

Ben Caldwell - Deposition AI Summary Long

Ben Caldwell is the Zoning Administrator for the City of North Myrtle Beach, South Carolina, a position he has held since 2020. Before that, he worked for 15 years as the Assistant Zoning Administrator under Paul Blust, the former administrator who had been in the role for over 30 years. Caldwell's job is to administer, interpret, and enforce the city's zoning ordinance, which includes overseeing new construction in planned development districts (PDDs) like Tidewater Plantation.

The lawsuit at the center of this deposition involves Ken and Suzanne Norton, who own two lots (407 and 408) in the South Island area of Tidewater Plantation in North Myrtle Beach. The Tidewater Plantation Community Association sued the Nortons over construction on those lots. The main dispute is about how to measure the maximum allowable building height — specifically, whether you measure from the ground (grade) or from the first finished floor of the home, which matters a great deal when a property sits in a flood zone.

Tidewater Plantation was created under a Planned Unit Development (PUD) agreement signed in 1992 between the City of North Myrtle Beach and Southern Land and Golf Company. That original agreement established the development standards for the community, including a maximum building height of 42 feet. The Tidewater PDD is unique because it specifies that height is measured to the peak (highest point) of the roof, whereas most other zoning districts in the city measure only to the midpoint between the eave and the roof's highest point.

The Nortons' lots are located in a flood hazard zone. Under the city's general zoning ordinance — specifically Section 23-106 — when a property is in a flood zone, the building height is not measured from the ground. Instead, it is measured starting from the first finished floor of the home, which must be at least one foot above the base flood elevation (a requirement sometimes called "freeboard"). Caldwell applied this rule to the Nortons' property: he measured from their first finished floor up to the peak of the roof, combining the flood-zone measurement rule in Section 23-106 with the peak-of-roof rule in the Tidewater PDD.

The Nortons were issued a building permit in 2020 for construction of a home on their lots. The plans, prepared by architect Felix Ayres, reflected this measurement methodology. However, the plans included a cupola (a small dome-like structure on top of the roof). Caldwell initially determined that the cupola was a "necessary mechanical feature" — meaning it could exceed the 42-foot height limit without counting toward the building's overall

height, as long as it covered less than 15% of the roof area. The cupola did cover less than 15% of the roof, so Caldwell approved the plans with it included.

The Tidewater Plantation Design and Review Board (DRB), led at the time by chairman JD Jeffers, disagreed with Caldwell's decision about the cupola. In August 2021, Jeffers filed an appeal to the City's Board of Zoning Appeals, arguing that the cupola was not a necessary mechanical feature and should not be exempt from the height limit. The Board of Zoning Appeals sided with the DRB — ruling that the cupola was not a necessary mechanical feature — meaning it would have to come within the 42-foot limit. The Nortons chose not to appeal that ruling to the circuit court, so the cupola decision became final. As a result, Caldwell acknowledged that going forward he would no longer classify a cupola in this situation as a necessary mechanical feature.

Importantly, the DRB's appeal was only about the cupola. The DRB did not challenge how Caldwell measured building height in a flood zone — meaning they did not argue that measurement should start from the ground rather than from the first finished floor. That issue was never formally appealed. Caldwell confirmed that his methodology of measuring from the first finished floor (flood elevation plus one foot) to the peak of the roof remains unchanged and would apply to any future plans on similar lots.

The deposition also addressed the relationship between the Tidewater PUD agreement and the city's general zoning ordinance. The PUD agreement itself contains a provision (Section A2) stating that anything not covered in the PUD document is governed by the city's zoning ordinance. Caldwell reviewed the entire PUD agreement (Exhibit 3) and found nothing in it that specifically addressed how to handle construction in a flood zone, and nothing that specifically excluded or overrode the application of Section 23-106 to properties in the South Island area. Section 8 of the PUD ("City Regulatory Power") further confirms that the city retains all regulatory powers, and the PUD does not preempt any land use regulations unless it specifically says so. Caldwell agreed that Section 23-106 still applies to the Nortons' property.

The plaintiff's attorney, Taylor Cary, raised a potential challenge during the deposition. She pointed to Section 3D of the PUD agreement — the Development Standards section — which states that "all building heights are measured from the uppermost point of the structure to the average finished grade." She suggested this language might conflict with Section 23-106 and require measuring from the ground even for flood-zone properties. Caldwell responded that he understood how that language is written, but still believed Section 23-106's flood-zone rules apply, and that the PUD language about average finished grade applies to properties

that are not in a flood zone. Caldwell noted that Section 23-106's flood-zone provisions only apply to single-family homes and duplexes — not townhomes or multi-family structures.

On the question of the maximum allowable height itself, Caldwell confirmed that the city recognizes 42 feet as the maximum building height in the Tidewater PDD. He stated he has no knowledge of the PUD ever being formally amended to lower it to 41 feet. While he has heard that the Tidewater Association uses 41 feet as their internal maximum, he does not recognize it as binding because he has not seen it in an official PDD document approved by the city. He explained that if the Association wanted to officially lower the height limit to 41 feet, they would need to go through a formal process: amend the PUD, hold public hearings, and get approval from the planning commission and city council.

Finally, Caldwell addressed the current status of the Nortons' building permit. He clarified that the permit was not nullified by the Board of Zoning Appeals' decision — rather, the Nortons simply need to submit revised plans that either remove the cupola or bring it within the 42-foot limit. He noted that while the city has switched to new permitting software since 2020, the Nortons could reapply using a new portal with the same plans (minus the cupola) and those plans would be approvable from a zoning standpoint. Caldwell confirmed he would review any resubmitted plans using the same methodology as before.