaint in this action as the "New Notice").¹ Because Plaintiff has declined to stipulate to dismissal of the action and withdrawal of such discovery, Town seeks an Order providing the following relief from discovery initiated by Plaintiff:

¹ Plaintiff alleges on page 58, Paragraph 372 of the *Amended Complaint* that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff."

- 1.) Quashing the *Plaintiff's Notice of Deposition of Mr. [Ryan] Fabbri*² (Exhibit A) and any additional notice as may be served for such deposition prior to the Court's ruling on this motion, and relieving the Town and intended deponent of any obligation to comply with the same; and
- 2.) Ordering that the Town is relieved of any obligation to respond to the *Plaintiff's First Interrogatories*³ (Exhibit B) submitted by Plaintiff in this action.

This relief is requested on the grounds that that (a) as set forth above, the challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary and inappropriate; (b) such discovery would be unreasonably burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCP; and (c) such protection is necessary to protect Town from entirely unnecessary burden, expense, and annoyance in this action, Rule 26(c), SCRCP.

Rule 11 Certification

Pursuant to Rule 11, SCRCP, undersigned counsel hereby certifies that he attempted to consult with opposing counsel to resolve the issues underlying this motion prior to filing the motion and determined that further consultation would serve no useful purpose.

² The *Notice of Deposition* references a deposition to take place on February 19, 2021. However, by written agreement of counsel, this date was extended to March 5, 2021, subject to reservation of Town's right to object to the taking of the deposition.

³ The *Plaintiff's First Interrogatories* and accompanying certificate of service are dated January 10, 2021. However, by written agreement of counsel, the date for responding was extended to March 5, 2021, subject to reservation of Town's right to object to the written discovery.

Respectfully submitted,

s/ William C. Dillard, Jr.
William C. Dillard, Jr. (S.C. Bar No. 78986)
BELSER & BELSER, P.A.
Post Office Box 96
Columbia, SC 29202
(803) 929-0096
will@belserpa.com
Attorneys for Town of Pawleys Island

March 3, 2021

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	PLAINTIFF'S
	)	NOTICE OF DEPOSITION
v.	)	OF MR. FABBRI
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL: Please take notice:

Pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Plaintiff will take the deposition of Ryan Fabbri 10:00 a.m. on Friday, February 19, 2021 at the offices of the undersigned. The deposition will continue from hour to hour, or day to day, until completion. The deposition will be recorded by stenographic and sound means and taken pursuant to the South Carolina Rules of Civil Procedure before a disinterested person authorized by law to administer oaths. If the deposition is commenced but not completed, it will be continued from time to time as agreed by the parties or pursuant to court order until completed, without further notice. If the deposition is rescheduled by agreement as to time or place after the initial notice, no further notice will be sent, and the original notice, as modified, will remain in effect.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)
 STANTON LAW OFFICES, P.A.
 (1230 Richland Street (29201))
 P.O. Box 245
 Columbia, SC 29202
 Tel: (803) 929-1484
bstanton@stantonlaw.com
Attorney for Sunset Lodge, LLC

1/15/21

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

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2020-CP-22-00932

CERTIFICATE OF
SERVICE

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com
(N. David DuRant, Sr., Esquire)

s/M. Baron Stanton
M. Baron Stanton

Date: 1/15/21

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	PLAINTIFF'S
	)	FIRST INTERROGATORIES
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

TO THE TOWN OF PAWLEYS ISLAND AND ITS COUNSEL:

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

1. What was the purpose of, with no prior notice, delivering to Plaintiff's counsel on October 16, 2020, the Condemnation Notice and Tender of Payment (including referenced map and proposed Beach Renourishment Easement) incorrectly dated June 9, 2020 (collectively, "the New Notice"), along with a proposed Acceptance of Service document and asking him to accept service?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Set forth a list of photographs, videotapes, plats, sketches, correspondence, notes, memoranda, agendas, logs, studies, minutes, press releases, resolutions, reports, charts, other writings and recordings, e-mails, texts, IMs, blogs, other electronically stored information, or other prepared documents in possession of the party that relate to the attempt to condemn and related contemplated proceedings, the instant lawsuit, Plaintiff's claims or Defendant's defenses. (By "electronically stored information," this party means to include all information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software, including, but not limited to the following: accounting or

bookkeeping information stored or accessed with QuickBooks or similar software; e-mail of any type, category, or status, including incoming, outgoing, draft, or deleted e-mail; social networking website postings or commentary; chat room logs, transcripts, archives, or commentary; instant messaging logs, archives, or history files; internet browser temporary files, cache files, cookies, or history information; online discussion group files; blog text, postings, or commentary; and any data stored on a computer network, servers, pop drives, disks, snap drives, flash drives, thumb drives, USB hard-drive, cell phone, PDA, or other electronic device capable of storing data.)

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

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

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

- a. Name, occupation, title, business address, area of specialization, if any, and professional relationship to the responding party;
- b. The manner in which such person became familiar with the facts of the case;
- c. The subject matter on which the person is expected to testify;
- d. Substance of the facts and opinions to which the person is expected to testify;

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

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

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

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

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

23. State and describe in detail, the date a person from the Corps of Engineers first explained to you the meaning of the desired contents to include in easements from south end property owners and who provided that explanation and in what document or by what means.

24. Have you withheld production or description of any documents you claim are privileged, and, if so, please identify those documents.

s/M. Baron Stanton

M. Baron Stanton (Bar#7970)
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bstanton@stantonlaw.com
Attorney for Sunset Lodge, LLC

1/10/21

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

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2020-CP-22-00932

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the undersigned has this date served the foregoing by causing a copy thereof to be e-mailed as indicated in the attached e-mail copy pursuant to S.C. Sup. Ct. Ord. 2020-04-22-01, to the address indicated below:

ddurant@lawofficesofdurant.com
(N. David DuRant, Sr., Esquire)

s/M. Baron Stanton
M. Baron Stanton

Date: 1/10/21

Motion in Sunset* Challenge II action for judgment on the pleadings,
dated March 5, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Sunset Lodge, LLC,

Plaintiff,

v.

Town of Pawleys Island,

Defendant.

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-22-00932

**DEFENDANT'S
MOTION TO DISMISS**

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

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island ("Town"), by and through its undersigned attorneys, will move this Court the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for issuance of an Order dismissing this action, without prejudice, on the general ground that the Town's February 10, 2021 filing of a *Notice of Abandonment of Condemnation Action* relating to a Condemnation Notice delivered to the Plaintiff on or about October 15, 2020 (referenced in the Amended Complaint in this action as the "New Notice"), renders this condemnation challenge action entirely moot.¹ More specifically, based on the Plaintiff's refusal to stipulate to dismissal of this matter even subject to an opportunity to assert any claim Plaintiff may have for litigation expenses, Town seeks dismissal of the action on the following grounds:

- 1.) The single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Town's filing of

¹ Plaintiff alleges on page 58, Paragraph 372 of the *Amended Complaint* that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." The New Notice has now been formally abandoned and withdrawn.

the *Notice of Abandonment of Condemnation Action*, which is also attached as an exhibit to Town's *Answer to the Amended Complaint*. As the subject Condemnation Notice has been abandoned and withdrawn, any condemnation action it initiated has been extinguished and therefore warrants no further challenge. *See, e.g.*, S.C. Code Ann. §§ 28-2-30(5), 28-2-470. Accordingly, based on the pleadings, there is no remaining issue of fact raised by the Amended Complaint that would entitle plaintiff to judgment if resolved in Plaintiff's favor, and Town is entitled to judgment on the pleadings dismissing the action pursuant to Rule 12(c), SCRCP.

- 2.) To the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to a separate prior condemnation notice and condemnation action, another action (referenced in the Amended Complaint as the "Existing Challenge Action") is already pending between the same parties for the same claim, and this present action should be dismissed pursuant to SCRCP 12(b)(8).

The requested dismissal is intended to be without prejudice to any right the Plaintiff may have to assert a claim to reasonable attorney fees, litigation expenses, and costs in this action pursuant to § 28-2-510(C). Accordingly, Town stipulates to inclusion in the Order of Dismissal of terms providing that:

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

(b) Plaintiff may assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs as part of this action within a reasonable specified time or, in the alternative, in the separately pending "Existing Condemnation Action" referenced in the Amended Complaint.

Based on the foregoing, the Defendant respectfully requests that the Court dismiss this action without prejudice as set forth above. This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, and oral arguments by counsel.

Rule 11 Certification

Although not required pursuant to Rule 11, SCRCP, undersigned counsel hereby certifies that he has consulted with opposing counsel prior to filing this motion in a good faith attempt to resolve the matter herein.

Respectfully submitted,

s/ William C. Dillard, Jr.
William C. Dillard, Jr. (S.C. Bar No. 78986)
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Post Office Box 96
Columbia, SC 29202
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Attorneys for Town of Pawleys Island

March 5, 2021

Brief in Sunset* Challenge II action in opposition to motions to
dismiss and protection, dated March 30, 2021 (filed March 31)

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
Plaintiff,	)	
v.	)	
Town of Pawleys Island,	)	
Defendant.	)	

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
THE TOWN'S MARCH 5, 2021 MOTION TO DISMISS
AS MOOT AND IN OPPOSITION TO THE TOWN'S
MOTION FOR PROTECTION FROM DISCOVERY

Defendant Town of Pawleys Island filed a March 5, 2021 motion to dismiss the instant action, asserting that the action is "moot." Plaintiff opposes the motion. Because the motion for protection from discovery is predicated entirely on the motion to dismiss, Plaintiff also opposes the Town's motion for protection from discovery.

This case is nowhere near over, nor moot. There is also no reason advanced for such haste, after the Town has brought two suits, and sought delay in the related case.

The only thing that might be accomplished by such haste would be to subject Plaintiff to the necessity of going through two lawsuits to enable a third without the true facts all coming out and without all the appropriate relief being afforded.

Plaintiff needs to submit a fee petition and also needs to decide what, if any, additional relief to seek under the amended complaint, under further amendment, or by appropriate motion.

I. The Town's unilateral stipulations in its motion do not control court procedure, the relief to which Plaintiff is entitled, or the relief Plaintiff may seek as the plaintiff in this action.

The Town's motion makes partial stipulations regarding fees and offers suggested resolutions including moving part of this case to another case so that this case can be dismissed.

While it is unusual to exchange, in the motion and in this response, ways to voluntarily resolve the matter without Court order, both parties do seek to streamline the matter. However, any resolution must be consistent with protecting Plaintiff's interests.

Plaintiff has now been sued not once, but twice. Plaintiff has been put to great distraction and great expense, and along the way has suffered defamation and has suffered a cloud on Plaintiff's title. The Town's offers do not protect Plaintiff from continuation or repetition on these matters. Plaintiff's interests cannot be oversimplified, disregarded, or overlooked. The need to protect Plaintiff and Plaintiff's right to direct Plaintiff's own case cannot be avoided by omitting the salient facts.

Only if the Town would stipulate to the following to end this case, the case could be ended now:

1. Plaintiff is entitled to reasonable fees and other litigation expenses for this action.
2. Fees and expenses of \$6,722.64 as of April 5, 2021 are reasonable as follows: (((\$190/hr. x 93.3 hrs. ÷ 3) plus \$180.32 filing fee) as of March 29, 2021, plus (\$190/hr. x 10.0 hrs. ÷ 3) estimated as of April 5, 2021, assuming expenditure of no more than 10 more hours is required to conclusion, subject to supplementation.
3. The notice of abandonment of the second condemnation attempt by the Town is confirmed to be an abandonment with prejudice, i.e., with stipulation that Plaintiff will not be sued a third time by the Town on the same subject matter.
4. This case is dismissed without prejudice to any other claims of Plaintiff may wish to bring separately.

I.e., if the Town would stipulate to the award and the amount of fees, and stipulate to not suing Plaintiff a third time on the same subject matter, then and only then, reserving Plaintiff's rights to assert other claims in a separate proceeding, the case would be over.

II. Plaintiff still needs to pursue and receive fees and expenses.

Plaintiff is in the process of preparing a petition for award of attorney's fees pursuant to the mandatory fee award provisions of S.C. Code Ann. §28-2-510(C)(pertaining to fees to landowner when condemnor abandons condemnation) or §28-2-510(A)(applicable to landowner's successful challenge to condemnation).

Plaintiff is also in the process of considering the status of the Town's answer in the instant case, the status of discovery already initiated by Plaintiff but not obtained, the relief which may be obtained in the instant action, and whether to seek amendment before or after obtaining discovery.

Plaintiff has also been working on an amended fee petition in the related case under S.C. Code Ann. §28-2-510(A), amidst briefings and hearings initiated by a request by the Town for a delay of over four months in that case.

The matter of fees for abandonment needs to be resolved in an orderly manner within the instant case.

Resolution may be possible by appropriate stipulation of both parties, but not a stipulation only by the Town which may allow for later new positions of the Town, confusion of issues or cases, or creation of other surprise, extra work, or prejudice for Plaintiff. The fee petition in the instant case obviously should not be moved, as the Town requests, to a different case.

It is inappropriate to do so based on the stipulation of only the one party, against which the fee petition lies. It is Plaintiff's fee petition, not the Town's. The Town has taken shifting positions in the related case. A frank review of the history of the matter in general reveals a history in which the Town acknowledges no value in Plaintiff's rights, no value in Plaintiff's property, and no value in Plaintiff's time or expense.

For example, in the initial, preceding, suit by the Town (the "initial suit"), the Town attempted to condemn an easement on expensive property without paying anything for it.

In doing so, the Town ignored numerous statutory, constitutional and common law protections of Plaintiff.

The Town did so again in commencing another action while the first case was pending and being challenged by Plaintiff.

When Plaintiff submitted a fee petition after the grant of summary judgment in Plaintiff's favor in the initial challenge case, the Town's position was that the Town opposed the fees as unreasonable, and wanted over four more months of proceedings.

However, the Town was apparently unable to state why the fees were unreasonable or in what respect they were unreasonable. So the Town asserted that it needed the delay of over four months, stating that the time was needed for discovery after which the Town would seek an entire trial on fees.

That position has already produced extensive further work, expense, and litigation, including separating the work attributable to the two cases, work on an amended fee petition, and detailed marking and protection of private bills in the initial challenge case.

The Town's position on the need for the full four months -- half of which has already elapsed -- has since changed, but only to tentative positions of lesser scope, based on what the Town states it does or does not currently foresee the need for.

The Town's request for great delay in some respects has changed to one for unexplained great haste in others. Somewhat similarly, early in the initial case, the Town had filed a motion to expedite the case and all its own motions, and shortly afterwards sought an order blocking all discovery from the Town. Plaintiff has begun discovery in the instant challenge action, but it has not progressed.

Plaintiff is not presently prepared to stipulate in the instant case to bypassing orderly presentation of the fee petition for the abandonment within this case, which is the case from which the fee petition arises. Resolving the matter in a different but related case in a different procedural posture

and leapfrogging over Plaintiff's ability to respond to different issues not even yet raised by the Town is not appropriate.

There is also no reason given for a great to hurry to dismiss the case still subject to having the fees then later determined in the case.

III. Plaintiff has not determined whether to seek other relief in this case.

"Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." Rule 54(c), SCRCPP.

This challenge action arises after the Town had already once before abandoned its request for an easement. See the Amended Complaint ¶¶35-48 re 2019 cessation of requests for easement; declaration of no need for easement, and 2020 completion of work without easement.

This challenge action arises after the second time the Town has sued Plaintiff on the same subject matter. While fee and expense awards are available, the Town's two suits have caused Plaintiff to incur noncompensable time and expense, suffer defamatory implications if not outright statements from the Town, endure gossip fomented by the Town, and have cast a pall over the state of the title to Plaintiff's property by threats of continued future action.

As late as March 18, 2021, the mayor of the Town sent out a mass public e-mail announcing a determination to continue to "pursue" the easements. In doing so, he continued in the same fashion in which the Town has previously operated, to not disclose to other owners, the actual issues in the two suits so far against each of three landowners.

Plaintiff needs equitable relief, res judicata relief, or if appropriate, relief by sanction, to prevent such repetitive problems. Plaintiff needs some discovery to explore these avenues. Permanent equitable relief, for example, may be available on one or more bases. See S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(barring re-institution of condemnation

permanently, because the condemnor had previously represented that there would be no need for an easement on the landowner's property).

Once the fee award is resolved, and once there is no remaining discovery sought, and once Plaintiff decides there is no additional relief sought under the existing amended complaint or a subsequent amendment or under appropriate motion in the case, it would only then be the traditional time to consider whether the case is over.

This would largely, but not exclusively, depend on whether the Town stipulates not to sue Plaintiff for a third time on the same subject matter. In this regard, the Court could also order now and declare that the Town's abandonment of the condemnation is with prejudice or could otherwise enjoin the Town now from suing Plaintiff for a third time on the same subject matter.

IV. The procedural and substantive background of this and the initial challenge action are necessary to an understanding of the issues before the Court, including the multiplicity of litigation, evasion of facts, and repeated expense and injury from which Plaintiff needs protection.

To more fully appreciate the context of the matters which are the subject of the Town's motion and this response, some procedural and substantive background is required for anyone who has not read both case files.

The Town has sued Plaintiff twice on the same subject matter. To say that the act is capable of repetition is an understatement.

The instant "challenge action" is the second of two statutory suits to stop two suits by the Town. That is, the Town sued Plaintiff in June 2020 under the Eminent Domain Procedure Act (the "Act"), seeking to condemn an easement on the oceanfront part of Plaintiff's oceanfront land.

Plaintiff had offered the Town an easement, but the Town sought to condemn an easement with terms and scope Plaintiff believed to be unreasonable. Under the Act, Plaintiff sued to stop the condemnation of the unreasonable easement.

While the Town's suit, the "initial suit," was still pending and stayed, the Town sued Plaintiff again. The Town did so in October 2020 on substantially the same subject matter. Under the Act, Plaintiff then sued, in the instant action, to stop the second condemnation attempt.

The original complaint in the instant challenge action was not adequately answered. Virtually everything was denied by the Town.

Denials shall fairly meet the substance of the averments denied. Rule 8(b), SCRCRCP. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Id.

Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11. Id. This is the rule against evasive answers.

The Amended Complaint in the instant challenge action was not adequately answered either. It is long. It was necessary to cover with particularity and precision, numerous chapters of the Town's acts, misrepresentations, evasions and persistent omissions over an extended period of time.

These have included the following, among other things:

- Misrepresentation of the nature and scope of the "renourishment" easement sought in 2019 when first soliciting it and seeking to pay nothing for it.
- Doing so by saying the "renourishment" easement was only for sand placement, sand fence and planting, when the legal document placed the easement two feet from the door of the house, granted perpetual public access within the easement area, granted a perpetual right to restrict the owner's access to that oceanfront part of the owner's property, granted a perpetual right to

tear down and prevent replacement of the owner's improvements within the area, and perpetually subjected the owner's right to build structures for access to the ocean to approval of an unidentified person with no governing standards.

- Misrepresentation publicly of the landowners' good-faith offer of an easement of reasonable scope in response to those solicitations from the Town.
- Doing so by omitting all reference to the landowner's offer, omitting all disclosure of the issues, and falsely perpetuating the impression and public representation that the landowner had refused any easement whatsoever.
- Misrepresentation of the nature and scope of the actually contemplated easement to the appraiser hired by the Town when seeking approval of federal participation in part of the project.
- Doing so by asking the appraiser to determine potential land acquisition costs for 109 properties as a condition of obtaining federal approval of federal assistance on that part of the overall proposed renourishment project, but omitting the unreasonable terms to which Plaintiff has objected.
- Filing an unauthorized easement grant from one property owner, Mr. Beattie.
- Active involvement in creating a poorly drafted and unreasonable proposed granting document proposed to become a permanent part of Plaintiff's chain of title.
- Abandonment, altogether, of the request for the easement in 2019.
- Concurrently with such abandonment, publicly announcing intention to perform the work without an easement.
- Concurrently with such abandonment, publicly announcing the scientific likelihood of the lack of necessity of similar work for another 22 years or more.

- Subsequent to such abandonment of the request for the easement, completion of the work for which the easement had been sought.
- Subsequent to abandonment of the request for the easement and completion of such work, disclosing in 2020 a determination to pursue a "program" for only potential work.
- Doing so knowing that the potential work was to be years in the future, with no certainty of future need or occurrence, no assurance of Congressional funding, and no guarantee of future assistance whatsoever, and that the need for the potential work was contrary to the Town's own prior data and estimates the Town obtained and publicized in order to justify the doing of the work, the scope of the work, and the spending on the work, which was now already done.
- Subsequent to abandonment of the request for the easement and completion of the work without such easement, then requesting the easement again, but now only for the mere purpose of joining the uncertain "program" for which the need was unlikely, for which the possible need was remote in time, and under which the receipt of financial help and the actual doing of anything was speculative.
- Repeating prior misrepresentations in making a new request for the easement. I.e., that the "renourishment" easement was for the limited purpose of sand placement, sand fence, and planting.
- Continued publicly broadcast misrepresentation in the May 2020 Council meeting of both (i) the nature and scope of the easement now sought as only for putting sand on the beach and (ii) the landowners' responses to the prior solicitations as being a categorical refusal rather than a good faith offer of a reasonable easement.
- Consequently issuing a resolution insufficient for and invalid for authorizing the condemnation which the Town would later pursue.

- Misrepresentation of the nature and scope of the easement to the appraiser hired to determine the just compensation which should be paid to the landowner if the easements were to be purchased from the landowner or condemned and taken by eminent domain.
- Doing so by asking the appraiser to determine the just compensation which should be paid to the landowner, but omitting from the easement he was asked to appraise, the unreasonable terms to which Plaintiff has objected.
- Commencing a condemnation action seeking an easement containing the unreasonable terms to which Plaintiff has objected, but doing so in a proceeding integrally based on the falsely procured appraisal of an easement of materially more reasonable scope, while withholding the appraisal in violation of the statutory procedure, and while making a false certification in the condemnation papers that the appraisal had been previously provided.
- In seeking condemnation of an easement the entire request for which had been previously abandoned, seeking also to include features and scope previously agreed with one or more landowners not to be necessary features or scope.
- Misrepresenting publicly the nature of, progress of, and positions taken in the litigation.
- Misrepresenting to the Court in moving to dismiss, for a bond, and for special expedited treatment, the likelihood that a storm could wash away all 1.1 million cubic yards of sand in a single event and misrepresenting to the Court that under the "program," if such an event occurred, the Town would be eligible to have the Corps of Engineers put all 1.1 million cubic yards back, including portions on which there would never be federal involvement.
- Presenting to the Court a resolution created by the Town which was known at the time of creation to be factually false, in which the Town Council falsely states that the materials contained in the resolution were presented to Plaintiff before the October 12, 2021 time of the resolution, impliedly in June 2020.

- Doing so in order to dissuade the Court from granting summary judgment by attaching the false resolution as Exhibit B to the Town's November 24, 2020 brief opposing Plaintiff's motion for summary judgment in the initial action.
- Doing so again on March 17, 2021 by attaching the false resolution to the Town's memorandum in support of the Town's motion to reconsider the granting of summary judgment.
- Approximately two months after Plaintiff's summary judgment motion was filed in the initial challenge actions, commencing a separate condemnation action based on knowingly falsely stated facts in the resolutions purportedly authorizing same.
- Doing so using condemnation notices created in October but falsely dated June 9, 2020.
- Doing so using condemnation notices in which the occurrence of other activities and events is recited falsely if the statements are taken to speak as of June 9, 2020.
- Not adequately answering the factual allegations of the original complaint in the instant challenge action.
- Abandoning the underlying condemnation notice on February 10, 2021.
- Not adequately answering the January 13, 2021 amended complaint in the instant challenge action.
- Seeking dismissal before discovery by Plaintiff on potential additional relief for Plaintiff has progressed, including the deposition of the Town Administrator noticed on January 15, 2021 for February 19 and the answering of January 10, 2021 interrogatories served by Plaintiff.

V. The case is not federally moot nor practically moot nor moot under South Carolina case law.

Mootness in federal court is a federal concept. It has been rooted since the 60s in Article III of the United States Constitution, which describes the limited jurisdiction of the federal courts. Article III

setting up the federal judiciary and courts does not govern state courts, except when they are part of the federal judicial system in the course of deciding issues of federal law under concurrent jurisdiction.

Article III of the United States Constitution is not duplicated in Article V of the South Carolina Constitution or anywhere else in the South Carolina Constitution. The South Carolina Constitution does not have a “case or controversy” requirement for jurisdiction of state courts in general.

Nor does the State Constitution have such a requirement or restriction for appellate courts. Cf. Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001)(describing mootness as if a doctrine generally confined to appellate forum). The orientation of Curtis and other cases toward mootness as only an appellate concept is not surprising, as by the time a case is on appeal, not only can there be no amendment (unless amendment is the issue), but also the appeal is likely confined to the issues specifically raised. In contrast, the availability of relief is broader and more flexible at the trial level, both through the availability of amendment and through less rigidity in pleading rules, relief rules, and other procedural rules.

Unlike federal trial courts, state general trial level courts are not courts of limited jurisdiction. Like state appellate courts, state trial level courts, being courts operating on a local, rather than national scale and being informed by localized familiarity with local policy and issues, also, for that policy reason, are under no compulsion to emulate federal constitutional considerations unless doing so to avoid conflict with rights assured by the federal constitution to individuals or doing so as a part of the federal court system.

For most of this century, state courts have not been thought bound by the “case of controversy” requirement of Article III, even when deciding questions of federal law. William A. Fletcher, The “Case of Controversy” Requirement in State Court Adjudication of Federal Questions, Calif. Law Rev., Vol. 78, No.2 (Mar. 1990), at 263-264.

The difference between federal mootness and state mootness has received little judicial attention in some state courts, which have generally followed federal principles of mootness without discussing the root of the federal rule, likely as a general policy matter, or based on a longstanding more general concept of mootness in a lay sense. See Jowers v. S.C.D.H.E.C., 423 S.C. 343, 815 S.E.2d 446 (2018)(citing Byrd v. Irmo H.S., 321, S.C. 426, 468 S.E.2d 861(1996) and collecting cases); and see Anderson v. North Carolina State Board of Elections, 788 S.E.2d 179 (N.C. Ct. App. 2016) (discussing federal constitutional underpinnings and state court policy basis). By contrast with federal courts, in state courts, the exclusion of moot questions simply represents a form of judicial restraint. Anderson.

Once a case first meets the test of technically or superficially being moot, it is then subject to traditional exceptions. See Sloan v Greenville County, 380 S.C. 528 670 S.E.2d 663 (2008)(skipping the first prong of the inquiry only because the issue was already the law of the case). A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Curtis v. State.

The exceptions include exceptions for cases or issues “capable of repetition yet evading review.” See Roe v. Wade, 410 U.S. 113 (1973)(holding challenge to restrictions on abortion could not be mooted by birth of baby or otherwise no longer being pregnant). See also Sloan v Greenville County, 380 S.C. 528 670 S.E.2d 663 (2008) and Byrd v. Irmo High Sch., 321 S.C. 426, 468 S.E.2d 861 (1996). The instant case is such a case.

The exceptions also include “voluntary cessation” by the opponent and “collateral legal consequences or effect on future events” of not completing the litigation. The instant case fits both of these descriptions as well.

Subsumed in the “capable of repetition” exception is the “voluntary cessation” exception. See Curtis v. State (including broad notions of capability of repetition in the rule). If a defendant

voluntarily terminates the allegedly unlawful conduct after the lawsuit has been filed but retains the power to resume the practice at any time, a court may deem the case nonmoot. Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000).

The "heavy burden" of persuading the court that a case has been mooted by the defendant's voluntary actions lies with the party asserting mootness, and the standard for such a determination is a "stringent" one: "if subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior [can]not reasonably be expected to recur." Id. (citing United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203 (1968)).

This exception is supported by the Supreme Court because, in addition to ensuring that the defendant is not "free to return to his old ways," there is "a public interest in having the legality of the practices settled." United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953) (citation omitted).

In Laidlaw, an environmental group had filed a citizen suit under the Clean Water Act against Laidlaw. Laidlaw was a company that operated a wastewater treatment plant. The citizens alleged that the plant had discharged far more toxic pollutants into a river than it was allowed under terms of a government-issued permit.

However, after the lawsuit began, Laidlaw began to comply with the discharge limit. The Supreme Court held that this case was not moot because it was a "disputed factual matter" whether the company's substantial compliance with its permit requirements, or its closure of the facility in question, which had occurred after the court of appeals had issued its decision, would make "it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur." Laidlaw, 528 U.S. at 193.

A related exception occurs if a decision or lack of decision by the trial court may affect future events, or have collateral consequences for the parties, even if the matter is on appeal and the appellate court cannot give effective relief in the present case. Curtis, 345 S.C. at 568, 549 S.E.2d at 596; accord Sloan, 365 S.C. at 303, 618 S.E.2d at 878.

In the instant case, the Town has already abandoned the easement request twice and yet has filed suit twice, and the mayor has announced on May 18, 2021 an intent to persist in some manner. The parties are still in the trial level court. The circumstances described hereinabove demonstrate that not only is the case not moot, but that even if it were perceived to be superficially so, at least three exceptions to dismissal for mootness apply.

Accordingly, the Town's motion to dismiss for mootness should be denied. It is also therefore not unreasonable to require the Town, as the party bringing a second suit against Plaintiff and threatening a third, to properly answer the amended complaint, to answer already pending interrogatories, to produce any documents the Town has not previously produced, and produce the Town Administrator, and perhaps others, for a deposition. Accordingly, the Town's motion for protection from discovery should be denied as well.

Respectfully submitted,

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3/30/21

Brief in Sunset* Challenge II action in support of motions to
dismiss and protection, dated March 31, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	
	)	DEFENDANT'S MEMORANDUM
Plaintiff,	)	IN SUPPORT OF THE
v.	)	MOTION TO DISMISS
	)	AND
Town of Pawleys Island,	)	MOTION FOR PROTECTIVE
	)	ORDER REGARDING DISCOVERY
Defendant.	)	

The Defendant, TOWN OF PAWLEYS ISLAND ("Town"), hereby submits the following combined Memorandum in Support of its Motion to Dismiss and Motion for a Protective Order regarding discovery, as follows. Identical memoranda are being filed in the "Stanton" (2020-CP-22-0930), "Beattie" (2020-CP-22-0931), and "Sunset Lodge" (2020-CP-22-0932) cases.

This matter is related to two sets of condemnation challenge actions involving three properties, sometimes referred to informally by counsel as the "Challenge 1" cases and "Challenge 2" cases. This action is part of the second set of challenge actions. To aid the Court's understanding of the procedural aspects of this action and the associated matters, the Town provides the following general chronology:

- a. In or around June 2020, Town undertook to serve on the plaintiff a Condemnation Notice through which it sought to acquire a beach renourishment easement (referred to in the pleadings herein as the "Existing Notice").
- b. On July 21, 2020, the plaintiff and two related parties filed separate challenge actions (Civil Action No.'s 2020-CP-22-0600, -0601 and -0602, referred to in the pleadings herein as the "Existing Actions").

- c. In or around October 2020, Town undertook to deliver to plaintiff's counsel for service a separate, new Condemnation Notice (referred to in the pleadings herein as the "New Notice") with revisions reflecting certain objections asserted in the first set of challenge actions.
- d. On November 12, 2020, the plaintiff in this and two related actions filed new challenge actions challenging the "New Notices" (Civil Action No.'s 2020-CP-22-0930, -0931 and -0932, referred to in the pleadings herein as the "New Actions").
- e. On January 20, 2021, Judge Michael Nettles issued an order granting plaintiffs' motions for summary judgment in the first set of cases. The order noted that the ruling "is without prejudice to another attempt and attendant defenses if applicable." (Summary Judgment Order p.13).
- f. On February 10, 2021, the Town filed a Notice of Abandonment of Condemnation Action in this and the other "New Actions" (i.e., the second set of cases).
- g. On March 5, 2021, Town filed the subject motions in the "New Actions."
- h. At a hearing on March 19, 2021, Judge Nettles denied the Town's motion to alter or amend the summary judgment order in the first set of cases, subject to revision of one portion of the factual discussion (formal revised order forthcoming).

1.) **This action is moot based on Town's abandonment of the subject condemnation notice and should be dismissed without prejudice pursuant to Rule 12(c), SCRCP**

The single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered entirely moot by Town's filing of the *Notice of Abandonment of Condemnation Action*, which is also attached as an exhibit to Town's *Answer to the Amended Complaint*. Plaintiff alleges on page 58, Paragraph 372 of the Amended Complaint that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant challenge action after awarding litigation expenses to Plaintiff." The S.C.

Eminent Domain Procedure Act specifically contemplates the power of a condemnor to abandon a condemnation. *See, e.g.*, S.C. Code Ann. §§ 28-2-230(B), -510(C). The New Notice has now been formally abandoned and withdrawn. Any condemnation action the New Notice initiated has therefore been extinguished and warrants no further challenge. *See, e.g.*, S.C. Code Ann. §§ 28-2-30(5), 28-2-470.

Accordingly, based on the pleadings, there is no remaining issue of fact raised by the Amended Complaint that would entitle plaintiff to judgment if resolved in Plaintiff's favor, and Town is entitled to judgment on the pleadings dismissing the action pursuant to Rule 12(c), SCRPC. "Any party may move for a judgment on the pleadings under Rule 12(c), SCRPC. A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). The motion is limited to matters within the pleadings. Rule 12(c), SCRPC.

"Mootness has been defined as follows: 'A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.'" Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (citing Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). "In the civil context, there are three general exceptions to the mootness doctrine." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. . . Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. . . Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id.

In evaluating whether a moot issue is capable of repetition, yet evading review, “the action must be one which will truly evade review.” Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). “[A]n action that is capable of repetition does not necessarily evade review.” Id. (citing Seabrook v. City of Folly Beach, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999)). Sloan involved an appeal of a trial court ruling that a Freedom of Information Act challenge to the defendant’s refusal to produce certain records became moot when the records were produced. As the Sloan Court explained,

In Seabrook, the plaintiffs brought an action against the city alleging that the city imposed conditions on a residential development for which it had no authority. 337 S.C. at 304, 523 S.E.2d at 462. After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. In reviewing the appeal this Court found that the issue was moot, and that although the scenario was capable of repetition, it did not evade review.

The instant case is analogous to Seabrook. Although Friends admits that the current situation is capable of repetition, it does not evade review. Should another person bring an action against Friends for a violation of FOIA and Friends fails to produce the requested documents, the Court will have the opportunity to review the issue.

Sloan at 27, 630 S.E.2d at 478. In other words, a matter susceptible to “evading review” is something which by its nature “usually becomes moot before it can be reviewed.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (citing S.C. Dep’t of Mental Health v. State, 301 S.C. 75, 390 S.E.2d 185 (1990)).

As indicated in this analysis, South Carolina has never applied a “stringent” analysis of “voluntary cessation” of conduct as the plaintiff asserts is applied in federal appellate courts. *See* Plaintiff’s Memo. in Opposition (discussing Laidlaw). The case of Jowers v. S.C. Dep’t of Health & Env’t Control, 423 S.C. 343, 815 S.E.2d 446 (2018), cited by plaintiff for the proposition that South Carolina follows federal mootness principles, is in fact a case involving separate doctrines of standing and ripeness. Instead, South Carolina law is clear that “[t]he utilization of an exception under the

mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.” Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

In the present action, any future attempt to condemn a similar or identical easement would be inherently susceptible to judicial review. S.C. Code Ann. § 28-2-470 (“Proceedings to challenge condemnor’s right to condemn”). Town has no interest in and absolutely nothing to gain by repeatedly initiating condemnation actions and then “evading review.” *See, e.g.*, S.C. Code Ann. § 28-2-510(A) and (C) (providing for landowner recovery of attorney fees in challenge actions and withdrawn condemnation actions). This is clearly distinguishable from a wastewater treatment plant sporadically violating effluent limitations, Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc., 528 U.S. 167 (2000), or a challenge to “[s]hort-term student suspensions [which], by their very nature, are completed long before an appellate court can review the issues they implicate.” Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996).

Instead, Town has abandoned the “New Notice” underlying this challenge action based on the procedural issues ruled upon in Judge Nettles’s January 20, 2021 summary judgment order in the related “Challenge 1” cases and a desire to avoid unnecessary litigation of the same and additional procedural objections raised by the plaintiff in this case. If the substantive objections the plaintiff has raised relating to public necessity, “bad faith”, and other issues do eventually need to be adjudicated, then this should occur in the context of a condemnation action that has not been abandoned or ended by summary judgment. For the same reasons discussed above, any claim the plaintiff may wish to assert to injunctive relief is also moot unless and until a new condemnation action is pursued.

Under the second exception to the mootness doctrine, this case and the related actions are discrete disputes involving three properties and do not give rise to any “imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” Curtis at 568, 549 S.E.2d at 596. The third exception to mootness doctrine contemplates an appellate situation in which, because “a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.” Id. As this matter is not on appeal, and does not involve review of any prior trial court decision, this exception is not relevant.

2.) Any claims related to the “Existing Challenge Action” should be dismissed pursuant to Rule 12(b)(8), SCRC

To the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to a separate prior condemnation notice and condemnation action, another action (referenced in the Amended Complaint as the “Existing Challenge Action”) is already pending between the same parties for the same claim (subject to the recent summary judgment order, with a pending fee petition by the plaintiff), and this present action should be dismissed pursuant to SCRC 12(b)(8). It should be noted that Judge Nettles’s summary judgment order in favor of plaintiff in that action specifically states that the ruling “is without prejudice to another attempt and attendant defenses if applicable.” (Summary Judgment Order p.13).

3.) The Town seeks protection from the burden and expense of additional discovery sought by Plaintiff on factual issues in this moot action

Finally, the Town has moved for relief in the form of protection from any obligation to respond to plaintiff’s written discovery requests in this action or to produce the Town Administrator for a deposition. This relief is requested on the grounds that (a) as set forth above, the challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary and inappropriate; (b) such discovery would be unreasonably

burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCP; and (c) such protection is necessary to protect Town from entirely unnecessary burden, expense, and annoyance in this action, Rule 26(c), SCRCP.

Conclusion

In conclusion, the Defendant Town of Pawleys Island respectfully requests that the Court dismiss this action, without prejudice and subject to any right the Plaintiff may have to assert a claim to reasonable attorney fees, litigation expenses, and costs in this action pursuant to § 28-2-510(C), and order that the Town be protected from the discovery sought by the plaintiff.

Respectfully submitted,

s/ William C. Dillard, Jr.

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March 31, 2021

Reply brief in Sunset* Challenge II action in opposition to
motions to dismiss and protection, dated March 31, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S REPLY MEMORANDUM IN OPPOSITION TO
THE TOWN'S MARCH 5, 2021 MOTION TO DISMISS
AS MOOT AND IN OPPOSITION TO THE TOWN'S
MOTION FOR PROTECTION FROM DISCOVERY

Plaintiff file a brief responding to Defendant Town's motion on March 30, 2021. On March 31, 2021, the Town filed a brief referring to Plaintiff's brief. Plaintiff hereby replies, opposing the motion.

The Town reiterates that the Town moves this Court for an order dismissing the action "without prejudice" based on the pleadings, pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure, on the ground, only, that the action is moot.

The standard of decision of Rule 12(c) outright prohibits the relief requested.

The standard for a Rule 12(c) motion is not a standard calling for Plaintiff to carry a burden of proof, or for the Court to decide the credibility of facts or to provide accommodations to the moving party. It is not even a summary judgment standard under which Plaintiff has to come up with evidence or disputes of fact. The standard calls for every well pled-fact the Plaintiff has pled to be believed.

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRPC. When considering such motion, the Court must regard all properly pleaded factual allegations as admitted, and any inference of law or

conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

The standard is thus the same as a Rule 12(b)(6) motion. A Rule 12(c) motion by a defendant is in essence, a Rule 12(b)(6) motion made after answering, with the added assertion by the defendant that nothing the defendant has pled lends any help to the complaint in stating any claim on any basis. Nothing the defendant affirmatively pleads to benefit itself is accepted for purposes of the motion and Plaintiff is under no requirement to negate any of it.

A complaint under a 12(c) motion is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Falk.

"A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment." Lydia v. Horton, 343 S.C. 376, 540 S.E.2d 102 (Ct. App. 2000), rev'd on other grounds; Douglass ex. rel. Louthian v. Boyce, 336 S.C. 318, 323, 519 S.E.2d 802, 805 (Ct. App. 1999) (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991)).

"Our courts have held the pleadings should be construed liberally so that substantial justice is done between the parties." Falk, 341 S.C. at 287, 533 S.E.2d at 353. "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." Id.

Like the practice under Rule 12(b)(6), the motion must be denied unless the pleadings, liberally construed, do not state facts sufficient to warrant relief on any theory, whether prayed for or identified in the complaint or not. Like the practice under Rule 12(b)(6), even if this standard is met, the proper course is to grant the motion with leave to amend the complaint. This leave should be provided as part of the ruling on the motion. However, in the event a plaintiff makes such a motion, leave to amend "shall be freely given." Rule 15(a), SCRCF, provides in relevant part that "a party may amend his

pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP.

"The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). There is seldom any such prejudice unless the motion is made on the eve of trial or after a deadline in a scheduling order, and even this may be an insufficient degree of prejudice because it can be relieved by continuance. In the instant case, the case is fairly young and the Town answered the Amended Complaint only days ago, and while Plaintiff has sought discovery, none has been obtained.

It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998).

In the instant case, Plaintiff has already explained in Plaintiff's brief opposing the motion why under South Carolina law, the case is not "moot," because the case is not on appeal and there is relief which can still be sought and ordered, particularly as long as the Town avoids declaring that its "abandonment" of the condemnation is a permanent abandonment, with prejudice.

Applying the Rule 12(c) standard straightforwardly, as the parties and the Court are required to do, the Town is taken to be admitting for the purposes of its motion, all 375 paragraphs of the Amended Complaint. Those paragraphs, taken as true, provide a basis for a permanent, across-the-board bar on further action by the Town, as well as permanent preclusive relief on aspects of what the Town has now sued for twice.

The Amended Complaint, in addition to alleging some things which may eventually require a criminal referral, alleges, among other things, that the Town previously abandoned its request for an easement, then declared publicly that the previously sought easement was unnecessary, then completed what the Town had described as the project – the placement of all the sand in the “renourishment project.” Not only is this admitted for the purposes of the motion, but it is true anyway.

Relying on this represented lack of necessity and relying on the Town’s declaration that no easement would be sought by the Town, and relying on other representations of the Town – also alleged in the Amended Complaint – that the sand would last potentially over 22 years and that the Town had a fiscally sound plan in place to pay for it, Plaintiff took no steps to stop the Town’s work on Plaintiff’s property. Plaintiff took no steps, even though the sand was obviously very close to the house, encroached on pilings in a way which would inhibit working on them, obviously blocked access for work or other purposes, blocked views, and interrupted access to and use of the beach for months. Plaintiff obviously proceeded with improvements or modified improvements in light of the work being over and there being no threat of destruction, and inevitably deferred other things and plans the work precluded. The Town is estopped from ever asserting the easement to be necessary and therefore is estopped from ever condemning it. Condemnation is only allowed for taking real property “necessary for any public purpose.” S.C. Code Ann. §28-2-210.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that almost every act of the Town from the first time easements were requested, through subsequent efforts to coerce capitulation, through public proceedings purporting to authorize condemnation, through dealings with the appraiser, through the initial legal proceedings themselves, through subsequent fraudulent public proceedings purporting to ratify or re-authorize condemnation, through the subsequent legal proceedings, have been heavily infused with misrepresentation, knowing falsity, bad

faith, abuse of discretion, and abuse of public power and finances. This fact may allow permanent relief and damages.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that the only alleged future “need” by the Town for any easement at all after possibly more than 22 years is so vague, indeterminate, and remote as to be beyond the pale of necessity as reasonably and legally understood.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that the project was completed in a manner inconsistent with the excessive scope of easement the Town sought, and the excessive scope will not be needed in the future no matter at what remote point an easement might be someday be argued to be needed again. Therefore, the details of this excessive scope can be established preclusively for Plaintiff’s protection.

The Amended Complaint also alleges facts which, taken as true, are sufficient to show that Certain features in the condemnation papers have already been agreed to be unnecessary and, in some cases, have been removed for others as unnecessary. Therefore, the details of these particular unnecessary features can be established preclusively.

Additionally taken as true for purposes of the Town’s motion are the following paragraphs describing a Town Council incapable of ever getting free of the undue influence of its “all-in” Administrator, incapable of understanding the legal context or truth of what it is doing, and therefore incapable of ever exercising discretion in the intelligent good faith manner contemplated and required by case law:

237. Introducing the purpose of proposing the Publicized Proposed Resolution, Mr. Durant states (at close to mark 33:49 on the video time counter), “Essentially, this document is a document that defines the use of the area of the easement that we are asking for.”

238. Mr. Durant does not state, and perhaps Council is unaware, that the document then presented to Council, the Publicized Proposed Resolution, does not define the use to which the easement may be put any further than did the June 2020 Existing Notice, and, for example, does not define, or even purport to define, “public use” at all.

239. Mr. Durant does not state, and perhaps Council is unaware, that he has not yet added any language at all to define "public use" or further define any other use of the easement, but he states at c.34:43, "There is a couple of things that we might want to tweak on there as far as defining public use and that sort of thing."

240. He adds at c. 36:08 that he will "meet with Ryan and go through the definition."

241. Mr. Holliday, at c. 35:27, understands that the entire purpose of the resolution is proposed to be supplied, not at the meeting, but after the fact, as he inquires whether the resolution could be approved subject to Mr. Durant "making the change you just discussed, since you don't have that particular language in there tonight."

242. In a self-lauding added clarification of Council's purpose in considering the Publicized Proposed Resolution that is before them, Mr. Henry emphasizes at c.38:51, that the easement "is limited to very specific uses, thus it is a 'use easement,' and it is not a taking. It is a clarification of those key points." "It" refers to the Publicized Proposed Resolution, but "it" does no such thing; it contains no new clarifications, it contains no new definitions, and it contains no new narrowing, limitation, or specification of uses. Again, apparently no one on Council read the document or asked what on earth Mr. Henry was referring to.

243. As another example of "saying it doesn't make its so," nothing in the Publicized Proposed Resolution or in the Existing Notice "limits the easement to very specific uses"; it is exactly the opposite: the impetus of the present litigation (other than fraudulent behavior of Town actors, frivolous assertions, abusive use of Town power and resources, etc.) is that the easements proposed by the Town consume over a page clarifying just how oppressively and dangerously broad the easement is and contain virtually no limiting language or definitions at all; this same verbiage remained intact in the Publicized Proposed Resolution.

244. Mr. Henry adds at c. 38:51, "Because the phrase 'public use' is in the easement -- what exactly is that -- that is the whole gist of what we are trying to do here." While the ordinary meaning of "public use" is far from mysterious, the Publicized Proposed Resolution does nothing to state exactly what "public use" is, and leaves it to be understood by its plain ordinary meaning.

245. At the meeting, at approximately 37:25, the Town Attorney confirmed a requested clarification from Mr. Green (c. 37:00) that the "change in language is to address the concerns of the citizens or property owners who have objected to the easement."

246. The Town Attorney confirmed (c. 37:25), "Yeah, and I think it also provides clarification for all the folks who have signed easements out there as well." There is nothing in the Publicized Proposed Resolution which does so, nor does the later harmful revision help the matter in any way.

247. The Town Attorney at c. 37:55, added, "The homeowner's property is just subject to the use and for renourishment purposes only."

248. It is of course unclear whether the Town Attorney is representing what the document then before the Council -- the Proposed Publicized Resolution -- says, or what he expects the document to say in the future.

249. In fact, the document then before Council contained no explicit limitation of public use to "renourishment purposes only," nor any narrowing of what was meant by "renourishment purposes."

250. In fact, the Town has essentially argued in the past in its opposition to summary judgment, in circular fashion, that "for the purpose of renourishment" means anything which is included in the easement the Town has sought, i.e., that anything that is in the proposed easement, is, because it is in the easement, for renourishment purposes.

251. Mr. Durant continued at c.38:04, "And it sort of just identifies what renourishment purposes are."

252. Again, the statement is less than clear on what "it" is – the document then before Council and the Existing Notice, or the nonexistent "it" -- some future altered version of one of these documents.

253. The document then before Council contained no identification of what "renourishment purposes" are.

254. Mr. Durant continued at 38:19, "So, to the extent that anybody uses the easement, it is going to be subject to what the use is as defined by the condemnation notice."

255. Again, this begs the question – never considered by Council – of what "the use is as defined by the condemnation notice." The term "public use" is not defined or limited at all, and was not defined or limited later.

256. Council and the Town Attorney exhibited, at best, confusion and lack of understanding of even the simplest aspects easements, condemnation, and what constitutes property in America.

257. They also exhibited an inability or refusal to read the language in the documents they were promulgating and blithely indulged in a shell game with present tense and future tense which concealed what they were not doing and what they were doing. They made no discernment between what document or verbiage existed and what document or verbiage did not exist at the time of the meeting.

258. For example, they clarified and emphasized in completely illusory and meaningless fashion no less than three times that the easement they were condemning was distinguished as being a less onerous subspecies of thing they called a "use easement." (Durant, c. 34:05 (It is a "use easement"); Durant, c. 37:45 ("There have been incorrect statements out there ... this is a use easement"); Henry, 38:35 (It is "limited to very specific uses, thus it is a 'use easement'").

259. All easements are for the purpose of use; all easements are interests in property; and all condemnations are takings.

260. An easement is a nonpossessory right to use.

261. There is no separate species of easement known as a "use easement."

262. By way of further example of the fundamental "misunderstanding" of Council and its counsel of the nature of property and the principles, objects and constraints of the process they were indulging in, they no less than twice emphasized self-assuredly that condemnation of the easements was "not a taking." (Henry, c. 38:07; Henry, c. 38:35). Mr. Henry at c.38:51 described this as one of two "key points" they were "making" with whatever present or future resolution he was referring to.

263. The act of condemning is, by definition, the act of taking. The Town commenced a condemnation action.

264. Easements and other property may not be taken without just compensation.

265. Paying just compensation when taking by condemnation is not prohibited by the State and federal constitutions.

266. Paying for property involuntarily taken through condemnation does not make it not a taking. Taking and paying for an easement, as opposed to taking and paying for a fee simple interest in real property, also does not make the taking of the easement not a taking.

267. All condemnations are takings.

268. The "takings clause" of U.S. Constitution provides that "nor shall private property be taken for public use, without just compensation. The "takings clause" of the South Carolina Constitution provides, "private property shall not be taken for private use without the

consent of the owner, nor for public use without just compensation being first made for the property.”

269. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also does not understand any of the significance of what it has embarked on doing to its property owners all up and down the beach.

270. It is apparent that the Town does not and cannot understand these fundamental principles and therefore also cannot be trusted to read and understand the “definitions” proposed to be added to the document and determine whether what is written accomplishes the Council’s stated purpose, or any purpose, or some other purpose.

271. At the October 12, 2020 meeting, the Council never once discussed any of the objecting three property owner’s concerns with the terms.

For the reasons above, and for the reasons stated in Plaintiff’s preceding brief, the Town’s Rule 12(c) motion must be denied. Accordingly, the Town’s motion to not be required to answer pending interrogatories, to not be required to present Mr. Fabbri for deposition pursuant to the notice previously served, and to not be required to respond to other discovery must be denied as well.

Respectfully submitted,

s/M. Baron Stanton

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3/31/21

Motion in Sunset* Challenge II action to reconsider, dated April 28, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
Sunset Lodge, LLC,	)	
Plaintiff,	)	
v.	)	
Town of Pawleys Island,	)	
Defendant.	)	

MOTION TO RECONSIDER
ORDER GRANTING TOWN'S MARCH 5, 2021 MOTION FOR JUDGMENT ON
THE PLEADINGS TO DISMISS AS MOOT AND RELATED MOTION FOR
PROTECTION FROM DISCOVERY

Plaintiff moves the Court to reconsider its Order entered April 22, 2021 granting the Town's March 5, 2021 motion for judgment on the pleadings and the Town's March 3, 2021 motion for protection from discovery.

Construing the pleadings in the light most favorable to Plaintiff, as this Court is required to do under the applicable standard of decision for a Rule 12(c) motion, and likewise accepting all of the allegations of the Amended Complaint and the favorable inferences therefrom as true, this action is not moot.

The grounds for this motion, respectfully submitted, are the following, as more fully explained below:

1. The Court overlooked or misapprehended the standard of decision, the facts of the case, the procedural posture of the case and the applicable substantive law in considering the pleadings, the motions, the submittals of the parties, and oral argument at the hearing April 1, 2021;
2. The Court overlooked the fact that this case is not in an appellate court, but is, rather, still in the trial court, where pleadings are liberally construed, amendment is freely granted, and the

rules require the court to grant all relief to which a party is entitled, regardless of whether prayed for in the complaint;

3. The Court overlooked that the facts of the sole pleading to be considered by the Court, the Amended Complaint, amply show that there is more than a possibility of repetition of the alleged acts, issues and controversies, and more than a prospect of multiple or repetitive litigation created by the actual and threatened acts that the suit addresses;

4. The Court overlooked that the Amended Complaint in fact demonstrates that the Town is already on its second suit repeating and persisting in the matters complained of and that, further, the declarations of the Town in public e-mails, in its briefs and at hearing demonstrate a specific intent to repeat and persist in these matters in a third suit – this is the antithesis of mootness and the antithesis of “abandonment”;

5. The Court erred in accepting the defendant’s pat assertion that the 375-paragraph Amended Complaint states a “single cause of action.”

6. The Court overlooked this error and the fact that the allegations of fact entitle Plaintiff to relief not confined to dismissing the Town’s second unsuccessful condemnation action “without prejudice.”

7. The Court overlooked the fact that the allegations of fact entitle Plaintiff to relief not confined to a mere determination that the one particular notice used to commence the Town’s second unsuccessful action is procedurally deficient.

8. To wit, the Court overlooked that the facts pled presently support declaratory relief and permanent injunctive relief beyond stopping only the present action and condemnation notice.

9. The Court overlooked that the facts pled presently support relief beyond stopping only the present action and condemnation notice, such as damages for defamation, violation of 42 U.S.C.

§1983, malicious prosecution, trespass, and other torts which may be better considered after the discovery thus far thwarted in two actions to date is obtained;

10. The Court thus overlooked that the Amended Complaint challenges condemnation on various and numerous levels of scope, regardless of which case or notice is used as a vehicle for pursuing condemnation, and that the Amended Complaint challenges condemnation both presently and prospectively;

11. The Court overlooked the fact that in the instant case, Plaintiff did not plead or request that the overall relief sought by Plaintiff be “without prejudice”;

12. The Court’s erroneous and extraordinary dismissal of Plaintiff’s action at the Town’s behest could prejudice Plaintiff with respect to statutes of limitation, including the short statute of limitations under the Tort Claims Act, in addition to subjecting Plaintiff to a repetitive, third, set of litigation expenses, a continuing cloud on Plaintiff’s title, continuation of uncorrected public misrepresentations and omissions of the Town, and suspension of personal and professional planning and scheduling with respect to the subject property.

13. The Court overlooked that dismissing a suit such as this “without prejudice” does not render the ruling innocuous, a proper exercise of discretion, or unprejudicial: even if Plaintiff does re-file the instant suit the day after a dismissal of the instant suit were final (thus demonstrating that the suit was not moot to begin with), there might be a question whether doing so stays a third condemnation suit by the Town, such that if the Town did file a third condemnation suit, Plaintiff would then have to file the same suit a fourth time in order to assure that the challenges to condemnation are resolved before any condemnation goes forward; Plaintiff cannot just keep spending money on filing fees and discovery again in a third or fourth action in an attempt, after great delay, loss of evidence and attorney time, only to get back to the same procedural stage as the instant suit.

14. The Court erred in its ruling that the case is moot;

15. The Court's ruling constitutes an extraordinary, impermissible, prejudicial and unconstitutional grant to a defendant of a request to have a case duly brought against it by a plaintiff dismissed merely upon making no more than a unilateral statement that the defendant intends to temporarily cease the acts sought to be redressed in the lawsuit.

16. Plaintiff requests that the Court rule on the issue of whether the Town's unilaterally declared "abandonment" was temporary or permanent with respect to future condemnations on the same subject matter for (i) the purposes and basis of the Court's ruling of mootness, and (ii) res judicata effect, law-of-the-case effect, or judicial estoppel effect in any future actions; the Court did not do so;

17. In granting "judgment on the pleadings," the Court erred in not ruling on what, if any, allegation or lack of allegation in the Amended Complaint caused the case to be moot and in not providing leave to amend to remove, change, or add such allegation;

18. For example, if all that was perceived to be lacking is a separate allegation and prayer that permanent injunction be granted against all or stated attributes of the Town's present or future condemnation attempts, Plaintiff should be allowed to supply that allegation and prayer, which are already in the Amended Complaint.

19. In the alternative that this Court does not change its ruling on mootness, this Court should in fairness reconsider the ruling and include a ruling consolidating the three related cases bearing the same rulings or lack of rulings on these issues so that Plaintiff will not be subjected to further inequitable repetitive expense; to do so would alleviate some protracted expense on appeal for filing fees, printing and binding of briefs, printing and binding of records on appeal, etc. for a party who has not yet even been paid fees and other expenses for the previous successful case brought by Plaintiff to challenge the previous unsuccessful condemnation case commenced by the Town; and

20. Since this Court's ruling on the Town's motion for protection from discovery was based on determining to dismiss the case, the Court should also change that ruling to deny the motion upon changing the ruling on mootness and dismissal.

Background

In November 2020, having already once before been sued by the Town on the same subject matter, Plaintiff filed the instant case. Plaintiff challenged a second attempt by the Town to condemn an easement on the oceanfront portion of Plaintiff's oceanfront property on Pawleys Island.

The ostensible and represented purpose of the easement was for permission to do "beach renourishment." Two similarly situated owners filed similar actions. (The instant case may herein be referred to as the "Challenge II case.")

On March 5, 2021, in each of three challenge cases which have similar pleadings, motions and discovery, but which have different Plaintiffs, the Town filed a motion pursuant to Rule 12(c), SCRCP for judgment on the pleadings.¹

The Town requested that the Court dismiss the instant action as moot on the grounds that the Town has pled in paragraph 8 of its March 3, 2021 Answer to the Amended Complaint that the Town had recently withdrawn its second condemnation notice which commenced the related second condemnation action.

The Town asserted that Plaintiff's action is a "single cause of action" challenging the second condemnation action, and that the Town's unilateral withdrawal, without prejudice, of only the second condemnation "notice" renders the instant case brought by Plaintiff moot.

¹ The Plaintiffs in the three cases and respective case numbers are as follows: Sunset Lodge, LLC, 2020-CP-22-00932, Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust, 2020-CP-22-00931, and M. Baron Stanton, 2020-CP-22-00930. These cases are referred to herein as the "Challenge II cases." Unless a difference is noted, the motions in the three cases were handled the same way. The order reads the same in each case.

On April 22, 2021, this Court issued an order dismissing this Challenge II case as moot, in light of the Town's unilateral and ambiguously stated "abandonment" of only the present, second, condemnation "action" challenged in this suit by Plaintiff.

Plaintiff requests that the Court take judicial notice of the fact that the fee petition in the instant case has yet to be submitted, and the January 2021 fee petition in the case challenging the first unsuccessful condemnation case brought by the Town is on April 27 still being opposed, delayed and scrutinized by the Town.

The Town also filed a March 3, 2021 motion for protection from discovery, which was based on the motion to dismiss, and was granted based on the determination that since the case is dismissed, there no longer remains any subject warranting discovery.

Standard of Review and Standard of Decision

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRCF. When considering such motion, the Court must regard all properly pleaded factual allegations of the nonmoving party as admitted, and any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

The standard is thus the same as a Rule 12(b)(6) motion made after answering. See Rule 12(b), SCRCF (requiring that a Rule 12(b)(6) motion be made before pleading), and cf. Rule 12(h)(2), SCRCF (providing that the defense ordinarily addressed in Rule 12(b)(6) is not waived by failure to assert it in a pre-answer motion and may be asserted by motion for judgment on the pleadings).

A Rule 12(c) motion by a defendant is in essence, a Rule 12(b)(6) motion made after answering, with the added assertion by a moving defendant that nothing the defendant has pled lends any help to the complaint in stating any claim on any basis, and that the court may also consider facts,

if any, formally admitted by Plaintiff's pleading in reply to a counterclaim or affirmative defense of the defendant.

Thus, no allegation the defendant affirmatively pleads to benefit itself is accepted unless the plaintiff admits it, and then only the inferences from it which are favorable to the plaintiff are indulged. Plaintiff is under no requirement to negate any allegation of the defendant in the course of the motion.

A complaint under a 12(c) motion is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Falk. See also Rule 54(c), SCRCP ("Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings"); and see Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P. et al., 385 S.C. 452 at 457, 684 S.E.2d 756 at ____ (2009)("The character of a complaint is determined by its factual allegations, not the label assigned to it").

"A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment." Lydia v. Horton, 343 S.C. 376, 540 S.E.2d 102 (Ct. App. 2000), rev'd on other grounds; Douglass ex. rel. Louthian v. Boyce, 336 S.C. 318, 323, 519 S.E.2d 802, 805 (Ct. App. 1999)(citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991)).

"Our courts have held the pleadings should be construed liberally so that substantial justice is done between the parties." Falk, 341 S.C. at 287, 533 S.E.2d at 353. "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." Id.

As in the practice under Rule 12(b)(6), if the challenged pleading does not meet the standard, the proper course is to grant the motion without prejudice, and grant the nonmoving party leave to amend the pleading to satisfy any missing requirement if the party can do so. See Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019)(discussing rationale for practice of

granting leave to amend under Rule 12(b)(6)). This leave should be provided as part of the ruling on the moving party's motion to dismiss without the nonmoving party making a motion to amend.

Skydive.

The Nature of the Case, the Issues, and the Amended Complaint Viewed
in the Light Most Favorable to the Nonmoving Party and Viewed
Without Limitation to Theories Named or Relief Requested

Because the standard of decision discussed above calls for the allegations of the 375-paragraph Amended Complaint of the nonmoving party to be accepted as true, and not be confined to the specific relief labeled or requested, the following background is necessary.

This background is recounted under the foregoing standard for the purposes of the motion. This background is concerned not only with the facts pled, but also with the issues they present and the types of relief to which they could entitle the pleader, keeping in mind how those claims and remedies would or would not be mooted by the filing of a notice of abandonment.

The instant case arises from the second suit by the Town against Plaintiff.

Previously, in June 2020, the Town commenced the first statutory condemnation action against Plaintiff:

Plaintiff had offered the Town a "beach renourishment easement" at no charge, but the Town sought an easement with terms and scope Plaintiff believed to be unreasonable.

The Town thereafter stated no easement would be necessary for its renourishment project, and completed the placement of all sand for the project.

The Town thereafter again sought an easement with terms and scope Plaintiff believed to be unreasonable. Plaintiff again declined to grant an easement with terms and scope Plaintiff believed to be unreasonable.

The Town sued to condemn.

In the first suit, the Town sought to condemn, among other things, a right of public use and access over a designated oceanfront portion of Plaintiff's oceanfront land.

The Town also sought to condemn the right to do "beach renourishment" work on the designated portion, and other rights to do things on or prohibit Plaintiff from doing things on the designated portion of Plaintiff's property. (See, e.g., Amended Complaint ¶¶45-52 (recounting provisions for limiting Plaintiff's access to Plaintiff's land and for tearing down improvements such as decks, stairs, showers, foundation elements, etc. if in easement area:)).

One boundary of the designated portion of Plaintiff's land was just a few feet away from the door of Plaintiff's oceanfront house. (See *id.*)

The offer of payment stated by the Town in the condemnation papers was for zero (\$0.00) dollars, based on a report procured by the Town from an appraiser to whom the Town did not give the written terms of the easement and whom the Town did not inform of the terms verbally.

Within 30 days of being sued, Plaintiff separately filed an approximately 169-paragraph suit against the Town pursuant to statute, to challenge on numerous stated bases, the power and ability of the Town to condemn ("the Challenge I case").² The Challenge I case, by statute, stayed all proceedings in the condemnation action until resolution of the Challenge I case. S.C. Code Ann. §28-2-470.

The Challenge I case presented a request for declaratory and injunctive relief.³ Under present statutory practice, it may not be necessary for the purposes of the instant motion, to determine in which

² The Challenge I case was filed pursuant to S.C. Code Ann. §28-2-470, which is part of the Eminent Domain Procedure Act (sometimes herein, "the Act"). Town similarly sued the two other landowners, each of whom filed a similar challenge case. Plaintiffs in the three challenge cases and respective case numbers are as follows: Sunset Lodge, LLC, 2020-CP-22-00600, Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust, 2020-CP-22-00601, and M. Baron Stanton, 2020-CP-22-00602. Unless a difference is noted, the cases were handled the same way.

³ The South Carolina Declaratory Judgment Act provides:
Courts of record may declare rights, status and other legal relations.

respects the Challenge I case requested declaratory relief, permanent injunctive relief, statutory relief, or other relief.⁴ A liberal reading of the extensive Challenge I Amended Complaint indicates that, among other things, Plaintiff challenged the power and ability of the Town to ever condemn any easement at all over Plaintiff's property for the generally stated purpose and subject matter involved.

The Challenge I Amended Complaint also indicates that, in the alternative, Plaintiff challenged the power and ability of the Town to ever include, in any easement condemned, various attributes the Town sought to include in the easement.

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S. C. Code Ann. §15-53-20.

⁴ See, e.g., Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961). In Atkinson, under the prior equity practice, a motion to dismiss the plaintiff's challenge action had been filed by the defendant on the ground that the action was not maintainable under the Declaratory Judgment Act, in that the plaintiff's remedy, if any, was for a permanent injunction. Upon the hearing of this motion, however, counsel for the parties agreed that the action simply be treated as one for permanent injunctive relief "in accordance with the usual procedure in such cases."

But see Timmons v. South Carolina Tricentennial Commission, 175 S.E.2d 805, 254 S.C. 378 (1970)(discussing, but not granting, primary remedy of permanent injunction). In Timmons, Annie Mary Timmons brought an action against the South Carolina Tricentennial Commission and against Daniel R. McLeod, as attorney general, under the Uniform Declaratory Judgment Act, but sought "a permanent injunction enjoining any proceedings to condemn her property."

And see Columbia Water Co. v. Nunamaker, 73 S.C. 550, 53 S.E. 996 (1906). Nunamaker was decided under the prior equity practice. There, the court observed:

When the right to institute condemnation proceedings is contested, the proper remedy is to bring an action in the Court of Common Pleas in order that the Court may, in the exercise of its chancery powers, determine such right. *** The [cited] cases show that such action must be regarded as independent, and not ancillary to the condemnation proceedings. If upon the final hearing of the case the Court should decide that the defendants did not have a right to institute condemnation proceedings, it would then grant a permanent injunction.

Id., 53 S.E. at 998 (citations omitted).

The Challenge I Amended Complaint also indicates that, in the alternative, Plaintiff challenged the power and ability of the Town to ever pursue any easement in any action without complying with certain requirements. These particularly described requirements included common law requirements for fair dealing and good faith deliberation in the selection of the attributes of the property interest to be condemned and for authorization of the condemnation of same, as well as requirements for compliance with specifically described statutory prerequisites.

The Challenge I Amended Complaint also indicates that, in the further alternative, Plaintiff challenged the power and ability of the Town to proceed under the particular case which was commenced, to proceed under the particular appraisal which was obtained, and to proceed under the particular condemnation notice served.

Among other things, after setting forth numerous other allegations, the Challenge I case made the following allegation and prayer: "The contemplated condemnation is completely unnecessary as a matter of law, and therefore constitutionally and equitably prohibited, and the Town of Pawley's Island's attempt to condemn an overbroad easement after the fact for an already completed and no longer proposed or prospective project should be disallowed and permanently restrained." (Challenge I Amended Complaint ¶ 158.)

The Challenge I Amended Complaint further asserted: "In the alternative that the Town asserts the condemnation is for some other, future, hypothetical project, the condemnation is still unnecessary and in bad faith in that any such putative future project is admitted by the Town to be speculative, unlikely, and by the Town's own calculations, most probably unnecessary for as much as twenty-two years." (Challenge I Amended Complaint ¶ 160.)

The Challenge I Amended Complaint also asserted:

In the alternative that an actual, bona fide, proposed additional project were to materialize, the easement sought has been sought through knowing, intentional misrepresentation, lack of honesty in fact, spite, caprice, arbitrariness, and illegality, and has also been sought under influence by legal error as to not only the nature of the easement that is sought, but also as to

the lack of basis, or legal or practical need, for the easement or its numerous overbroad attributes. The easement sought has also been sought under influence of legal error as to the consequences of Plaintiff granting it or the Town taking it. The easement is also being sought through bad faith noncompliance with procedural rules. In that these facts constitute "fraud, bad faith or abuse of discretion," the Town's contemplated condemnation action, currently stayed by this action, should be disallowed with prejudice.

(Challenge I Amended Complaint ¶ 162.)

In the Sunset and Beattie Amended Complaints, there were also allegations as to the Town making false certifications in its pleading, the condemnation notice. The Amended Complaint in those Challenge I cases asserts: "For the reasons that (1) noncompliance with exclusive mandatory procedure renders the Town's condemnation notice ultra vires and void, and (2) knowing or recklessly negligent false statements in a pleading render the pleader subject to sanctions including dismissal, the beginnings of the condemnation action represented by the Town's Condemnation Notice should be dismissed with prejudice." (Challenge I Amended Complaint ¶ 172 Sunset-600 and Beattie-601.)⁵

The Challenge I Amended Complaint also asserts the following: "Among other things, there is no need for an easement over the owner's entire lot. There is no need for public access of any kind, no need to limit owner access, no need for broad Town activities unassociated with doing and maintaining the work, no need to include owner improvements, no need to be so close to owner homes, and no reason not to clarify there is no change in owner access to ocean and beach." (Challenge I Amended Complaint ¶ 175.)

⁵ In the Stanton Challenge I Amended Complaint, there were additional allegations as to the Town attempting to change the description of the easement sought after commencing the action, and the Amended Complaint asserts: "For the reasons that (1) noncompliance with exclusive mandatory procedure renders the Town's condemnation notice ultra vires and void, and (2) knowing or recklessly negligent false statements in a pleading render the pleader subject to sanctions including dismissal, and (3) the Town stated in writing that the condemnation notice was withdrawn, the beginnings of the condemnation action represented by the Town's Condemnation Notice should be dismissed with prejudice. (Challenge I Amended Complaint ¶ 172 in Stanton-602.)

In all three Challenge I Amended Complaints, there are allegations that the Town Administrator filed an easement grant for the Beattie property which was unauthorized by the Beattie. (See, e.g., Sunset Ch.I Cmplt. ¶66.)

The Challenge I suit also asserts: "In the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project, Plaintiff may need the already completed actions of the Town to be redressed by damages for trespass or other monetary remedy, for which cause of action Plaintiff would and does demand a trial by jury, despite the nonjury portions of this action challenging the Town's right to condemn." (Challenge I Amended Complaint ¶ 179.)

The Challenge I Amended Complaint further states: "Plaintiff prays that the Condemnation Notice be quashed and that the Town be forever barred and enjoined from filing it or proceeding with it, for such other and further relief as is just and proper, and for all litigation costs." (Challenge I Amended Complaint, prayer for relief following ¶ 179 (emphasis added).)

The Town filed a motion pursuant to Rule 12(b)(6) to dismiss the Challenge I case for failure to allege facts sufficient to state a cause of action and this Court denied the motion on September 11, 2020.

While the first condemnation action by the Town was stayed and Plaintiff's August 2020 motion for summary judgment in the Challenge I case was pending, the Town, in October 2020, commenced a second statutory condemnation action against Plaintiff.

In this second suit, the Town again sought to condemn a right of public use and access over a designated oceanfront portion of Plaintiff's oceanfront land, as well as the right to do renourishment work on the designated portion, and other rights to do things on or prohibit Plaintiff from doing things

on the designated portion.⁶ In this second suit, again, one boundary of the designated portion of Plaintiff's land was just a few feet away from the door of Plaintiff's oceanfront house.⁷

⁶ For example, the Amended Complaint in case 2020-CP-22-00932 alleges:

354. The New Notice is similar to the Existing Notice, but among other possible differences, the New Notice attempts, without leave of court, to alter the Existing Notice by adding the aforescribed 9-line footnote in the description of the property sought to be acquired.

355. The New Notice is falsely dated June 9, 2020, as if it, including the map and proposed Beach Renourishment Easement forming a part of it, existed on that date. This leaves the Town actors poised to next represent to the public, the Town Council or a court, if need be, that the New Notice (including its constituent parts) is what was served in June 2020 instead of the Existing Notice.

356. The New Notice is dated the same as the Existing Notice, but upon information and belief, did not exist on that date and was not prepared until after the October 12, 2020 Town Council meeting.

357. The New Notice is fraudulent in the above respect, and is an attempt, like other aforescribed activities, to create a false public record and a morass of official-looking paperwork to obscure the delicts and derelictions of the various Town actors involved; the New Notice is part of the continuing series of bungles at the landowner's expense, frauds, and coverups alleged in the Existing Action and now this one.

⁷ There appears to be no dispute that the Town intended to commence the second suit and did so. Under the peculiar statutory procedure, the first and second suits by the Town began with service of papers without yet filing the papers with the court, and therefore the captions simply reflect the same parties in an identical case caption, without any Common Pleas case number on either caption.

The Town's March 31, 2021 brief only states that the second suit by the Town against Plaintiff contained "revisions reflecting certain objections asserted in the first set of challenge actions."

The Town does not state what revisions were made or in what way the suit and any revisions in it were responsive to objections stated in the Challenge I case. The Challenge II Amended Complaint does address the similarities and differences in detail and at length.

No other explanation is offered for why the Town commenced a second suit against Plaintiff when one was already pending and stayed.

In the Amended Complaint of the instant Challenge II case, the allegations of which, as discussed above, must be taken as true for the purposes of the Town's motion, Plaintiff asserts that the second suit was not an amendment made within the first suit because the "New Notice" was created without any leave to amend, in a suit which was stayed. Plaintiff states and alleges at length and in detail that the second suit by the Town was without any lift of the statutory stay, was without proper authorization from Town Council, and was without any prior resolution of the already pending action. (See Ch.II Am. Cmplt. ¶¶ 224-374.)

In the Challenge II Amended Complaint, which must be taken as true, Plaintiff asserts that the additional action was without consultation with Plaintiff, without notice to Plaintiff, without consent of Plaintiff, and without prior or subsequent explanation of purpose to Plaintiff. (See *id.*)

Plaintiff further alleges in the Challenge II Amended Complaint that virtually no objections of the plaintiffs in the first set of challenge actions were cured or corrected in the Town's second suit, and that, rather, the Town attempted to pursue condemnation of substantially similar subject matter, with

In response to the second suit by the Town, Plaintiff, again, within 30 days of being served by the Town, separately filed suit against the Town pursuant to statute, to challenge the power and ability of the Town to condemn. Viz., Plaintiff filed the instant Challenge II case, which the Town contends is now moot.

In the 375-paragraph Amended Complaint in this Challenge II case, Plaintiff incorporated by reference, the entire Amended Complaint in the Challenge I case. (Challenge II Amended Complaint ¶ 182.)⁸

the same defective appraisal, and the same lack of good faith deliberation on applicable factors. (See id.) Plaintiff alleges that the condemnation was also generally made more onerous and damaging to the landowner by addition of a disparaging and legally incorrect “argument” inserted by footnote into the granting/demising language and that additional false statements and events occurred which were additionally fatal to the second condemnation attempt. (See id.)

⁸ Plaintiff offered in Plaintiff’s brief, a partial synopsis of the 375-paragraph Challenge II Amended Complaint’s allegations, referring to the Amended Complaint as an account “of numerous chapters of the Town’s acts, misrepresentations, evasions and persistent omissions over an extended period of time.” The synopsis is stated here for summary purposes in lieu of the longer allegations themselves, which must stand on their own for purposes of the motion. The allegations “have included the following, among other things”:

- Misrepresentation of the nature and scope of the “renourishment” easement sought in 2019 when first soliciting it and seeking to pay nothing for it.
- Doing so by saying the “renourishment” easement was only for sand placement, sand fence and planting, when the legal document placed the easement two feet from the door of the house, granted perpetual public access within the easement area, granted a perpetual right to restrict the owner’s access to that oceanfront part of the owner’s property, granted a perpetual right to tear down and prevent replacement of the owner’s improvements within the area, and perpetually subjected the owner’s right to build structures for access to the ocean to approval of an unidentified person with no governing standards.
- Misrepresentation publicly of the landowners’ good faith offer of an easement of reasonable scope in response to those solicitations from the Town.
- Doing so by omitting all reference to the landowner’s offer, omitting all disclosure of the issues, and falsely perpetuating the impression and public representation that the landowner had refused any easement whatsoever.
- Misrepresentation of the nature and scope of the actually contemplated easement to the appraiser hired by the Town when seeking approval of federal participation in part of the project.
- Doing so by asking the appraiser to determine potential land acquisition costs for 109 properties as a condition of obtaining federal approval of federal assistance on that part of the overall proposed renourishment project, but omitting the unreasonable terms to which Plaintiff has objected.

- Filing an unauthorized easement grant from one property owner, Mr. Beattie.
- Active involvement in creating a poorly drafted and unreasonable proposed granting document proposed to become a permanent part of Plaintiff's chain of title.
- Abandonment, altogether, of the request for the easement in 2019.
- Concurrently with such abandonment, publicly announcing intention to perform the work without an easement.
- Concurrently with such abandonment, publicly announcing the scientific likelihood of the lack of necessity of similar work for another 22 years or more.
- Subsequent to such abandonment of the request for the easement, completion of the work for which the easement had been sought.
- Subsequent to abandonment of the request for the easement and completion of such work, disclosing in 2020 a determination to pursue a "program" for only potential work.
- Doing so knowing that the potential work was to be years in the future, with no certainty of future need or occurrence, no assurance of Congressional funding, and no guarantee of future assistance whatsoever, and that the need for the potential work was contrary to the Town's own prior data and estimates the Town obtained and publicized in order to justify the doing of the work, the scope of the work, and the spending on the work, which was now already done.
- Subsequent to abandonment of the request for the easement and completion of the work without such easement, then requesting the easement again, but now only for the mere purpose of joining the uncertain "program" for which the need was unlikely, for which the possible need was remote in time, and under which the receipt of financial help and the actual doing of anything was speculative.
- Repeating prior misrepresentations in making a new request for the easement. I.e., that the "renourishment" easement was for the limited purpose of sand placement, sand fence, and planting.
- Continued publicly broadcast misrepresentation in the May 2020 Council meeting of both (i) the nature and scope of the easement now sought as only for putting sand on the beach and (ii) the landowners' responses to the prior solicitations as being a categorical refusal rather than a good faith offer of a reasonable easement.
- Consequently issuing a resolution insufficient for and invalid for authorizing the condemnation which the Town would later pursue.
- Misrepresentation of the nature and scope of the easement to the appraiser hired to determine the just compensation which should be paid to the landowner if the easements were to be purchased from the landowner or condemned and taken by eminent domain.
- Doing so by asking the appraiser to determine the just compensation which should be paid to the landowner, but omitting from the easement he was asked to appraise, the unreasonable terms to which Plaintiff has objected.
- Commencing a condemnation action seeking an easement containing the unreasonable terms to which Plaintiff has objected, but doing so in a proceeding integrally based on the falsely procured appraisal of an easement of materially more reasonable scope, while withholding the appraisal in violation of the statutory procedure, and while making a false certification in the condemnation papers that the appraisal had been previously provided.
- In seeking condemnation of an easement the entire request for which had been previously abandoned, seeking also to include features and scope previously agreed with one or more landowners not to be necessary features or scope.
- Misrepresenting publicly the nature of, progress of, and positions taken in the litigation.

In the Challenge II case, Plaintiff stated: "Plaintiff prays that both the "Existing" and the "New" Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them, for such other and further relief as is just and proper, and for all litigation costs." (Ch.II Am.Cmplt., prayer (emphasis added).)

In the instant Challenge II case, Plaintiff did not plead or request that the overall relief sought by Plaintiff be "without prejudice."

Nor did Plaintiff plead or request that issues adjudicated within the action in order to provide the declaratory or injunctive relief requested not be given permanent preclusive effect. Nor did Plaintiff characterize Plaintiff's Amended Complaint as a "single cause of action."

-
- Misrepresenting to the Court in moving to dismiss, for a bond, and for special expedited treatment, the likelihood that a storm could wash away all 1.1. million cubic yards of sand in a single event and misrepresenting to the Court that under the "program," if such an event occurred, the Town would be eligible to have the Corps of Engineers put all 1.1. million cubic yards back, including portions on which there would never be federal involvement.
 - Presenting to the Court a resolution created by the Town which was known at the time of creation to be factually false, in which the Town Council falsely states that the materials contained in the resolution were presented to Plaintiff before the October 12, 2021 time of the resolution, impliedly in June 2020.
 - Doing so in order to dissuade the Court from granting summary judgment by attaching the false resolution as Exhibit B to the Town's November 24, 2020 brief opposing Plaintiff's motion for summary judgment in the initial action.
 - Doing so again on March 17, 2021 by attaching the false resolution to the Town's memorandum in support of the Town's motion to reconsider the granting of summary judgment.
 - Approximately two months after Plaintiff's summary judgment motion was filed in the initial challenge actions, commencing a separate condemnation action based on knowingly falsely stated facts in the resolutions purportedly authorizing same.
 - Doing so using condemnation notices created in October but falsely dated June 9, 2020.
 - Doing so using condemnation notices in which the occurrence of other activities and events is recited falsely if the statements are taken to speak as of June 9, 2020.
 - Not adequately answering the factual allegations of the original complaint in the instant challenge action.
 - Abandoning the underlying condemnation notice on February 10, 2021.
 - Not adequately answering the January 13, 2021 amended complaint in the instant challenge action.
 - Seeking dismissal before discovery by Plaintiff on potential additional relief for Plaintiff has progressed, including the deposition of the Town Administrator noticed on January 15, 2021 for February 19 and the answering of January 10, 2021 interrogatories served by Plaintiff.

Subsequently to commencing the instant Challenge II case, Plaintiff began to pursue discovery from the Town in the Challenge II case, including the deposition of the Town Administrator.

On January 20, 2021, the Court granted Plaintiff's motion for summary judgment against the Town in the Challenge I case. The Town subsequently moved for reconsideration. After summary judgment was granted, the Town, without prior consultation, moved in the Challenge I cases of Beattie (ending in 601) and Sunset (ending in 600) to disqualify Plaintiff's counsel from representing them in the Challenge I cases. After those plaintiffs responded extensively in writing to the Town's motion to disqualify, and asserted the motion was completely without merit, the Town withdrew the motion without hearing.

In January 2021, Plaintiff petitioned for award of litigation expenses in the Challenge I case.⁹ The Town opposed the fee petition and requested at least a four-month period in which to conduct discovery and mount opposition to the award of attorney's fees in a proposed full-blown evidentiary hearing. As of April 27, 2021, proceedings relating to fees are still pending.

On February 10, despite the statutory stay in the second condemnation action, without leave of court or consent of Plaintiff, the Town sought to withdraw its condemnation notice which was used to commence the second condemnation action against Plaintiff.

The Town did so by filing, in the instant Challenge II case challenging the second condemnation suit, a "Notice of Abandonment." The Notice states that the condemnation action is "hereby abandoned and withdrawn."

⁹ Only the plaintiffs in the Sunset and Beattie Challenge I cases sought attorney's fees, and each asserted that the fee petition was based approximately if not exactly on one-third of the fees and expenses incurred in all three Challenge I cases and the early stages of the three Challenge II cases. The plaintiff in the Stanton Challenge I case did not seek the other one-third of the fees.

The Notice states that the action is “abandoned,” but does not state that the dismissal is with prejudice, or that the Town relinquishes any right to bring another condemnation action with regard to Plaintiff’s property.

On March 3, 2021, the Town filed an answer to the Amended Complaint in the instant Challenge II case, and, after denying the majority of the 375 paragraphs of the Amended Complaint, alleged at paragraph 8 that the “single cause of action” alleged by Plaintiff was rendered moot by the Town’s filing of the February 10 Notice of Abandonment.

In its Answer, the Town again did not allege or stipulate that the Notice of Abandonment was intended to end the condemnation action with prejudice to commencing another condemnation action on the same subject matter.

On March 5, 2021, the Town filed its motion for judgment on the pleadings pursuant to Rule 12(c), SCRCP, asserting that this case is now moot. The Town requested that the instant case be dismissed “without prejudice.” Just beforehand, on March 3, 2021, the Town filed a motion for protection from pending discovery, including the still un-taken deposition of the Town Administrator, pending interrogatories, and any future discovery.

This Court granted the Town’s motions on April 22, 2021.

Interpretation, Validity and Effect of the
Filed Notice of Abandonment Alleged by
the Town in its Answer to the Amended Complaint

The Town's unilaterally "abandoning" its suit while the suit is stayed for a challenge to be resolved¹⁰ is as ineffectual as trying to "take a nonsuit" in a conventional civil action when a nonsuit is prohibited.¹¹

Additionally trying to "abandon" the suit without leave of court or consent of the opposing party, and asserting separately that the "abandonment" is without prejudice to promptly pursuing a third suit on the same subject matter, is as ineffectual as to trying to declare one's own nonsuit to be "without prejudice" when neither the court nor the opposing party agrees that the nonsuit is without prejudice.

¹⁰ S.C. Code Ann. §28-2-470 provides: "All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise. No issues involving the condemnor's right to condemn may be heard in the trial upon the issue of just compensation." Id. (emphasis added).

If a subsequent suit were brought by a condemnor after the condemnor abandoned the prior suit during a challenge action without consent, the landowner would be required to file a challenge action within 30 days of service of the new condemnation suit in order to resolve the question whether the prior "abandonment" during a stay was valid, and whether the abandonment was a permanent relinquishment of the right to pursue the landowner's property, thus barring further suit by the would-be condemnor.

¹¹ Rule 41(a), SCRCP provides for a plaintiff's unilateral dismissal, or nonsuit, by notice if filed before the defendant answers or files a motion for summary judgment. If the defendant has answered or filed such a dispositive motion, voluntary dismissal is still available, but not by unilateral dismissal. Nonsuit is then available by stipulation signed by all parties.

A crucial feature of Rule 41(a) is the "two dismissal rule": the first voluntary dismissal is without prejudice, that is, it is not an adjudication on the merits unless otherwise stated in the dismissal order. The second dismissal is with prejudice, that is, when a voluntary dismissal is filed "by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim," the dismissal is with prejudice.

For the further protection of a successively sued defendant, Rule 41(c), SCRCP additionally provides: "If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order."

Putting aside for the moment, the question of whether a unilateral dismissal of any type was allowed while the matter was statutorily stayed and being challenged, the finality and preclusive effect of the stated “abandonment” is a question highly relevant to legal or practical mootness.

“Abandon” has been defined as “to give up with the intent of never again claiming a right or interest in.” Merriam-Webster’s Collegiate Dictionary (11th ed., Springfield, Mass. 2003).

“Abandonment” with regard to a use of real property is held legally to mean the owner’s intentional abandonment of the use in the sense of subjective intent to forever relinquish it. Conway v. City of Greenville, 254 S.C. 96 at 101, 173 S.E.2d 648 at 650 (1970)(stating, with respect to a prior use rendered nonconforming by a new zoning ordinance, that abandonment is discontinuance of a thing accompanied by intent to relinquish the right to do the thing that is discontinued); see also Maguire v. City of Charleston, 271 S.C. 451, 247 S.E.2d 817 (1978) (Rhodes, Justice, dissenting)(discussing cases in which “discontinuance” required intent to relinquish and meant the same as “abandonment”).

With respect to an easement, abandonment of it requires the intention to abandon and the external act by which the intention is carried into effect. Witt v. Poole, 182 S.C. 110, 188 S.E. 496 (1936). An intention to abandon property or a property right need not appear by express declaration, although it may be manifested thereby. Witt.¹²

The Town has now again expressly declared “abandonment.” If the “abandonment” is final, namely with prejudice to further attempts to condemn, it would clearly present, if not a legal, then at least a practical, question of mootness.

Historically, instances in which a condemnor does “abandon,” or is permitted to “abandon,” a condemnation action generally are instances of permanent relinquishment. In these instances, as a matter of fact, the condemnor has determined to abandon not only the action, but any claim to the

¹² The Challenge II Amended Complaint indicates that the Town had once before abandoned the right to pursue an easement. See the Amended Complaint ¶¶35-48 re 2019 cessation of requests for easement, declaration of no need for easement, and 2020 completion of work without easement.

property. I.e., the condemnor has determined that the condemnation will not be necessary at all, or for some other reason will not be pursued again.

These instances arise from time to time when, for instance, the underlying project for which the condemnation is pursued is changed or terminated so as to eliminate the need for the property, or when it becomes clear that the compensation which will be ordered is higher than it is feasible to pay for purposes of the project.

These instances historically receive attention when there is concern with, or dispute over, whether the condemnor should be able to thus permanently back out of, or “abandon” the condemnation. These issues of “abandonment” arise when the landowner wishes to enforce an award of compensation already made, or where the landowner or the landowner’s property has otherwise suffered or changed position in some respect because of the long pendency of the threat of condemnation before the condemnor finally decides to “abandon” the condemnation.

There are few instances involving “abandonment” as a temporary expedient exercised by the condemnor before promptly resuming substantially similar activities. See, e.g., Miller v. City of Beaver Falls, 368 Pa. 189, 82 A.2d 34 (1951)(considering “injustice” to property owners in permitting a municipal body to tie up an owner’s property for three years, after which the city can change its mind and abandon or refuse to take the property at the end of three years); In re Certain Land, 364 Pa. 71, 70 A.2d 847 (1950)(holding that in condemnation of land for playgrounds, the date of taking was the date the ordinance was passed which designated the property for acquisition, and holding the statute not unconstitutional, but holding that the city could not abandon the condemnation of the subject parcel without the consent of the owner); Town of Trumbull v. Ehram, 148 Conn.47 at ___, 166 A.2d 844 at 847 (1961)(addressing landowner objection to permanent withdrawal of condemnation, noting that if for some reason, it is desired “to give up the undertaking,” the proceedings may be discontinued before the payment of the judgment); and Hamer v. State Highway Comm’n, 304 S.W.2d 869 (Mo.

1957)(involving claim that highway department's decision to abandon any plan to place highway on plaintiff's property after plaintiff made plans in cooperation with the intended condemnation constituted a taking without just compensation).

The Code is silent on whether a condemnor is authorized to define "abandonment" for itself. There is no express authorization for the condemnor to declare that a "temporary abandonment" is being made, in which the "abandonment" is an expedient or a tactical tool, such as for the purpose of ending discovery, moving out the valuation date for a subsequent condemnation attempt, changing counsel, etc., and to subsequently re-commence an action on substantially the same subject matter with a putatively "cleaner slate."

If such a procedure were permitted, it would be comparable to allowing a government plaintiff in a conventional civil action to take a voluntary nonsuit without prejudice and without leave of court after the defendant answered and counterclaimed, over and over, ad infinitum.

As noted above, this is not permitted in a Civil Action governed by the Rules of Civil Procedure. "In the event of conflict between [the Eminent Domain Procedure A]ct and the South Carolina Rules of Civil Procedure, th[e] act shall prevail." S.C. Code Ann. §28-2-120. However, it is unclear whether, here, the Legislature intended a conflict with the Rules of Civil Procedure, or a parallel scheme with the same guiding principles averse to successive multiple litigation.

Assuming the Rules of Civil Procedure do not apply by letter, it is difficult to conclude that the Legislature intended "abandon" to mean "not abandon" or "temporarily abandon," and to allow a limitless ability of the government condemnor to dismiss and re-commence a condemnation on the same subject matter.

There is also no delineation in the Act of "the manner of abandonment authorized by this chapter," as referenced in §28-2-510(c). I.e., there is no provision which states that the Town's "abandonment" is affirmatively authorized; there are only the requirement in Section 28-2-470 of

landowner consent to any proceedings during a pending challenge action, and the prohibition in §28-2-230(B) against abandonment without owner consent after taking possession and making material alterations. Section 28-2-470 authorizes actions taken during the automatic stay only if done with landowner consent: “All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise.” Id.

The Chapter 2 of Title 28 of the Code thus actually contains no express authorization for a condemnor to unilaterally “abandon” a condemnation once a challenge action has been commenced.

At that point, all proceedings have been stayed pending resolution of the challenge. The condemnor is clearly authorized to abandon and do other things after obtaining landowner consent, or to stipulate to the correctness of the challenge, or to have the court determine the merits of the challenge in the pending challenge action.

These questions may not need to be answered completely now, where the question is only whether these or other questions still present a live controversy and where the case involves an actual assertion of rights.

The Town’s argument that it has abandoned condemnation and that the challenge action is “entirely moot” would at first imply that the Town’s voluntary dismissal of its condemnation action is with prejudice and puts an end to almost all controversy. However, the Town does not plead this in its Answer.

Plaintiff stated in Plaintiff’s March 30 pre-hearing brief at 5, that “as late as March 18, 2021, the mayor of the Town sent out a mass public e-mail announcing a determination to continue to ‘pursue’ the easements.” Plaintiff further stated, “In doing so, he continued in the same fashion in which the Town has previously operated, to not disclose to other owners, the actual issues in the two suits so far against each of three landowners.” The latter assertion by Plaintiff relates to the issues of misrepresentation and defamation which appear in the allegations of the Challenge II amended

Complaint, and are stated to need timely correction. (See, e.g., id., Preliminary Statement, and ¶¶78, 87 and 126.)

The Town's oral argument at the April 1 hearing did not dispute or directly address the Plaintiff's account of the mayor's mass e-mail. The Town's counsel's statements that the Town "believes the issues are entirely moot at the present time," and that "the Town is still very interested in acquiring the easements" indicate the Town clearly intends other than to stop pursuing condemnation of the same subject matter.

The Town's statements at the hearing about starting over "with a clean slate" and giving the landowners a third "opportunity to present challenges" certainly do not communicate permanent relinquishment of the pursuit of the property.

For this reason, and based on the well-defined and live dispute of the parties reflected on the face of the Challenge II Amended Complaint and its exhibits, the availability of relief, and the realistic threat of future litigation, this Court should have determined this case not to be moot. It is also clear that a fee petition may be forthcoming from Plaintiff; there is more to do in the case, and the Town's sudden urgency to end the case and end discovery does nothing but trumpet a lack of mootness.

The Town acknowledged to the Court the probability of a third action against Plaintiff on substantially the same subject, qualifying the probability by stating that the matter might be averted if the Town "could negotiate an agreement" with the owners. This of course, would be the situation in many a case. When the Town introduced this subject at oral argument, Plaintiff responded to correct any implication that control of the matter might be in Plaintiff's hands. Plaintiff, clarifying an intention of both parties to tread lightly on such matters, clarified to the Court that such negotiation is something on which the Town has put forth no proposal since before January 2021.

The Town's unilateral "temporary abandonment" for the purpose of arguing that that no present cause of action is stated in law or equity, and dismissing "without prejudice," the case that Plaintiff

brought — all in order to grant a “clean slate” to the Town and provide negotiating leverage — is ineffectual and unsupported in law.

To date, the Town still has not adequately answered hundreds of allegations of the Amended Complaint.¹³ To grant the Town’s motion would, among other things, continue to keep issues obscure, require dredging up “Challenge I,” “Challenge II,” and “Challenge III” pleadings in a Challenge III or Challenge IV case, require Plaintiff, as a private citizen, to bear the expense, a third or fourth time, of commencing discovery that was not reached in the Challenge I and Challenge II cases and that might be similarly delayed in a Challenge III or Challenge IV case, and allow memories and other evidence to be lost during the delay. During the present litigation, the Town has already changed counsel, and the Town Clerk resigned, and that over time, people could not only forget, but die, resign, become disabled, move, be discharged, not run for reelection, fail to be reelected, etc.

In State v. Flamme, 217 Ind. 149, 26 N.E.2d 917 (1940), after the condemnation proceeding had progressed to the determination of an award and a judgment, the condemnor decided not to proceed with payment under the schedule in the statute for finalizing the condemnation and stated “that it has waived and abandoned, and does waive and abandon, any and all right, title, and interest it may have in said property.” This was yet another case of final, unequivocal, abandonment.

However, the landowner objected that the condemnor should not be allowed to “abandon” the condemnation. The court examined extensively, the authorities of various jurisdictions that a condemnor could “abandon” a condemnation at any time before judgment, but all instances examined were those in which the condemnor truly relinquished pursuit of the property and offered no intention to continue to pursue it.

¹³ Denials shall fairly meet the substance of the averments denied. Rule 8(b), SCRCP. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Id.

The court reasoned that under the circumstances and the statutory scheme, the condemnor, in that case, could also abandon pursuit of the property even after judgment. The landowner “significantly pointed out that if the state, or any other agency possessing the power of eminent domain, may abandon a proceeding of this character after the damages have been fixed and determined by a court of competent jurisdiction and reduced to a final judgment, there is nothing in the statute to prevent the condemnor from claiming what would amount to a succession of new trials as of right until an acceptable award is obtained, or the property owner is exhausted by the uncertainty, annoyance, and expense of litigation and deprived of his property without just compensation.” Flamme, 26 N.E.2d 917 at 919.

The court, however, upheld the ability of the condemnor to permanently relinquish any pursuit the property. Notably, addressing the landowner’s “significant” point, the court observed:

It does not appear to be important that the state may attempt to abuse its privileges by resorting to a succession of condemnation proceedings with a view of acquiring the appellees' property at its own price, or harassing them into involuntary submission. There is ample authority for the intervention of courts of equity to prevent such abuses. Northern Pacific R. Co. v. Georgetown, 1908, 50 Wash. 580, 97 P. 659; Central of Georgia R. Co. v. Thomas, 1928, 167 Ga. 110, 144 S.E. 739; East Bay Municipal Utility Dist. v. Kieffer, 1929, 99 Cal.App. 240, 278 P. 476, 279 P. 178.

Flamme, 26 N.E.2d 917 at 919 (emphasis added).

The first question, then, remains, not whether the South Carolina Eminent Domain Procedure Act contemplates the ability of a condemnor to “abandon,” but what the South Carolina Eminent Domain Procedure Act contemplates “abandonment” to mean.

If “abandonment” of the notice is a permanent waiver of pursuit of the property and has a res judicata effect, the case cannot be considered moot until this is declared. Plaintiff fairly has a right to have that determined and declared in this second action before being faced with third in which the proposition is denied by the Town.

If, on the other hand, “abandonment” is not a final relinquishment of the right to pursue the plaintiff’s property, then before the case can be considered moot, the question still remains whether

Plaintiff has stated a cause of action in equity or otherwise, for any relief preventing, affecting or redressing such a pursuit, or for any other relief. Plaintiff has done so.

Prospective or Present Relief Supported by
the Amended Complaint Which Would Not Be Concluded in the
Case of a "Nonfinal" Temporary "Abandonment" by the Town

In the instance of a "nonfinal" "abandonment" by the Town, one question affecting mootness is whether Plaintiff still seeks prospective or declaratory relief, notwithstanding the Town's effectual dismissal of its claim without prejudice with reservation of right to start over a third time.

The case is not moot, for example, if Plaintiff still seeks to permanently enjoin the Town from pursuing the property, to declare certain attributes of the easement unnecessary under any future condemnation, to declare what steps would be required in any future condemnation for pursuit of a successful condemnation, or to permanently enjoin multiplicity of litigation by the Town, i.e., enjoin the Town from serving or filing yet a third suit on the same subject matter.¹⁴ Plaintiff seeks all these things, for which there are supporting allegations.

¹⁴ Courts of equity have long had the power to permanently enjoin condemnation, as well as the power to permanently enjoin multiple or successive litigation.

The Town appears to contend that its abandonment is not permanent with respect to condemnation of Plaintiff's property, but only as to the particular notice which was used to commence the second lawsuit against Plaintiff.

Permanent injunction is the conventional remedy, rather than an unusual one, sought in challenge actions. See, e.g., Atkinson v. Carolina Power & Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)(observing agreement of parties that the action simply be treated as one for permanent injunctive relief "in accordance with the usual procedure in such cases"); Timmons v. South Carolina Tricentennial Commission, 175 S.E.2d 805, 254 S.C. 378 (1970)(discussing, but not granting, primary remedy of permanent injunction enjoining any proceedings to condemn landowner's property); and Columbia Water Co. v. Nunemaker, 73 S.C. 550, 53 S.E. 996 (1906)(observing that when the right to institute condemnation proceedings is contested, the proper remedy is to ask the Court to decide that the defendants did not have a right to institute condemnation proceedings, and to then grant a permanent injunction). See also S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993)(barring re-institution of condemnation permanently, because the condemnor had previously represented that there would be no need for an easement on the landowner's property).

Permanent injunction arises in many instances from the power of equity to prevent or minimize multiple or successive lawsuits.

Putting aside the question of permanent injunction and declaratory relief, which already render the case not moot, there also remains a question of whether Plaintiff, on the facts alleged, may pursue statutory or other at-law relief which is not prospective in nature, such as special costs including attorney's fees, or damages. If so, the case is not moot for that reason as well.

Both parties have already acknowledged the imminency of a request, before the action is completed, for litigation expenses including attorney's fees.

It is obvious that the rule of *res judicata*, available in law cases, cannot apply and provide any protection to a party in a subsequent lawsuit unless the prior lawsuit is determined on the merits and the issues are actually or constructively decided. See Robert Von Moschzisker, *Res Judicata*, 38 Yale Law Journal 299 (1929).

The rule of *res judicata* is said not to have been definitely formulated until 1776, but, in essence, it is of much earlier origin and application. Primarily, the rule is one of public policy, and, secondarily, of private benefit to individual litigants. The primary principle early found expression in the maxim, "Interest reipublicae ut sit finis litium," and the secondary or subordinate one in the form "Nemo debet bis vexari pro una et eadem causa." The whole doctrine bears a close resemblance to the exceptio rei judicatae of the Roman law. *Id.* at 299.

"Equity follows the law," that is, "Aequitas sequitur legem." Equity has determined that one ground supporting intervention providing the anticipatory relief of injunction is to forestall a multiplicity of suits. See Douglas Laycock, *The Death of the Irreparable Injury Rule*, 103 Harv. L. Rev. 687, 714 (1990) (citing decisions holding that "[a] legal remedy is inadequate if it would require a 'multiplicity of suits'"). And see *Cent. of Ga. Ry. Co v. Thomas*, 144 S.E. 739, 167 Ga. 110 (1928) (affirming injunction against railway company from proceeding with second condemnation after abandoning first: "We are of the opinion that this is a case where a court of equity should have interfered to protect the landowner in her rights"). Estoppel in pais has been employed by equity to serve the same purpose in a proper case. See *S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.* (barring re-institution of condemnation permanently).

South Carolina courts have long recognized the power of equity to remedy prospective disputes over interests in land and prevent future or successive litigation, particularly when the aggrieved party does not have a present vehicle to resolve the issues finally by one action in law for ejectment or for trespass damages, thus settling title or definition of the interest in land. See, e.g., *Uxbridge Co v. Poppenheim*, 135 S.C. 26, 133 S.E. 461 (1926) (citing, among concerns, "the practical certainty of a multiplicity of suits growing out of the confusion or uncertainty," and reversing trial court's grant of demurrer, the precursor to the practice of granting a Rule 12(b)(6) motion, in which the trial court ruled that the allegations and prayer of plaintiff in possession for declaration of the location of a disputed land boundary were insufficient to constitute a cause of action either legal or equitable); and *McRae v. Hamer*, 148 S. C. 403, 146 S. E. 243 (1929) (affirming denial of demurrer to complaint of plaintiff in possession to settle land boundary line, citing a "feature of equitable cognizance, the prevention of a multiplicity of suits," as sufficient to sustain the complaint against demurrer).

Additionally, Plaintiff has emphasized and explained in Plaintiff's various pleadings and papers, that Plaintiff did not seek the litigation -- that both challenge suits were defenses to suits brought by the Town which required that the defenses would be lost if not presented pursuant to statute within 30 days of being sued by the Town each time. While emphasizing a desire to conduct discovery and reflect first on both Plaintiff's grounds and appetite for a damages claim, Plaintiff has pointed out that numerous facts alleged in the Amended Complaint support a claim for defamation of Plaintiff, or for slander of Plaintiff's title. (See, e.g., Ch.II Am. Cmplt., Preliminary Statement, and ¶¶78, 87 and 126.)

The Amended Complaint of the Challenge I case, which is specifically incorporated into the Challenge II Amended Complaint, also specifically mentions the prospect of a trespass claim based on the facts alleged, arising from the work already done by the Town on Plaintiff's land, "[i]n the alternative that Plaintiff's rights herein or in any contemplated condemnation action are adversely affected by the already completed project." (Challenge I Amended Complaint ¶ 179.)

Paragraph 221 of the Challenge II Amended Complaint characterizes the action only summarily, as "an action challenging Town attempts which were alleged to be unconstitutional, illegal, unauthorized, noncompliant, fraudulent, etc." However, under Rule 12(c), this Court cannot summarily disregard all the other facts in the Amended Complaint which might state a claim for a constitutional tort or other wrongdoing.

For example, this Court has concurrent jurisdiction for a claim pursuant to 42 U.S.C. §1983, which prohibits deprivation of procedural or substantive due process under color of state law.¹⁵

¹⁵ An example of such a case arising in the municipal condemnation context is found in Haworth v. City of Forest Grove, Oregon, Case 3:09-cv-01241-HZ (U.S. Dist. Ct. D. Or. Apr. 12, 2011), adopted as modified, Case 3:09-cv-01241-AC (U.S. Dist. Ct. D. Or. Jul. 6, 2011), which incidentally described the need for proof of further facts in subsequent litigation, because the claim was not presented and heard in the prior litigation.

In Haworth, the Haworths got some previously refused discovery from the city late in the state court proceedings, after the condemnation trial had commenced, essentially just before those

proceedings were concluded. During the condemnation trial, the judge persuaded the parties to dismiss without prejudice to see if the matter could be worked out in mediation, with leave of the city to re-institute the case with the parties resuming the positions they had at the time of dismissal. The issue of attorney's fees was to be negotiated by the parties, included in mediation, or determined upon re-institution of the case.

The city agreed, not disclosing that it knew its position was untenable and that it had no intention to follow through with the condemnation.

The matter was not worked out. The city stated it did not intend to pay attorney's fees. The city did not mediate. The city did not re-institute. The Haworths re-instituted and were awarded over \$185,000 in legal fees sometime around 2009.

The Haworths sued in federal court for, among other things, violation of §1983. They were unable to establish issue preclusion based on the previous state court proceedings, in which the discovery was not available, the claim had not been made, and the state court determining the fee petition was only in a position to determine that the city had been "unreasonable," and not in a position to rule that the city had engaged in conduct which was not only unreasonable but also unconstitutional.

The federal court Magistrate Judge, however, recommended that the Haworths were entitled to try to prove the further facts in federal court. The Magistrate Judge recommended denying the condemnor Town's motion for summary judgment on violation of §1983 and the attendant claim for damages for violation of substantive due process.

After the fact, the Haworths had discovered that in executive session, the city council discussed the limited actual need for the Haworth's entire tract for a park and the city's ulterior desire for extra land to sell for private use, while nevertheless publicly making a case for the entire tract. The Haworths discovered discussions planning to whitewash the matter under an opinion "that we can demonstrate that we have a potential need in the not-too-distant future."

One city actor, Jordan, characterized the relevant issues as whether the entire parcel should be designated as parks and recreation land, whether the resolution should include the commercial development clause, and whether a resolution should be adopted in the first place. Another city actor, Holan, Forest Grove Community Development Director, authored a memorandum to the city manager, Sykes, wherein Holan stated that, in his estimate, "there is a 60 percent chance of success to develop a park as envisioned above."

The landowners had offered a portion of their land for free in order to buy peace from the city's efforts to acquire it and in order to be able to plan reliably with respect to remaining land. The Haworths argued that the audiotape of the executive session of the city council and the city's failure to produce it were unlawful because the tape revealed that no public need existed, that no condemnation analysis was ever conducted, and that the city only wished to keep its options open for the future.

This, the Haworths contended, allowed the condemnation action to proceed far further than it would have had the tapes been disclosed in a timely fashion and the City's true intentions been revealed. In failing to disclose the tapes and these matters, the city allowed the presumption to arise that there was a true public need to justify the condemnation action. Instead, the city attempted to condemn more than it needed for an ulterior purpose not disclosed in its resolution and had actively discussed manipulation of the resolution to avoid the disclosure.

The Haworths also described ways in which the city unnecessarily and unjustly delayed the process: the city rejected the Haworths' offer to donate seventy acres only to later abandon the condemnation entirely; having privately determined that the city had no chance of success in the condemnation, the city failed to inform the Haworths that the city had no intention of reinstating the condemnation action and allowed the charade of mediation to continue; and the city disputed the Haworths' entitlement to attorney fees.

Plaintiff has not sued, by named theory, under this or any other tort. However, the allegations of the complaint, liberally construed, could be understood by a factfinder to describe deliberate, concerted action making out causes of action other than permanent injunction of condemnation.

It is not this Court's job to construct every cause of action which the facts may support, but nor is it this Court's province to grant "drastic" relief and summarily dismiss a relatively young case on the face of pleadings when the absence of sufficient allegations or the absence of the ability to amend and add them has not been demonstrated by the moving party.

Mootness in the Law

As indicated above, the case is in commonsense understanding, no moot. Under South Carolina law, the case is not "moot," because the case is in a trial level court rather than on appeal and there is relief which can still be sought and ordered, particularly if the Town maintains that its "abandonment" of the condemnation is a not permanent abandonment, with prejudice.

Applying the Rule 12(c) standard straightforwardly, as this Court is required to do, the Town is taken to be admitting for the purposes of its motion, all 375 paragraphs of the Amended Complaint. Those paragraphs, taken as true, provide a basis for declaratory relief, and for a permanent, across-the-board bar on further action by the Town, as well as for permanent preclusive or injunctive relief on components of what the Town has now sued for twice and concretely threatens to sue for again, and for possible tort liability which has not been eliminated from consideration.

Mootness in federal court is a federal concept. It has been rooted since the 60s in Article III of the United States Constitution, which describes the limited jurisdiction of the federal courts. Article III, setting up the federal judiciary and courts, does not govern state courts, except when they are part

On these and other facts, the Magistrate Judge recommended that summary judgment on a substantive-due-process §1983 claim should be denied.

of the federal judicial system in the course of deciding issues of federal law under concurrent jurisdiction.

Article III of the United States Constitution is not duplicated in Article V of the South Carolina Constitution or anywhere else in the South Carolina Constitution. The South Carolina Constitution does not have a “case or controversy” requirement for jurisdiction of state courts in general.

Nor does the State Constitution have such a requirement or restriction peculiar to appellate courts. Cf. Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001)(describing mootness as if a doctrine generally confined to appellate forum).

The orientation of Curtis and other cases toward mootness as only an appellate concept is not surprising. By the time a case is on appeal, not only can there be no amendment (unless amendment is the issue), but also the appeal is likely confined to the issues specifically raised. In contrast, the availability of relief is broader and more flexible at the trial level, both through the availability of amendment (e.g., Rule 15(a)) and through less rigidity in pleading rules (e.g., Rule 8(a)), relief rules (e.g., Rule 54(c)), and other procedural rules. Seldom could a case in the trial level court in South Carolina be properly dismissed as moot, with no defect in pleading being identified, no leave to amend being provided, and the relief to which Plaintiff is entitled not being granted or provided in full.

Unlike federal trial courts, state general trial level courts are not courts of limited jurisdiction. Like state appellate courts, state trial level courts, being courts operating on a local, rather than national scale and being informed by localized familiarity with local policy and issues, also, for that policy reason, are under no compulsion to emulate federal constitutional considerations unless doing so to avoid conflict with rights assured by the federal constitution to individuals or doing so as a part of the federal court system.

For most of this century, state courts have not been thought bound by the “case of controversy” requirement of Article III, even when deciding questions of federal law. William A. Fletcher, The

“Case of Controversy” Requirement in State Court Adjudication of Federal Questions, Calif. Law Rev., Vol. 78, No.2 (Mar. 1990), at 263-264.

The difference between federal mootness and state mootness has received little judicial attention in some state courts, which have generally followed federal principles of justiciability without discussing the root of the federal rule, likely doing so as a general policy matter, or basing the parallel on a longstanding more general concept of justiciability in a lay sense. See Jowers v. S.C.D.H.E.C., 423 S.C. 343, 815 S.E.2d 446 (2018)(citing Byrd v. Irmo H.S., 321, S.C. 426, 468 S.E.2d 861(1996) and collecting cases); and see Anderson v. North Carolina State Board of Elections, 788 S.E.2d 179 (N.C. Ct. App. 2016) (discussing federal constitutional underpinnings and state court policy basis).

By contrast with federal courts, in state courts, the exclusion of moot questions simply represents a form of judicial restraint. Anderson.¹⁶

¹⁶ South Carolina courts have described the concept of “justiciability” in connection with the Declaratory Judgment Act, in a history not explored at length here. There appear to be varying descriptions of whether the concept is one restraining courts and cases in general – and applying only derivatively to the Declaratory Judgment Act – or whether the concept is one specifically based on perceived legislative intent specifically with respect to the Declaratory Judgment Act.

The concept appears to have evolved without explanation into a concept referenced on the rare occasion as one of of subject matter jurisdiction, specifically under the Declaratory Judgment Act, as if limiting judicial power only under that Act as a matter of the limits of the statute. The initial concept of “justiciability” under the Declaratory Judgment Act appears to have entered the case law in a context having nothing to do with concreteness of controversy, and to have been thereafter referenced as if the context had been otherwise. See South Carolina Electric & Gas Co v. South Carolina Pub. Serv. Auth., 215 S.C. 193, 54 S.E.2d 777 (1949)(holding the matter not “justiciable” because the acts of defendant sought to be enjoined were authorized by law and within its discretion and no cause of action was stated for coercive equitable relief).

The formulation for justiciability under the Declaratory Judgment Act is stated generally as simply that a justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002), reh. den., cert. den.

The test of sufficiency is not whether complaint shows plaintiff is entitled to declaration of rights according to his theory, but whether he is entitled to declaration of rights at all. Dismukes v. Carletta, 269 S.C. 110, 236 S.E.2d 421 (1977).

While it is true that a declaratory judgment should not deal with moot or abstract matters or constitute a merely advisory opinion, all that is required is that there be an existing controversy, or at least the “ripening seeds of a controversy”: the purpose of the Act is to provide for declaratory

A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Curtis v. State. In the instant case, a judgment, if rendered, will have definite, practical, and likely final legal effect. Once a case first meets the test of technically or superficially being moot, it is then subject to traditional exceptions. See Sloan v Greenville County, 380 S.C. 528 670 S.E.2d 663 (2008)(skipping the first prong of the inquiry only because the issue was already the law of the case).

The exceptions include exceptions for cases or issues “capable of repetition yet evading review.” See Roe v. Wade, 410 U.S. 113 (1973)(holding challenge to restrictions on abortion could not be mooted by birth of baby or otherwise no longer being pregnant). See also Sloan v Greenville County, 380 S.C. 528 670 S.E.2d 663 (2008) and Byrd v. Irmo High Sch., 321 S.C. 426, 468 S.E.2d 861 (1996). The instant case is such a case.

The exceptions also include “voluntary cessation” by the opponent and “collateral legal consequences or effect on future events” of not completing the litigation. The instant case fits both of these descriptions as well.

Subsumed in the “capable of repetition” exception is the “voluntary cessation” exception. See Curtis v. State (including broad notions of capability of repetition in the rule). If a defendant voluntarily terminates the allegedly unlawful conduct after the lawsuit has been filed but retains the

judgments without awaiting a breach of existing rights. Waller v. Waller, 220 S.C. 212, 66 S.E.2d 876 (1951).

The statute providing for declaratory judgments meets a real need and should be liberally construed to accomplish the purposes intended, namely, to afford a speedy and inexpensive method of adjudicating legal disputes without invoking any coercive remedies of the old procedure, to settle legal rights, and to remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships. Williams Furniture Corp. v. Southern Coatings & Chemical Co., 216 S.C. 1, 56 S.E.2d 576 (1949).

The Declaratory Judgment Act itself contemplates that further litigation may ensue. Notios Corp. v. Hanvey, 256 S.C. 275, 182 S.E.2d 55 (1971). It is always possible that after the granting of declaratory relief, other contingencies and questions may arise. Notios Corp.

power to resume the practice at any time; a court may deem the case nonmoot. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000).

The "heavy burden" of persuading the court that a case has been mooted by the defendant's voluntary actions lies with the party asserting mootness, and the standard for such a determination is a "stringent" one: "if subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior [can]not reasonably be expected to recur." Id. (citing United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203 (1968)).

This exception is supported by the Supreme Court because, in addition to ensuring that the defendant is not "free to return to his old ways," there is "a public interest in having the legality of the practices settled." United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953) (citation omitted).

In Laidlaw, an environmental group had filed a citizen suit under the Clean Water Act against Laidlaw. Laidlaw was a company that operated a wastewater treatment plant. The citizens alleged that the plant had discharged far more toxic pollutants into a river than it was allowed under terms of a government-issued permit.

However, after the lawsuit began, Laidlaw began to comply with the discharge limit. The Supreme Court held that this case was not moot because it was a "disputed factual matter" whether the company's substantial compliance with its permit requirements, or its closure of the facility in question, which had occurred after the court of appeals had issued its decision, would make "it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur." Laidlaw, 528 U.S. at 193.

A related exception occurs if a decision or lack of decision by the trial court may affect future events, or have collateral consequences for the parties, even if the matter is on appeal and the appellate court cannot give effective relief in the present case. Curtis, 345 S.C. at 568, 549 S.E.2d at 596; accord Sloan, 365 S.C. at 303, 618 S.E.2d at 878. Obviously, when such a case is not on appeal but is in the

trial court and the trial court can give relief, the case is not even superficially moot and the trial court should act.

In the instant case, the Town has already abandoned the easement request twice by some counts and yet has filed suit twice, and the Town has acknowledged an intent to persist in some manner. The parties are still in the trial level court. The circumstances described hereinabove demonstrate that not only is the case not moot, but that even if it were perceived to be superficially so, at least three exceptions to dismissal for mootness apply.

Conclusion

Accordingly, the Town's motion to dismiss for mootness should have been denied. It was also therefore not unreasonable to require the Town, as the party bringing a second suit against Plaintiff and acknowledging the intent to bring a third, to respond to discovery while the case is pending.

Accordingly, the Town's motion for protection from discovery should have been denied as well and the pending discovery should have been ordered to be complied with within 15 days of the entry of the order requiring same.

For these reasons, Plaintiff requests that these corrections to the order be made.

In the alternative, the Court should at least (i) rule as to whether the Town's declared "abandonment" is a permanent abandonment of the right to pursue any future condemnation of Plaintiff's property on the same subject matter, (ii) consolidate the three related cases for purposes of the ruling and further proceedings, including but not limited to fee petitions and appeal, and (iii) rule on what, if any, allegation or lack of allegation in the Amended Complaint caused the case to be moot and provide leave to amend to remove, change, or add such allegation.

Respectfully submitted,

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4/27/21

Brief in Sunset* Challenge II action in opposition to motion to reconsider,
dated June 2, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	
	)	DEFENDANT'S MEMORANDUM
Plaintiff,	)	IN OPPOSITION TO PLAINTIFF'S
v.	)	MOTION TO RECONSIDER
	)	ORDER OF DISMISSAL
Town of Pawleys Island,	)	
	)	
Defendant.	)	

The Defendant, TOWN OF PAWLEYS ISLAND ("Town"), hereby submits the following Memorandum in Opposition to Plaintiff's Motion to Reconsider Order of Dismissal, as follows. Identical memoranda are being filed in the "Stanton" (2020-CP-22-0930), "Beattie" (2020-CP-22-0931), and "Sunset Lodge" (2020-CP-22-0932) cases.

Responding to grounds 1 through 18 and 20 of Plaintiff's Motion, the Town asserts that the Order of Dismissal correctly and adequately addressed all relevant and necessary issues, and further craves reference to the terms of the Order and its prior Motion to Dismiss and Memorandum in Support of its Motion to Dismiss. Responding to ground 19 of the Plaintiff's motion, the Town does not object to consolidation of the three related "Challenge 2" cases. Arguments regarding certain issues included in Plaintiff's Motion to Reconsider are further discussed below.

ARGUMENTS

1.) The allegations of the Amended Complaint, accepted as true, do not entitle the plaintiff to prospective relief prohibiting future condemnation efforts

The allegations of the Amended Complaint, even if taken as admitted, do not give rise to any issue of fact that would entitle the plaintiff to judgment in the form of prospective relief prohibiting the Town from ever condemning a beach renourishment easement on the plaintiff's property. Even treating all properly pleaded factual allegations as admitted, the plaintiff has presented no basis for

the Court to permit further amendment of the pleadings to assert a claim for permanent injunctive or other equitable relief. There is no South Carolina authority in support of the proposition that the type of conduct the plaintiff alleges the Town has engaged in, which the plaintiff characterizes as “bad faith,” would give rise to a judicial remedy permanently prohibiting the Town from exercising its power of eminent domain in order to acquire the same or a similar easement from the plaintiff.

The S.C. Supreme Court has made it clear that the power of eminent domain is a fundamental attribute of sovereignty. “The primary right to acquire rests in eminent domain, and that power resides in the state of right and by necessity; the Constitution did not create it, but has only affirmed it (article 14), and limited its exercise (article 1, § 17; article 9, § 20). The exercise of the right resting in the Legislature, that body may prescribe how it shall be exercised.” Paris Mountain Water Co. v. City of Greenville, 110 S.C. 36, 96 S.E. 545, 551 (1918).

That right is based upon the theory that when the state originally granted lands to individuals the grant was made under the implied condition that the state might resume dominion over the property whenever the interest of the public or welfare of the state made it necessary. Its origin antedates constitutional provisions and legislative enactments. It is one of the unwritten laws of all civilized nations. It is justified by the fact that the right of individuals must yield to the public good, and the welfare of the state is paramount to that of the individual citizen. It is a previously existing universal law that lay dormant in the state until proper legal authorities directed the occasion and the mode through which it may become operative.

Haig v. Wateree Power Co., 119 S.C. 319, 112 S.E. 55, 57 (1922).

The General Assembly has authorized municipalities to exercise the power of eminent domain in order to “become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose,” S.C. Code Ann. § 5-7-50, and enacted the Eminent Domain Procedure Act “to create a uniform procedure for all exercise of eminent domain power in this State.” S.C. Code Ann. § 28-2-20. Although the Act specifically contemplates challenge actions, § 28-2-470 (“Proceedings to challenge condemnor's right to condemn”),

nowhere does it provide for permanent judicial prohibition of a certain type of condemnation based on “bad faith” or similar allegations.

Common law considerations of fraud, bad faith, and abuse of discretion in a challenge action relate to the basis for and intentions behind decisions about whether to condemn and what amount of property to condemn. For example, in Atkinson v. Carolina Power & Light Co., the plaintiff alleged that “the defendant's condemnation above the 220 foot elevation contour line, above mean sea level is **cloaked with a scheme to serve its own private purposes, uses and advantages** in that it intends to sell, lease or otherwise control the land surrounding the impounded waters for purposes not connected with the generating of electricity or proper adjuncts thereto[.]” 239 S.C. 150, 161, 121 S.E.2d 743, 748 (1961) (emphasis added).

In Timmons v. S.C. Tricentennial Comm'n, in rejecting a landowner’s challenge to condemnation of property for historical preservation and recreational purposes, the court explained that, “[t]he burden would be upon the landowner to show that **the public use is a sham and a fraud**. . . . If there is no necessity for the use or the condemnation proceeding's purpose is **to cloak some sinister scheme**, then the courts may interfere with the taking, but there is no showing of that kind here.” 254 S.C. 378, 396, 175 S.E.2d 805, 814 (1970) (emphasis added). *See also* Sease v. City of Spartanburg, 242 S.C. 520, 527, 131 S.E.2d 683, 687 (1963) (“The allegations in the complaint that the proposal of the respondent is fantastic, unreasonable, unnecessary, uncalled for and unwarranted are merely conclusions which are not admitted by the demurrer and, at most, merely characterize the facts set forth in the complaint which are insufficient to allege fraud, bad faith, or clear abuse of discretion on the part of the respondent.”).

By contrast, South Carolina law does not entitle a landowner to seek permanent prohibition of a condemnor’s exercise of eminent domain powers based on allegations of past

“misrepresentation” and “bad faith” in the administrative and legal efforts used to pursue an otherwise legitimate effort to condemn property for a proper public use. That type of relief would be vastly different than simply invalidating a specific condemnation notice based on procedural deficiencies (or even fraud, bad faith, or abuse of discretion) in the administrative and legal efforts associated with the notice. While the Plaintiff clearly objects to the wisdom and expediency of the previously sought beach renourishment easement and alleges that the Town has acted poorly in its legislative, administrative, and legal efforts to acquire the easement, there has been no allegation that the fundamental decision to pursue the easement for a stated public use was in fact a “sham” meant to “cloak some sinister scheme” for the benefit of undisclosed private interests.

Furthermore, there is no legitimate indication that the Town is attempting to use successive condemnation actions in order to gain “negotiating leverage” with the plaintiff. The Notice of Abandonment was filed shortly after the issuance of a summary judgment order in favor of the plaintiff in Challenge I, which the Amended Complaint herein alleges involved similar procedural deficiencies as were alleged here. Undersigned counsel also takes note of the statutory stay effected by the filing of the Challenge I action. It is clear, even accepting the allegations of the Amended Complaint at face value, that the Notice of Abandonment was filed in this action in order to avoid unnecessary, duplicative litigation over procedural issues. Accordingly, there is no factual basis for any assertion that the Town’s withdrawal of the Condemnation Notice in this action was part of an effort to harass the plaintiff into submission. To the contrary, the withdrawal was an attempt to minimize the time and expense burden on all parties.

Just as property ownership is perpetually subject to the government’s police powers, S.C. State Highway Dep’t v. Wilson, 254 S.C. 360, 365, 175 S.E.2d 391, 394 (1970); *see also* Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1022-23 (1992), property rights are also inherently subject

to the government's sovereign right to exercise its power of eminent domain, subject to constitutional constraints, at any time. Haig v. Wateree Power Co., 119 S.C. 319, 112 S.E. 55, 57 (1922). The General Assembly deemed it appropriate to protect landowners from the expense of condemnation disputes by, among other things, providing statutory rights to recover attorney fees and costs in the event of a condemnation abandonment or a successful challenge action. These statutory protections satisfy considerations of equity and due process, and clearly disincentive any condemnor from attempting to use "multiplicity of litigation" to gain leverage over a landowner.

Although older cases cited by the plaintiff discussing what are now referred to as "challenge actions", from a time when "the condemnation statutes provide[d] no machinery for determining the right to institute such proceedings," Greenwood Cty. v. Watkins, 196 S.C. 51, 12 S.E.2d 545, 550 (1940), sometimes spoke in terms of "permanent injunction," this was in relation to hypothetical allegations of "bad faith" or "fraud" in the sense of the initiation of a condemnation based on sham, pretextual purposes for a private or other improper benefit. *E.g.*, Atkinson, *supra* (denying requested relief), Timmons, *supra* (denying requested relief). These cases speak in general terms and do not purport to authorize judicial prohibition of future similar condemnations based on revised decision-making procedures.

Accordingly, to the extent that the plaintiff has alleged that the withdrawn Condemnation Notice in this action was, for example, based on an inadequately articulated public use or insufficient decision-making process relative to the scope or necessity of the easement, these and similar issues can be corrected (or attempted to be corrected) in any future condemnation effort. These types of alleged deficiencies simply do not give rise to permanent prohibitory relief, as reflected in more modern cases such as Hill v. York Cty. Nat. Gas Auth., 384 S.C. 483, 682 S.E.2d 809 (2009) (holding that condemnor could revise condemnation notice to correct statutory

reference) and Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 305 S.C. 507, 514 – 16, 409 S.E.2d 428, 432 – 434 (Ct. App. 1991), *aff'd in part, rev'd in part on other grounds*, 311 S.C. 29, 426 S.E.2d 748 (1993). As the Court of Appeals explained in Southern Dev., “[t]he parties have not cited any reported South Carolina case in which a planned condemnation was permanently enjoined by a court because the court found the condemning authority abused its discretion in the selection of a chosen route. . . . We vacate this portion of the master's decision and remand with instructions that the master direct Santee Cooper to re-evaluate its proposed route and the alternate routes proposed by Southern.” Id.

Likewise, the plaintiff's allegations do not give rise to any basis to allow further amendment of the pleadings seeking judicial determination of certain discrete issues that may be of interest to the parties in any future litigation. In the Amended Complaint, the plaintiff alleges that the Town engaged in various types of procedural missteps, as well as “misrepresentation”, “bad faith”, and “fraud” in the process associated with the first and second condemnation notices. The plaintiff also raises questions about, for example, whether the Town adequately considered and established the necessity of an easement for participation in a long-term federal beach renourishment program. However, judicial determination in this action of the legal effect of any such alleged acts and omissions, even if proven to have occurred, would provide no more than an “advisory opinion”, with applicability to the legal relations between the parties only if and when identical acts or omissions occur in connection with any future condemnation effort. Neither the Eminent Domain Procedure Act nor the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, provide any basis for such hypothetical litigation.

“To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy.” Thompson v. State, 415 S.C. 560, 565, 785 S.E.2d 189, 191 (2016)

(quoting Sunset Cay, L.L.C. v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004)). “A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” Id. “The Declaratory Judgment Act is not properly invoked for an advisory opinion to be put on ice by the plaintiff for use if the [parties] reach the occasion which might demand it, nor is the Act a license to fish in this judicial pond for legal advice[.]” Orr v. Clyburn, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982) (citing Columbia v. Sanders, 231 S.C. 61, 97 S.E.2d 210 (1957)).

Now that the condemnation notice underlying this action has been abandoned, there is no basis for judicial review of the discrete underlying factual matters involved in the attempted condemnation process for the sake of the hypothetical, contingent possibility that similar facts might be at issue in future litigation. For example, any future condemnation effort may involve a decision making process that includes new or additional scientific/engineering analysis, documentation related to necessity and public use, and legislative deliberation procedures, among other things. Any ruling regarding specific aspects of the prior condemnation efforts underlying the Challenge 1 and Challenge 2 actions would provide nothing more than an advisory opinion in relation to the specific facts of any future condemnation.

Finally, as noted in the Order of Dismissal, although there is one South Carolina appellate opinion finding that a condemnor was permanently estopped from pursuing a power line easement across a specific property, Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993), in the case at hand there are no allegations giving rise to a claim for estoppel.

2.) Plaintiff is not entitled to a ruling that the Notice of Abandonment has a preclusive effect on future condemnation efforts

It is unclear what specific relief the plaintiff seeks with respect to its claim that the Notice of Abandonment has some preclusive effect. As noted in the Order of Dismissal, the S.C. Eminent Domain Procedure Act specifically contemplates the power of a condemnor to abandon a condemnation. *See, e.g.*, S.C. Code Ann. §§ 28-2-230(B), -510(C). South Carolina courts have long recognized at common law the right of a condemnor to abandon a condemnation proceeding prior to physical appropriation of the property or the vesting of title. S.C. State Highway Dep't v. Bobotes, 180 S.C. 183, 185 S.E. 165 (1936) (quoting and affirming trial court order (Condemnation statutes “[do] not confer the right of abandonment; that right is presupposed as existing at common law.”)). *See also* S.C. Code Ann. § 28-2-20 (“[T]his act is designed to create a uniform procedure for all exercise of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation[.]”).

While a condemnor may choose to move forward and litigate procedural and other deficiencies alleged by a challenge action plaintiff, it is certainly not required to do so. The condemnor may instead abandon the relevant condemnation notice and, if it deems appropriate, amend the procedure or other relevant aspects in any future attempt. Particularly in a case such as this, where the plaintiff has recently obtained summary judgment against the Town in a related case based on similar if not identical issues, the Town should not be forced to continue litigating over what the plaintiff alleges was a flawed condemnation process. Commonsense dictates that a landowner who challenges a condemnation waives the right to object to abandonment and withdrawal of the condemnation notice.

The Notice of Abandonment was very clear about its purpose: “the Town of Pawleys Island hereby abandons and withdraws the Condemnation Notice underlying this challenge action . . . To

the full extent that such Condemnation Notice and/or its delivery or service initiated a condemnation action, such action is hereby abandoned and withdrawn.” The filing abandoned and withdrew the specific Condemnation Notice and condemnation action at issue in this case.¹ There is absolutely no basis for the plaintiff’s assertion that the abandonment of this specific Condemnation Notice, which the plaintiff alleges was based on a fundamentally flawed process, could somehow preclude the Town from authorizing and pursuing any future condemnation action for a beach renourishment easement. This conclusion is contradicted by what South Carolina law recognizes to be the broad nature of the eminent domain power, Haig, 119 S.C. 319, 112 S.E. at 57, Paris Mountain, 110 S.C. 36, 96 S.E. at 551, and there is no constitutional or legislative enactment that would circumscribe the exercise of the power in this way.

In other words, the Notice of Abandonment withdrew the Town’s right to rely on the specific Condemnation Notice at issue in this matter but did not in any way purport to withdraw the Town’s authority to condemn an easement at a later time based on a separate condemnation notice. The cases cited by Plaintiff in relation to abandonment of easements and other property rights are inapposite, as the Town has not in any way abandoned any easement. Instead, the Town simply undertook to withdraw this second, unfiled condemnation notice and condemnation attempt in response to the Challenge I summary judgment order and other issues raised by the Plaintiff in this matter. To the extent that the plaintiff may wish to argue that the abandonment was somehow undertaken in “bad faith” and should bar a future condemnation attempt, that is a question that will only be ripe for determination at the time that any new attempt is initiated based on the full set of

¹ “‘Condemnation action’ includes all acts incident to the process of condemning property after the service of a Condemnation Notice.” S.C. Code Ann. § 28-2-30(5)

circumstances presented at that time. However, this situation is very clearly not an instances of a “bad faith” abandonment attempting to obtain a more favorable verdict after an adverse jury award.

The Plaintiff provides no support for the broad assertion on page 22 of its motion that, “[h]istorically, instances in which a condemnor does ‘abandon’ . . . a condemnation action generally are instances of permanent relinquishment.” Likewise, the cases cited on page 22 of the Plaintiff’s motion for the proposition that “[t]here are few instances involving ‘abandonment’ as a temporary expedient exercised by the condemnor before promptly resuming similar activities” do not seem to relate to that proposition and do not support Plaintiff’s position.²

Finally, touching on procedural issues raised by the Plaintiff, the “two dismissal” rule under Rule 41(a)(1) has no bearing here, as the Town is not the plaintiff in this challenge action matter and has not asserted or dismissed any “claim” in this challenge action matter. More fundamentally, abandonment of a condemnation notice is a matter addressed by the Eminent Domain Procedure Act and common law, which allow for abandonment without such a limitation, and is therefore outside the scope of the “two issue” rule, S.C. Code Ann. § 28-2-120 (“In the event of conflict between this act and the South Carolina Rules of Civil Procedure, this act shall prevail.”). Regarding the statutory stay of condemnation proceedings, abandonment of a condemnation notice is the opposite of pursuing the condemnation, and is clearly not part of the “proceedings *under* the

² In Miller v. City of Beaver Falls, 82 A.2d 34 (Pa. 1951), the court held a landowner was awarded compensation for temporary loss of use based on a city’s temporary “plotting” of a road across private property on the city map. In In re Certain Land, 70 A.2d 847 (Pa. 1950), the court held that a condemnation could not be abandoned after an ordinance that did not merely authorize but instead effected the condemnation, causing title to vest and entitlement to compensation. In Town of Trumbull v. Eshram, 166 A.2d 844, the court acknowledged the condemnor’s right to abandon a condemnation but never discussed the “permanency” issues. In Hamer v. State Highway Comm’n, 304 S.W.2d 869, the Court held that a landowner’s reliance on highway plans that were subsequently changed to not impact his property did not give rise to a claim for compensation.

Condemnation Notice” as contemplated in the statutory stay provision. § 28-2-470 (emphasis added).

3.) An attorney fee petition by the plaintiff would not prevent the underlying substantive action from being moot

On page 29 of the Motion to Reconsider, the plaintiff seems to take the position that plaintiff’s stated intention to submit a petition for attorney fees somehow renders the action not moot. This position is incorrect. Town’s understanding is that the plaintiff intends to seek an award of attorney fees on the basis of the filing of the Notice of Abandonment. This relates to a procedure for taxing expenses at the end of an action, and does not mean that the underlying substantive issues are still in controversy.

Conclusion

In conclusion, the Defendant Town of Pawleys Island respectfully requests that the Court deny the Plaintiff’s Motion to Reconsider the Order of Dismissal. Plaintiff does not object to an order consolidating this and the two related “Challenge 2” actions. In the event that the Court permits the Plaintiff to move forward with one or more claims in this action, the Town requests that (1) it be permitted 30 days to answer any second amended pleading and (2) it be protected from any pending discovery and that no new discovery shall be served or otherwise initiated by Plaintiff until after service of any second amended pleading.

Respectfully submitted,

s/ William C. Dillard, Jr.

William C. Dillard, Jr. (S.C. Bar No. 78986)

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Attorneys for Town of Pawleys Island

June 2, 2021

Motion in Sunset* Challenge II action to correct June 3, 2021 order, motion
being dated June 14, 2021

*See stipulation to include representative papers from one of the three cases where the subject papers in each of the three cases on appeal are identical or nearly identical other than with respect to caption, party name or some pronouns. Here, the paper(s) from the Sunset case is included with the understanding that the corresponding paper in the Beattie or Stanton case is substantially the same.

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Civil Action No. 2020-CP-22-00932
	)	
Sunset Lodge, LLC,	)	<i>Consolidated from Civil Action No's</i>
	)	2020-CP-22-00932
Plaintiff,	)	2020-CP-22-00931
v.	)	2020-CP-22-00930
	)	
Town of Pawleys Island,	)	
	)	
Defendant.	)	

and

Franklin D. Beattie, as trustee of	)
The Franklin D. Beattie Preservation Trust,	)
	)
Plaintiff,	)
v.	)
	)
Town of Pawleys Island,	)
	)
Defendant.	)

**DEFENDANT'S MOTION TO
CORRECT OR AMEND ERROR
IN JUNE 3, 2021 ORDERS**

and

M. Baron Stanton,	)
	)
Plaintiff,	)
v.	)
	)
Town of Pawleys Island,	)
	)
Defendant.	)

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR ATTORNEY, M. BARON STANTON, ESQ.

YOU WILL PLEASE TAKE notice that the Defendant, Town of Pawleys Island, by and through its undersigned attorney, will within ten (10) days after service hereof or as soon thereafter as counsel may be heard, move the Court for an order or orders amending the June 3, 2021 Form 4 Orders entered by the Honorable Benjamin H. Culbertson separately in each of the above

referenced matters ("the Orders") for the purpose of correcting a clerical mistake pursuant to Rule 60(a), SCRCP, or in the alternative, as an amendment to the Orders pursuant to Rule 59(e), SCRCP. This motion is made on the following grounds:

a.) The Order consolidated the three above referenced actions and denied the Plaintiffs' motions to reconsider prior orders of dismissal. The final line of text in the "Statement of Judgment by the Court" in each of the Orders states that, "[t]he "existing" and "new" condemnation notices have been abandoned by the defendant and the issue of litigation costs remains pending." (emphasis added).

b.) The "existing condemnation notices", as discussed in the pleadings, refer to condemnation notices underlying prior challenge actions involving identical parties and bearing Civil Action No.'s 2020-CP-22-0600, -0601 and -0602. These "existing" notices were not abandoned but, instead, quashed pursuant to summary judgment orders in those actions entered by the Honorable Michael G. Nettles on January 20, 2021 and subsequently amended on April 5, 2021. Specifically, Judge Nettles's orders in those prior actions stated in the "Conclusion" paragraphs, in reference to what are referred to here as the "existing" condemnation notices, that:

"The Town's Condemnation Notice is quashed and the action commenced by it is hereby declared ended without prejudice in the respect described hereinabove."

c.) On information and belief, the reference in the Orders to abandonment of the "existing" notices, which did not occur and has not been asserted by any party to have occurred, was the result of a clerical error. "A clerical error is a mistake or omission by a clerk, counsel, judge or printer, which is not the result of exercise of judicial function." Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000) ("Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time.").

d.) In order to avoid any future confusion, whether on the part of an appellate court or otherwise, Defendant respectfully requests that the relevant portion of the Orders be corrected and/or amended to state as follows, or words to the same effect:

“The ‘existing’ condemnation notice has been quashed in a separate challenge action, the ‘new’ condemnation notice has been abandoned by the defendant and the issue of litigation costs remains pending.”

Based on the foregoing, the Defendant respectfully requests that the Court correct and/or amend the Orders as set forth above. This motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, and oral arguments by counsel.

Rule 11 Certification

Undersigned counsel hereby certifies that further consultation with opposing counsel regarding the matter herein would have served no useful purpose.

Respectfully submitted,

s/ William C. Dillard, Jr.

William C. Dillard, Jr. (S.C. Bar No. 78986)

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Attorneys for Town of Pawleys Island

June 14, 2021

STIPULATION TO SUFFICIENCY OF ONE REPRESENTATIVE COPY OF EACH DESIGNATED PAPER FROM ONE OF THE THREE CASES, TO INCLUDE LESS THAN ALL MATERIAL ORIGINALLY DESIGNATED, AND TO ABILITY OF ANY PARTY TO SUPPLEMENT THE RECORD WITH COPIES FROM THE OTHER TWO CASES IN THE EVENT THE PARTY DEEMS NECESSARY

The parties stipulate that reference to a paper in this Challenge II action, or reference to a paper in the preceding Challenge I action, be taken as an accurate reference to the corresponding substantially similar or identical papers and passages in the other two Challenge II or Challenge I actions. The parties stipulate to including in the Record on Appeal, less than all the material previously designated, to wit, including, where substantially identical in all three actions, one designated representative pleading, order, or other paper from one Challenge action rather than all three. The parties stipulate that either party may later supplement the record with the separate additional counterpart of such an item from the other two Challenge actions if that party deems it desirable to do so.

SO STIPULATED:

s/M. Baron Stanton
M. Baron Stanton
Attorney for Appellants

s/William C. Dillard, Jr.
William C. Dillard, Jr.
Attorney for Respondent

Certificate of Counsel

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties, and no other material.

s/M. Baron Stanton

M. Baron Stanton (S.C. Bar No. 7970)

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M. BARON STANTON (PRO SE),

FRANKLIN D. BEATTIE, AS TRUSTEE,

AND SUNSET LODGE, LLC,

Date: March 11, 2022

RECEIVED

MAR 31 2022

SC Court of Appeals