

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 Horry County

4 DEPOSITION OF ANN LIPPINCOTT
5 TIDEWATER PLANTATION COMMUNITY ASSOCIATION, INC.,

6 Plaintiff,

Case No. 2021-CP-26-04599

7 vs.

8 SUZANNE N. NORTON, INDIVIDUALLY, KENNETH R.
9 NORTON, INDIVIDUALLY, SUZANNE N. NORTON AS
10 TRUSTEE OF THE SUZANNE N. NORTON LIVING TRUST
11 DATED MAY 8, 2012, AND KENNETH R. NORTON, AS
12 TRUSTEE OF THE KENNETH R. NORTON LIVING TRUST
13 DATED MAY 8, 2014,

14 Defendants.

15 DEPONENT: ANN LIPPINCOTT

16 DATE: February 11, 2026

17 TIME: 2:05 p.m.

18 LOCATION: Bellamy Law Firm
19 Myrtle Beach, South Carolina

20
21 REPORTED BY: KAREN BECKMAN, CSR
22 CERTIFIED SHORTHAND REPORTER
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A P P E A R A N C E S

ON BEHALF OF TIDEWATER PLANTATION COMMUNITY
ASSOCIATION, INC.:

COPELAND STAIR VALZ & LOVELL
BY: TAYLOR CARY
40 Calhoun Street
Charleston, South Carolina

ON BEHALF OF SUZANNE N. NORTON, INDIVIDUALLY,
KENNETH R. NORTON, INDIVIDUALLY, SUZANNE NO.
NORTON AS TRUSTEE OF THE SUZANNE N. NORTON LIVING
TRUST DATED MAY 8, 2012, AND KENNETH R. NORTON,
AS TRUSTEE OF THE KENNETH R. NORTON LIVING TRUST
DATED MAY 8, 2014:

BELLAMY, RUTENBERG, COPELAND, EPPS,
GRAVELY & BOWERS, P.A.
BY: HOWELL V. BELLAMY, III
1000 29th Avenue
Myrtle Beach, South Carolina

ALSO PRESENT:

KEVEN CARVAJAL
Videographer

ROBERT DEWITT MOSS
PAIGE F. BELLAMY
CATHERINE S. WEIS
TOBY D. RICHARDS
KENNETH NORTON

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ANN LIPPINCOTT - FEBRUARY 11, 2026

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(No Information Requested)

1 THE VIDEOGRAPHER: We are on the
2 record in the video deposition of Ann Lippincott
3 in the matter of Tidewater Plantation Community
4 Association, Inc., vs. Suzanne Norton, et al.

5 Today's date is February 11th,
6 2026. The time is 2:05 p.m.

7 The court reporter is Karen
8 Beckman. My name is Kevin Carvahal, videographer
9 with Clark Bolen.

10 Will counsel please identify
11 themselves for the record.

12 MS. CARY: Counsel for Plaintiff
13 and Counterclaim Defendant, Taylor Cary.

14 MR. BELLAMY: Howell Bellamy with
15 the Bellamy Law Firm. I represent the defendants
16 in this case, the Nortons.

17 THE VIDEOGRAPHER: All right.
18 Court Reporter, please swear in the witness.

19 THE REPORTER: Good afternoon.
20 Before this proceeding moves forward, I'd like to
21 instruct the attorneys and witness to speak
22 slowly and clearly and not interrupt one another.
23 I do not want to interrupt, but I will if I have
24 to.

25 ANN LIPPINCOTT,

1 having been first duly sworn, was examined and
2 testified as follows:

3 EXAMINATION

4 BY MR. BELLAMY:

5 Q. Ann, how are you doing?

6 A. I'm doing fine.

7 Q. I think last time that I had a chance to
8 talk to you directly we were involved in a
9 deposition in another case.

10 A. Yes.

11 Q. Okay. And obviously you have been
12 deposed before, okay?

13 A. (Nods head up and down.)

14 Q. And what I need to do pursuant to our
15 Rules of Civil Procedure -- and you know that I
16 represent the Nortons in this matter, and the
17 plaintiff is Tidewater Plantation Community
18 Association, Inc., and is represented by Taylor
19 Cary. And my understanding, she's also your
20 counsel in this matter too --

21 A. Yes.

22 Q. -- legal counsel. Okay.

23 Now, we've sent you a copy of a Notice
24 of Deposition. And did you receive it?

25 A. I did.

1 Q. Okay. Now, what I want you to do, Ann,
2 is flip back to the subpoena, and there's an
3 attachment. This is Exhibit No. 13.

4 (Exhibit No. 13 marked for
5 identification.)

6 Q. And I'll just publish this part on the
7 record. It's got Attachment A and it's got the
8 caption of the lawsuit, and it says, All
9 documents and information in your possession,
10 custody, and control concerning your
11 investigation, interpretation, findings, and
12 decisions related to the above-referenced
13 lawsuit, parties, subject property identified at
14 4630 South Island Drive, (Lots 407 and 408),
15 North Myrtle Beach in South Carolina. It's got
16 the zip 29582, including, but not limited to, and
17 it's got correspondence, emails, texts, notes,
18 financial records, memorandum. And it's got a
19 list of Items 1 through 23.

20 And my question is, did -- and for the
21 record, obviously you reside in Tidewater
22 Plantation, correct?

23 A. Yes.

24 Q. Okay. And you have been a former member
25 of the DRB, correct?

1 A. Yes.

2 Q. Okay. And for the record, you served on
3 the DRB from what period of time to what period
4 of time? I know that you were -- in 2020 you
5 were serving on the DRB, correct?

6 A. I was 2010 to sometime in 2014.

7 Q. Okay.

8 A. Again in 2018 to 2020 and then again in
9 2024 for about eight months to '25.

10 Q. Okay. And then you got off the DRB in,
11 I think, sometime in 2024?

12 A. '25.

13 Q. '25, okay.

14 A. I believe it was April.

15 Q. Okay. Did you resign from the Board?

16 A. Yes.

17 Q. And for the record, why did you resign
18 from the Board?

19 A. A little discord with the Master Board.

20 Q. And the president of the Master Board at
21 that time was Cathy Weis?

22 A. No. Toby.

23 Q. Toby.

24 But she was vice president --

25 A. Yes.

1 Q. -- or she was on the Master Board at
2 that time?

3 A. Yes.

4 Q. Okay. And would it be fair to say over
5 the years you and Cathy have disagreed on the
6 interpretation of the governing documents for
7 Tidewater Plantation?

8 A. On Harbor Loft we did.

9 Q. Okay.

10 A. I don't believe we had any sort of
11 discord on the Norton situation.

12 Q. Okay. Now, pursuant to the subpoena in
13 Attachment A, did you get a chance to -- did you
14 have any documents, texts, emails in your own
15 personal custody and control? Did you bring
16 anything pursuant to this subpoena?

17 A. No.

18 Q. Okay. Do you have any documentation
19 that's relevant to this lawsuit in your own
20 personal custody and control at your house?

21 A. No. Only what was provided by the
22 attorney.

23 Q. Okay. Do you not keep records of the
24 governing documents or, you know...

25 A. I did when I was on the DRB.

1 Q. Okay. Okay. All right.

2 Let me move on. Also I marked a copy of
3 your deed. I think, was it Defendant's
4 Exhibit -- was it 13 or was it 14? Your deed
5 right here.

6 MS. CARY: It's 14.

7 (Exhibit No. 14 marked for
8 identification.)

9 Q. 14. Okay.

10 This is the deed that was filed sometime
11 July 10, 1997. And all this deed represents is
12 that you're a property owner in Tidewater
13 Plantation, correct?

14 A. Yes.

15 Q. Okay. And your property is subject to
16 the PUD Agreement. It's subject to the Third
17 Amended Restated Declaration of CCRs and Bylaws.
18 It's subject to -- including amendments. And
19 it's subject to the Design Review Board's
20 standards, requirements, and subsequent
21 amendments, correct?

22 A. Yes.

23 Q. And as of today's date, you currently
24 still reside at that property?

25 A. Yes.

1 Q. And my understanding is your property,
2 where it's located at, when you turn to go in
3 South Island, you have to go by your property; is
4 that a fair statement?

5 A. Yes.

6 Q. And for the record, South Island is in a
7 floodplain, correct?

8 A. Yes.

9 Q. Is your property in a floodplain?

10 A. No.

11 Q. Okay. Now, one of the things I want to
12 talk about -- give me one second -- okay. The
13 master association who is the plaintiff in this
14 lawsuit, they are a nonprofit corporation,
15 correct?

16 A. Yes.

17 Q. Okay. And the DRB is a subset or
18 committee of the Master Board?

19 A. Yes.

20 Q. Do you agree with that?

21 A. Yes.

22 Q. And they're under the jurisdiction of
23 the Master Board, correct?

24 A. Yes.

25 Q. Okay. Now, when you go to -- let me ask

1 you this: Have you ever had a chance to -- are
2 you familiar with the South Carolina Nonprofit
3 Corporation Act?

4 A. Somewhat, not -- I'm aware of it.

5 Q. Okay. And let me hand you a copy.

6 MR. BELLAMY: I'll mark this as
7 No. 15.

8 (Exhibit No. 15 marked for
9 identification.)

10 Q. Ann, take a minute -- Ann, would it be
11 all right to call you Ann?

12 A. Yes. Fine.

13 Q. What I'd like you to do is just take a
14 minute to look over it and just familiarize with
15 it, and I'll just have some general questions,
16 okay?

17 (Pause in the proceedings.)

18 Q. Okay. Ann, what this is that this is
19 from Title 33, Corporations, Partnerships, and
20 Associations. That's from our South Carolina
21 Code of Laws. And specifically this is Chapter 8
22 of Title 33, and it deals with directors and
23 officers, and it also deals with committees that
24 are subsets of the Board of Directors.

25 In Article 3, which is what we're

1 talking about right here, it deals with standards
2 of conduct, and specifically provides
3 Section 33-A 300, General Standards for
4 Directors.

5 Did I state that correctly?

6 A. Yes.

7 Q. Okay. And it applies again to a
8 nonprofit corporation. And in this particular
9 lawsuit, the Tidewater Plantation Community
10 Association, Inc., the plaintiff in this case, is
11 a nonprofit corporation, correct?

12 A. Yes.

13 Q. Okay. And it specifically says, under
14 subparagraph A, A director shall discharge his
15 duties as a director, including his duties as a
16 member of the committee, in good faith, in
17 subparagraph 1 and subparagraph 2, with the care
18 an ordinary prudent person in a like position
19 would exercise under similar circumstances, and,
20 under subparagraph 3, in a manner reasonably
21 believes to be in the best interest of the
22 corporation and its shareholders.

23 Did I state that correctly?

24 A. Yes.

25 Q. Okay. So no question that the Board of

1 Directors for the Master Association and the
2 committee members of the Board of Directors for
3 the Design Review Board have a duty of good faith
4 to act with reasonable care regarding their
5 duties and responsibilities as set forth in the
6 governing documents of the Tidewater PUD,
7 correct?

8 A. Correct.

9 Q. Okay. And clearly -- and one of the
10 things I wanted to go through with -- give me one
11 second.

12 MR. BELLAMY: Do we have a copy of
13 the -- Madam Court Reporter, I need a copy of the
14 Complaint that we had listed as an exhibit. I
15 think it's either 3 or 4.

16 MS. CARY: It's Exhibit 8.

17 (Exhibit No. 8 previously marked
18 for identification.)

19 Q. All right. Let me do this -- I think I
20 can do it from memory. Okay. What you've got
21 what you're holding is -- it's a Summons. And
22 it's a Verified Amended Complaint, okay?

23 When you flip it over on page 3, it
24 indicates it's an Amended Verified Complaint.

25 Did I state that correctly?

1 A. Yes.

2 Q. Okay. And it shows that it was filed on
3 August 30th, 2021.

4 Did I state that correctly?

5 A. Yes.

6 Q. Okay. If you flip back to the last --
7 and it's also got exhibits. Give me one second.
8 And for the record -- and just please confirm
9 this. The plaintiff has exhibits from A through
10 Exhibit G. See if you agree with that, for the
11 record.

12 A. Yes.

13 Q. Okay. Now, Ann, what I'm trying to do
14 is I've got a lot of documents, so I'm kind of
15 trying to move as quickly as I can. I'm not
16 going to go through every single paragraph, but
17 I'm going to try to focus on what I think is
18 relevant.

19 So now what I want to do is, I want you
20 to flip over to page 4, okay? And then under the
21 heading it says, Tidewater Plantation and its
22 Covenants, okay?

23 The first paragraph, 8, deals with the
24 PUD Agreement, correct?

25 A. Yes.

1 Q. And you would agree that the PUD
2 Agreement is the agreement between the City of
3 North Myrtle Beach and the original developer in
4 this case, which was Southern Land and Golf
5 Company, LTD, correct?

6 A. Correct.

7 Q. Okay. And the PUD Agreement is the
8 controlling document as far as Tidewater -- you
9 know, as far as the Tidewater PUD. It's the
10 seminal document, all the responsibilities,
11 obligations, and duties and so forth. And as far
12 as what is permitted, what is intra vires that is
13 permissible as far as the duties and powers of
14 both the Master Board and the DRB all arise from
15 the PUD Agreement, the original PUD Agreement and
16 amendments.

17 Do you disagree with that?

18 MS. CARY: Objection to the form.

19 Q. You can answer.

20 A. Yes.

21 Q. Now, what I want to do is I want to flip
22 you over to page 5, and it's under paragraph 9,
23 okay? And under paragraph 9, I'll quote. I've
24 got a little bit of a squeaky there, but it says,
25 The relevant Tidewater Plantation Community

1 Association governing documents were hereinafter
2 incorporated by reference. And then it says,
3 Hereafter collectively referred to as the
4 governing documents, include but not limited to,
5 and then you've got subparagraph a through d,
6 okay?

7 And as far as subparagraph a talks about
8 the Third Amended and Restated Declaration of
9 Covenants, Conditions, and Restrictions from
10 Tidewater Plantation including the Bylaws. It
11 references that document and the deed book and
12 page.

13 Do you agree with that?

14 A. Yes.

15 Q. And it represents relevant amendments.

16 In the second document, you've got the
17 Property Owners Rules and Regulations Manual
18 recorded in the Horry County Register of Deeds,
19 and he gives a deed book and page. Okay. And
20 it's in parenthetical referred to as (Rules and
21 Regs.)

22 And then the third document is
23 subparagraph c. It's the Design Review Board
24 Standards, Requirements, and Procedures. And
25 it's dated August 6th, 2020. It was recorded in

1 the Horry County Register of Deeds at 4275 at
2 page 2053.

3 And the last one is subparagraph d, the
4 Contractor Work Rules, and it's dated March 2021,
5 and it's attached as Exhibit A.

6 You've got Exhibit A, B, C, D, E, F, and
7 G, correct?

8 A. Correct.

9 Q. Now, this Amended Complaint was prepared
10 by Amanda Bailey, okay? Are you familiar with
11 Amanda Bailey?

12 A. Yes, I am.

13 Q. Okay. She used to work at Burr Forman,
14 LLP. And since then she's no longer working for
15 them, and I think she's in-house counsel for
16 Coastal Carolina University.

17 But your current attorney is Taylor
18 Cary, okay?

19 So the point I want to make is Amanda
20 Bailey was initially the attorney of record when
21 the amended lawsuit was filed on August 30th of
22 2021.

23 Do you agree with that?

24 A. Yes.

25 Q. Okay. Now, if you flip over to the next

1 page, you'll see Verification to Amend the
2 Verified Complaint, okay? And what I'm going to
3 do I'm going to kind of read this into the
4 record. Then after I read it, I'll have some
5 follow-up questions.

6 It states, Catherine S. Weis, being
7 first duly sworn and deposed and says, I have
8 read the following Amended Verified Complaint,
9 and the name is true of my own knowledge except
10 to those matters or things relied upon
11 information and belief and to those things I
12 believe them to be true.

13 Okay. Did I read that correctly?

14 A. Where are you reading that?

15 Q. Right here. Right here. It says, I
16 have read the foregoing. Yeah.

17 Oh, I'm sorry. I apologize. I thought
18 you were -- it's the next page after the
19 signature page on the Amended Complaint.

20 A. Okay. I see it.

21 Q. Yeah. See where it says right here, it
22 says, Verification to Amended Verified Complaint.
23 And then it goes, Catherine S. Weis, being duly
24 sworn, deposed and says, quote, I have read the
25 foregoing Amended Verified Complaint, and the

1 same is true of my own knowledge except to those
2 matters and things stated upon information and
3 belief. And to these things, I believe them to
4 be true, end quote.

5 Did I read that correctly?

6 A. Yes.

7 Q. And I think she signed this roughly, it
8 looks like, in August of 2021. Do you agree with
9 that? I think it was notarized on the 30th day
10 of August 2021.

11 A. Well, the date is wrong, but it is
12 August 2021, yes.

13 Q. Okay. Okay.

14 So essentially do you know what a
15 verification is?

16 A. A verification?

17 Q. Yes.

18 A. You're verifying something is correct.

19 Q. Correct. Right. Under oath. Okay.

20 Now, getting back to paragraph 9 and as
21 we went over those --

22 A. What page are you on?

23 Q. Page 5. Okay.

24 MR. BELLAMY: And, Madam Court
25 Reporter, for the record, this is Defendant's

1 Exhibit --

2 THE REPORTER: I don't know.

3 She'll have to...

4 Q. Ma'am, I'm sorry.

5 A. 8.

6 Q. Okay. I apologize. Thank you, Ann.

7 It's Defendant's Exhibit 8, for the record.

8 And we already talked about paragraph 9
9 of the Amended Complaint, okay? And we went over
10 basically the governing documents, okay, that are
11 outlined in subparagraphs A, B, C, and D,
12 correct?

13 A. Yes.

14 Q. And my question is these were the
15 applicable documents, to your knowledge, at the
16 time the lawsuit was filed against the Nortons,
17 okay? These were the controlling documents that
18 Amanda Bailey was relying upon as far as
19 asserting what her position was with respect to
20 whether or not the Nortons complied with, you
21 know, the terms and conditions of the governing
22 documents.

23 And what I mean "controlling documents,"
24 these were the documents that applied based upon
25 when they submitted their plans, architectural

1 plans, to build for new construction on Lots 407
2 and 408.

3 At the time they submitted those plans
4 for DRB board approval, these were the
5 controlling documents that applied with respect
6 to their property.

7 Do you agree with that?

8 MS. CARY: Objection to the form.

9 You can still answer.

10 A. Yes. The PUD should be included in that
11 also?

12 Q. I agree. I agree. The PUD is the
13 controlling document.

14 A. But that's a City document. These are
15 Tidewater documents. And the City document is --
16 that's the City's document.

17 Q. Let me see if I can explain it this way.
18 The PUD Agreement is the seminal document between
19 the City of North Myrtle Beach and the original
20 developer, okay? And we'll get to the PUD in a
21 second.

22 And what essentially the PUD says is, is
23 the heirs and assigns of the city and of the
24 original developer, which would be the
25 association, okay, the Master Association, their

1 heirs and assigns would be -- they're bound by as
2 far as the design standards as set forth in the
3 PUD.

4 Do you have any reason to disagree with
5 that?

6 A. No.

7 Q. Now, what the PUD also says is, is that
8 the Board and the City have the right to have
9 additional covenants, conditions, restrictions
10 regarding setting up the powers and duties and
11 obligations of the Board of Directors and the
12 Design Review Board, okay? That's set out in the
13 PUD Agreement.

14 So what you have is, is you've got the
15 PUD, which is a seminal controlling document, and
16 then one of the -- as far as the Amended and
17 Restated Declaration -- the Third Amended and
18 Restated Declaration of Covenants, Conditions,
19 and Restrictions and Bylaws for Tidewater, you
20 know, Association, that is the controlling
21 document as set forth on paragraph 9 that the
22 Board of Directors looks to and the design board
23 looks to regarding as far as the scope of their
24 powers dealing with, you know, whether or not the
25 Nortons' plans and, you know, the architectural

1 plans comply with what I would say is the Design
2 Review Board standards of the association.

3 For example, maximum building height,
4 setbacks, whether you can have a tabby driveway
5 or whether you can put, you know, a firepit in
6 your yard or whether -- whatever type of railing
7 or, you know, whatever type of windows, it's all
8 set forth in the Design Review Board construction
9 standards of the DRB?

10 A. Yes.

11 MS. CARY: Objection.

12 Q. Okay. So the main thing I wanted to say
13 is, the point I wanted to use is the lawsuit was
14 filed by Tidewater, you know, Plantation
15 Community Association, Inc. And the point I was
16 trying to make is Amanda Bailey, who was the
17 attorney for the plaintiff in this particular
18 case, the Master Association, she outlined in
19 paragraph 9 the controlling documents that would
20 apply with respect to their allegations against
21 the Nortons in this lawsuit. That's the main
22 point I wanted to make.

23 And do you have any reason to disagree
24 with that?

25 A. No.

1 Q. Okay. And, Ann, you would agree as a
2 former member of the Design Review Board -- and
3 this is one of the things that I think is
4 important -- that a lot of people that serve on
5 Design Review Boards or serve as a Board of
6 Director on a nonprofit corporation are not
7 attorneys, okay?

8 And, Ann, you would agree that to
9 interpret and review a document you don't have to
10 be lawyers. You don't have to go to law school
11 to say only lawyers can interpret documents. The
12 point is as a person who has common sense and
13 knowledge and experience, life experience and
14 skills and that can read and write can interpret
15 a document.

16 You don't disagree with that.

17 A. No. I agree.

18 Q. Okay. So when you were on the -- I
19 think there were several periods from 1997 up
20 until 2025, if I remember your testimony. There
21 were like two or three -- at least three or four
22 times that you served on the Design Review Board
23 in different capacities?

24 A. Yes.

25 Q. And the point I want to make is when

1 you -- the first time that you served on the
2 Design Review Board, did you take it upon
3 yourself to go back and review the governing
4 documents, like the PUD Agreement? Did you go
5 back and read, you know, the Third Amended and
6 Restated Declaration of CCRs and Bylaws? Did you
7 review that? Did you review the Design Board,
8 you know, standards and requirements, and
9 procedures?

10 A. Yes. I -- yes.

11 Q. Okay. The reason why I ask that is,
12 obviously, as part of your duties and
13 responsibilities is acting in good faith. And
14 part of your duty and care as being a Board
15 member on the Design Review Board you have the
16 duty to inform yourself of what the governing
17 documents are that apply to a particular factual
18 situation or dispute between the parties, between
19 a homeowner and Design Review Board, between a
20 homeowner and the Master Board.

21 And obviously in order to resolve that
22 dispute, legal factual dispute, you've kind of
23 got to know what the documents say.

24 Do you agree with that?

25 A. Yes.

1 Q. And to the extent that you've never
2 read, you know, the PUD Agreement and you don't
3 know anything about it, obviously that would
4 essentially -- assuming there was a situation
5 where a Board member was serving on the Design
6 Review Board and indicated that he never read the
7 PUD Agreement, that would kind of be a -- you
8 would agree -- a breach of the standard of care?

9 MS. CARY: Objection to the form.

10 Q. You can answer.

11 A. There is a copy of the PUD Agreement
12 always in the DRB office. And I know speaking
13 from my own experience, I referred to the PUD
14 Agreement on a regular basis.

15 Q. Right.

16 And let me ask this -- and I'm not
17 trying to put you on the spot -- but just
18 hypothetically to the extent that somebody had
19 served on the DRB and an individual had served on
20 the Master Board, to the extent they testified
21 that they never reviewed the PUD Agreement, that
22 would kind of obviously, you know -- they would,
23 you know, fail to obviously discharge their duty
24 of good faith and care to be familiar with the
25 governing documents.

1 Obviously they're making decisions that
2 are binding the homeowners and binding the Board,
3 and the only way you can make an intelligent
4 decision is know what the documents say, correct?

5 MS. CARY: Object to the form.

6 Q. So the point I'm getting to, if there
7 hypothetically is a Board member that's on the
8 Design Review Board and he's never reviewed the
9 PUD Agreement, obviously that would be evidence
10 of his failure to discharge his duties.

11 MS. CARY: Objection to the form.

12 Q. You can answer.

13 A. I think circumstances would dictate, not
14 just a flat-out --

15 Q. That would be evidence -- the fact that
16 he never read the PUD Agreement, that would be a
17 failure to discharge his duties. That would be
18 evidence of his failure to discharge his duties?

19 MS. CARY: Objection to the form.

20 Q. You can answer.

21 A. Not necessarily, because everything in
22 the PUD Agreement that would apply to anything
23 you're doing on the DRB is also in the DRB
24 standards.

25 Q. Well, assuming that -- let me put it

1 this way: If you're on the Board of Directors,
2 the Master Board of Directors, if you're on the
3 DRB, in order to act in good faith, in order to,
4 you know, comply with your duty of care, a Board
5 member would need to inform himself and be
6 familiar with the PUD Agreement as far as the
7 dealing with -- also dealing with the
8 Declarations of CCRs and Bylaws and amendments
9 and also dealing with, you know, the DRB
10 standards, requirements, and procedures. And in
11 order to comply with your duty of good faith and
12 duty of care, you would need to familiarize and
13 become familiar with those documents.

14 MS. CARY: Objection to the form.

15 Q. Do you have any reason to disagree with
16 that?

17 A. I'm sorry?

18 MS. CARY: Objection to the form.

19 Q. Do you have any reason to disagree with
20 that?

21 A. I don't disagree with it.

22 Q. Okay. All right.

23 MR. BELLAMY: What I'd like is the
24 PUD Agreement. If we can pull that real quick.

25 Q. Ann, I think this is, what, Defendant's

1 Exhibit No...

2 A. 2.

3 Q. 2? Okay. All right.

4 (Exhibit No. 2 previously marked
5 for identification.)

6 Q. What you've got, this is the Planned
7 Unit Development, PUD Agreement, between the City
8 of North Myrtle Beach, South Carolina, and
9 Southern Land and Golf Company, LTD, for the
10 Tidewater Golf Club and Plantation, okay? And it
11 indicates that it's got a Deed Book of 1544, and
12 it's got a page of 391. And it looks like it was
13 filed on April 30th of 1992. Okay.

14 Do you agree with that?

15 A. Yes.

16 Q. Okay. Now, Ann, understand I'm not
17 going to go through every -- you know, there are
18 a couple of sections and provisions that I want
19 to address, and I'll try to move pretty quickly
20 through them. So I'm not going to go through the
21 whole document. So what I'll try to do is I'll
22 try to direct you to the relevant provisions,
23 okay?

24 The first thing I want to do, if you
25 would go -- and the pages that we're going to

1 focus on are page 1 through 13, okay? We're not
2 going to go through all 13 pages. But the thing
3 I would do, if you need to flip through it real
4 quick, you know, to refresh your memory, let me
5 know and I can wait.

6 A. No, I'm good.

7 Q. Okay. On page 1, it says, The City of
8 North Myrtle Beach, South Carolina, a South
9 Carolina Municipal Corporation, and Southern Land
10 and Golf Company, LTD, hereafter referred to as
11 the Developer, hereby covenant and agree to bind
12 the successors and assigns as follows. Okay.

13 So what that specific language does is
14 binding the heirs and assigns of the City of
15 North Myrtle Beach and the heirs and assigns of
16 the Developer, which include the Master
17 Association.

18 Do you agree with that?

19 A. Yes.

20 Q. Okay. Now, what I want to do is I want
21 to focus on -- I want to direct your attention to
22 subparagraph A2. And what I'd like you to do is
23 read that into the record, and then I'll have
24 some follow-up questions.

25 Oh, read it loud. Publish it. I'm

1 sorry. My apologies.

2 A. To all future development for the
3 project shall -- mine is not there -- I believe
4 it says conform to the standards --

5 Q. Described herein.

6 A. -- described herein. Each phase shall
7 require approval by the City. Approval of the
8 Planning Commission, the City Council, or other
9 regulatory agencies may also be necessary.

10 Q. Okay.

11 A. Then mine has something.

12 Q. And review shall be as stated in
13 Sections 9 and 10 of this agreement.

14 And then the last sentence says,
15 Anything not covered in this document shall be
16 governed by the City Zoning Ordinance Section 8
17 of this Agreement -- and Section 8 of this
18 Agreement.

19 Did I read the last sentence correctly?

20 A. Yes.

21 Q. So this is a seminal document that binds
22 the City of North Myrtle Beach and the original
23 developer and its heirs and assigns, which
24 includes the Master Association, correct?

25 A. Correct.

1 Q. Now, one thing, Ann, I want to ask you
2 about is -- and you may have to flip through the
3 Documents 1 through 13 -- but my specific
4 question is, is there anything in the PUD
5 Agreement, this PUD Agreement, that specifically
6 addresses building in a floodplain, okay, a
7 residential structure like a single-family
8 res- -- in large lots in a floodplain? Is there
9 anything that specifically addresses that?

10 A. From my knowledge, I don't recall their
11 floodplain being addressed --

12 Q. That's right. That's right.

13 A. -- in there.

14 Q. So what I would say, my review of the
15 document is I've read pages 1 through 13 and the
16 attachments, and I would represent as an officer
17 of the court there's nothing in the PUD
18 Agreement, this PUD Agreement, that specifically
19 addresses building in a floodplain and how you
20 determine or how you measure maximum roof height.

21 Do you agree with that statement?

22 MS. CARY: Objection to the form.

23 A. I'm not aware that there's anything in
24 here.

25 Q. Okay. Now, if you had sufficient time

1 to review it, because I'm not trying to trick
2 you. But if you can point it out, I'd like to
3 see it, but I don't think it's in there.

4 A. I don't think it is.

5 Q. Just take your time. If you want to go
6 back --

7 A. I'm not -- I mean, I'm --

8 Q. Okay. You're pretty sure --

9 A. I'm pretty familiar with the PUD. I
10 don't recall it being in there.

11 Q. Okay. All right.

12 The next question I've got for you --
13 and I'm still talking about, you know, this PUD
14 Agreement. Okay. Is there anything in the PUD
15 Agreement that specifically states or indicates
16 that Section 23106 is inapplicable as far as how
17 you would determine maximum building height, of
18 roof height of a residential structure in a
19 floodplain? Is there anything that speaks to
20 that, to your knowledge?

21 A. To my knowledge, it's not in the PUD
22 Agreement.

23 Q. Okay. All right.

24 And the point I'm trying to make is --
25 the reason why I ask those questions is, is when

1 you go to subparagraph A2, again it specifically
2 states anything that is not covered in this
3 document shall be governed by the City Zoning
4 Ordinance. Okay. Did I state that?

5 So based upon the last sentence of
6 subparagraph 2, if anything regarding regulations
7 or dealing with provisions of the City of
8 North Myrtle Beach Zoning Ordinance, if they're
9 not specifically, expressly excluded, okay, then
10 you would look to the city ordinance. If it's
11 not specifically addressed in the PUD, my
12 question is you would agree that you would have
13 to go to the City Zoning Ordinance obviously to
14 deal with that?

15 For example, the City Ordinance on
16 23-106 deals with building a residential
17 structure in a floodplain.

18 Do you agree with that?

19 MS. CARY: Objection to the form.

20 A. Yes.

21 Q. Okay. Okay. Yes.

22 A. It's not in the governing documents for
23 Tidewater, anything about 23-106.

24 Q. Okay. So you would agree that based
25 upon that last sentence that because there's

1 nothing in the PUD Agreement dealing with
2 determining maximum building height in a
3 floodplain, you would resort to 23-106.

4 You agree with that?

5 MS. CARY: Objection to the form.

6 Q. You can answer.

7 A. Me as -- in general or me as a DRB
8 member? I would not have even been aware of
9 23-106.

10 Q. As a DRB member.

11 A. I would not be aware of 23-106.

12 Q. But what I'm saying is you're familiar
13 with 23-106, aren't you?

14 A. Now I am.

15 Q. Okay. I understand that. All right.

16 But the point I'm trying to make is, is
17 because there's nothing in the PUD Agreement that
18 deals with building in a -- building a
19 residential structure in a floodplain as far as
20 determining maximum building height, how you
21 measure, whether it's from grade or you determine
22 what the base certified flood level, 1 foot above
23 that and measure from there. My point being is,
24 is that because that is not specifically
25 addressed in the PUD, you would look to the City

1 Zoning Ordinance for clarification?

2 Do you agree with that?

3 MS. CARY: Objection to the form.

4 A. DRB never got involved in any kind of
5 enforcement, any kind of ordinance or --

6 Q. I'm not saying it's your job to enforce
7 it. I'm just saying for clarification purposes,
8 like I said, that sentence says if the PUD
9 doesn't speak to it, you have to look to the City
10 Zoning Ordinance. That's what that last sentence
11 says.

12 Do you agree?

13 A. Yes.

14 Q. Okay. So what I'm saying is, is that,
15 as you had mentioned, you since learned when you
16 were on the DRB, and it since came to your
17 knowledge, that when you deal with a situation
18 when somebody is building in a floodplain, that
19 23-106 specifically deals with that.

20 You don't disagree with that?

21 MS. CARY: Objection to the form.

22 A. I don't really want to comment on
23 interpreting a federal...

24 Q. It's not federal.

25 A. A city ordinance.

1 Q. Well, the thing is, is that a lot of
2 times is when you're on the DRB and you're in a
3 PUD, you're going to have to look to the City
4 Zoning Ordinance as far as determining whether or
5 not somebody's plans, construction plans,
6 architectural plans comply with, you know, design
7 review standards. Sometimes you're going to have
8 to look to the actual city zoning agreement -- or
9 zoning ordinance, excuse me, to make that
10 determination whether they comply or don't
11 comply?

12 A. No, we would not. We only enforce and
13 refer to the DRB standards when we look at house
14 plans.

15 Q. Okay. But your controlling document
16 that you said, the PUD Agreement, basically says
17 that if it's not specifically stated in the PUD
18 Agreement, you have to look to the City Zoning
19 Ordinance. That's what the document says.

20 A. And everything we deal with in the PUD
21 Agreement is also in the DRB standards.

22 Q. Right. And the point where this is
23 really coming to, Ann, is that ultimately the PUD
24 Agreement sets out, you know, as far as the
25 hierarchy and which document controls.

1 You don't disagree with that?

2 A. No.

3 Q. Okay. And if the PUD Agreement says
4 that if it's not specifically addressed in the
5 PUD Agreement and you have to look to the City
6 Zoning Ordinance, whether the Board of Directors
7 does that, then that's what the PUD Agreement
8 calls for, correct?

9 MS. CARY: Objection to the form.

10 A. I can't think of any reason why the
11 governing board would have to be in a situation
12 like that.

13 Q. Well, let me explain, okay? When
14 Tidewater Plantation -- when the PUD -- Tidewater
15 Plantation is a PUD, correct?

16 A. Yes.

17 Q. Okay. When it was created, the seminal
18 document creating it is the PUD Agreement, okay?
19 The PUD Agreement is between the City of North
20 Myrtle Beach, and it's between the original
21 developer, correct?

22 A. Yes.

23 Q. And the Master Association Design Review
24 Board essentially errs to the designs of the
25 original developer, correct?

1 A. Yes.

2 Q. So if -- in the PUD Agreement there's
3 nothing that specifically addresses building in a
4 floodplain, correct?

5 A. Yes.

6 Q. Okay. Now, when the Nortons submitted
7 their building plans to you, okay, back in July
8 of -- I think in 2020, the Nortons submitted
9 their building plans for new construction on
10 Lots 407 and 408 that were prepared by Felix
11 Ayres, correct?

12 A. Yes.

13 Q. And when you got the plans, it didn't
14 take a rocket scientist to figure out that what
15 they did is -- through the DRB approval they
16 combined two lots, 407 and 408, correct?

17 A. Correct.

18 Q. And their lot was the biggest lot in
19 South Island, correct, because they combined two
20 lots?

21 A. I know there's several combined out
22 there.

23 Q. Okay. I'll represent that I think it's
24 the biggest lot. Okay.

25 Now, and you've already testified that

1 there's nothing in the PUD that deals with how
2 you determine maximum building height in a
3 floodplain, correct?

4 MS. CARY: Objection to the form.

5 Q. And, Ann, if you go back -- the other
6 thing I will tell you, none of the governing
7 documents deal with -- that were applicable at
8 the time that the Nortons submitted their plans
9 to the DRB back in -- a little bit before July of
10 2026, that dealt with how you determine maximum
11 building height in a floodplain.

12 Do you agree with that?

13 MS. CARY: Objection to the form.

14 Q. You can answer.

15 A. It's not been in our documents because
16 we don't deal with calculating building in a
17 floodplain.

18 Q. I understand that. You're getting ahead
19 of me. What I'm saying is, is that because the
20 governing documents of the Tidewater Plantation,
21 including -- we're talking about the PUD. We're
22 talking about all the documents we -- you know,
23 we're going through subparagraphs A through, you
24 know -- let me see, A through, whatever, D.
25 Okay.

1 Because they don't specifically deal
2 with how you measure maximum building height in a
3 floodplain for residential structure, then what
4 I'm arguing is you have to refer back to the City
5 Zoning Ordinance, okay?

6 And because -- what I'm asking you is,
7 if you disagree with me, then what I'd like you
8 to do is, since you're familiar with the
9 governing documents, the PUD and all that, show
10 me where -- any document at the time that Ken was
11 trying to construct new construction, build his
12 house, back in July 2020 that specifically
13 instructed and informed the DRB regarding, you
14 know, the design standards and requirements, how
15 you measure maximum building height. There was
16 nothing in -- there was nothing in the governing
17 documents that dealt with that, correct?

18 MS. CARY: Objection to the form.

19 A. Pardon?

20 MS. CARY: Objection to the form.

21 Q. You can answer.

22 A. No. We deal from finished grade to the
23 highest peak.

24 Q. Okay.

25 A. PUD Agreement and the DRB standards.

1 Q. All right.

2 MR. BELLAMY: Let's mark this -- do
3 we have the building agreement? Do we have
4 the -- I think I marked the building permit. See
5 if it's in there.

6 Q. Ann, let me back up for a second. I
7 want to ask you this: In the PUD Agreement --
8 you've had a chance to look at it -- is there
9 anything in the PUD Agreement that indicates that
10 maximum building height is 41 feet?

11 A. No. It's 42 in the PUD.

12 Q. Okay. All right.

13 Now, in the PUD Agreement, is there
14 anything that specifically says that the DRB or
15 the Board of Directors has the right or the
16 discretion to limit maximum building height?

17 A. Does it state that in the PUD?

18 Q. Yes.

19 A. Not that I'm aware of.

20 Q. It doesn't state that. Okay.

21 And obviously you served on Design
22 Review Boards on three or four different
23 occasions over a period of greater than ten
24 years, and you're aware of and you know that as
25 far as the governing documents under South

1 Carolina law are considered, like, a contract
2 between the Board, between the developer, and
3 between the members, okay? All right.

4 And under covenants and conditions -- I
5 don't think Taylor will disagree with it --
6 they're strictly construed, okay? So you
7 strictly construe them.

8 And what I'm saying is when you go back
9 and look at the PUD, look at the governing
10 documents from Tidewater, there's nothing in
11 there that it specifically, expressly state that
12 the Board or the Design Review Board, the Board
13 of the Master Association or Design Review Board
14 has the discretion and the ability to limit
15 maximum building height.

16 It does not address that, correct?

17 MS. CARY: Objection to the form.

18 A. I don't know. I'm not --

19 Q. Well, I need a -- I mean, what I'm
20 saying is you're familiar with the governing
21 documents. You're not saying, I haven't had a
22 chance to read them. I forgot about them. I
23 never read them, or anything like that. Since
24 you're familiar and have read them, then what I
25 want to say is -- clearly I'll represent to you

1 there's nothing in there that specifically allows
2 or impliedly allows the Board, the DRB Board, or
3 the Master Board to go back and say, you know,
4 I'm going to reduce it from 42 to 41. There's
5 nothing that gives them that express or implied
6 power --

7 MS. CARY: Objection.

8 Q. -- in the governing documents?

9 MS. CARY: Objection.

10 Q. And if you say, Well, I'm not sure, then
11 what I would ask you to do, Ann, is as far as --
12 go through the PUD and see if there's any
13 language in there. Then go through the Third
14 Amended and Restated Declaration of CCRs and
15 Bylaws and show me if there's anything in there.

16 Because, you know, I think what I'm
17 saying is I have the right to either know yes or
18 no. Either it does or it doesn't. It can't
19 be -- like I say, you can't be half pregnant.
20 Either you are or you're not.

21 So what I'm asking you is, with all due
22 respect, if you think that language is in there,
23 please find it and point it out to me.

24 A. I don't think it is.

25 MS. CARY: Objection to the form.

1 Q. You don't think it is. Okay. Are you
2 100 percent sure on that?

3 A. No.

4 Q. Well, then take a minute. Just go
5 through it. I'm willing to wait.

6 A. Read the whole PUD Agreement?

7 Q. Well, it's 13 pages. You can flip
8 through it.

9 A. Well, what about has always been
10 Tidewater DRB standards can enhance the PUD
11 Agreement, but it cannot violate the PUD
12 Agreement?

13 Q. I'll get to that. You're getting one
14 step ahead of me. I know where you are, but just
15 go through. What I'm asking is, my specific --

16 A. I'm not aware that it's in the PUD.

17 Q. Okay. So for the record, so we're clear
18 on this, regarding the PUD and all the governing
19 documents for Tidewater Plantation, to your
20 knowledge, upon information and belief, what you
21 know is there's not any express language that
22 states that the Master Board of Directors or the
23 DRB Committee or Board of Directors has the
24 discretion to limit maximum building height from
25 42 to 41 or to 36 feet in a floodplain. There's

1 nothing that expressly states y'all have that
2 right to do it, either an express right or
3 implied right?

4 Is that a fair statement?

5 MS. CARY: Objection to the form.

6 A. Not to my knowledge.

7 Q. All right. Okay. All right.

8 Ann, bear with me. Okay. All right.

9 All right.

10 What I'm holding is the Third Amended
11 Restated Declaration of Covenants, Conditions,
12 and Restrictions for Tidewater Plantation, okay?
13 And remember in the Complaint that was prepared
14 by Amanda Bailey, the Master Association's
15 attorney -- and then she filed, I think, that
16 Amended Complaint back in August of 2021 -- this
17 is one of the documents that she references that
18 would be controlling, correct?

19 A. Yes.

20 Q. Okay. All right.

21 Now, I'll represent to you there's
22 nothing in this document, the Third Amended and
23 Restated Declaration of Covenants, Conditions,
24 and Restrictions and Bylaws, that specifically
25 states that the maximum building height in

1 South Island, you know, subassociation, or I
2 would say that particular subdivision, that
3 allows a maximum building height of 41 feet.
4 There's no language in this document that
5 specifically addresses that --

6 MS. CARY: Objection.

7 Q. -- saying it's 41 feet.

8 And to the extent you believe there is,
9 I would appreciate if you would point that out to
10 me.

11 MS. CARY: Objection to the form.

12 A. To my knowledge, there is not.

13 Q. Okay. All right.

14 All right. Ann, let me refer you to --
15 this is Exhibit B, okay? And this is the
16 supplemental use restrictions. And it's -- the
17 deed book and page is -- the page is 1815. And
18 just let me know when you get there.

19 A. I'm there.

20 Q. Okay. Now, it is Exhibit B. Obviously
21 it's an exhibit to the First Amended Declaration
22 and CCRs, correct?

23 A. Yes.

24 Q. Now, I'm not going to ask you about the
25 first paragraph, but I want to refer to the

1 second paragraph where it talks about building
2 height.

3 What I would appreciate is you would
4 read that into the record, publish it, and then
5 I'll have some follow-up questions.

6 A. Building height was to the units within
7 the property described as Exhibit A hereto, no
8 dwelling or other structure shall be constructed
9 on a lot which has a height exceeding 42 feet
10 above the elevation of the average finished grade
11 of the lot. Declarant reserves the right to
12 modify, amend, or change the within height
13 restriction as it may apply to any unit or
14 dwelling within the additional property subject
15 to this declaration upon the filing of a
16 supplemental declaration of record, provided,
17 however, that all height shall be subject to the
18 provisions of the PUD Agreement dated April 4,
19 1989, and as may be amended.

20 Q. Okay. So what this agreement is, as far
21 as building height, it basically is sending you
22 back to the PUD Agreement, including all
23 amendments, okay?

24 So ultimately you have to go back to the
25 PUD Agreement to determine what the building

1 height is, maximum building height is, in a -- as
2 far as in South Island.

3 And when you go to the PUD, specifically
4 it deals with that section where it says
5 single-family large lots.

6 A. Yes.

7 Q. Do you know what I'm talking about?

8 A. Yes.

9 Q. And if you go down to the second to the
10 last bullet point, it says, The upper expansion,
11 the uppermost part of the roof is 42 feet.

12 Did I state that correctly?

13 MS. CARY: Objection to the form.

14 Q. You can look at it. I'll pull it up.
15 Just take a minute to look at it.

16 A. Where is it?

17 Q. Go to the PUD Agreement. So what it
18 would be, it would be under, Ann, 3D,
19 Developmental Standards, okay?

20 A. Yes.

21 Q. All right. You go under 1, Large Lot
22 Single-Family, and obviously that would refer to
23 the Nortons' two lots, okay?

24 Then you go to the last bullet point and
25 it says -- I apologize -- the last bullet point,

1 Uppermost point of the structure indicates
2 42 feet, correct?

3 A. Correct.

4 Q. It doesn't say 41 feet?

5 A. No.

6 Q. And specifically it doesn't say, oh, by
7 the way, in a footnote, you know, the DRB board
8 or the Board of Directors for the Master
9 Association has the discretion to limit the
10 maximum height of the structure in, you know, in
11 South Island. It didn't say that?

12 A. No.

13 Q. Okay. Okay.

14 So the point I want to make about the
15 Third Amended Restated Declaration of Covenants
16 and Restrictions is that if you're going to amend
17 maximum height you have to refer to the PUD
18 Agreement. And then what you have to do is you
19 have to meet with the city officials, the City of
20 North Myrtle Beach, and you have to -- they have
21 to agree to obviously amend the PUD document.

22 So it's not like -- The Board does not
23 unilaterally -- the Master Board or the DRB
24 cannot unilaterally amend building height. They
25 have to get the City to sign off on that?

1 MS. CARY: Objection.

2 A. In the PUD Agreement.

3 Q. In the PUD Agreement, correct.

4 And remember, again, the point I'm
5 trying to make is in the Third Amended and
6 Restated Declaration of Covenants, Conditions,
7 and Restrictions it specifically states that the
8 maximum building height is 42 feet, correct? And
9 that you have the right to amend it or change it,
10 but the PUD Agreement controls, correct?

11 MS. CARY: Objection to the form.

12 Q. So in order to reduce the maximum
13 building height from 42 to 41, you're going to
14 have to amend the PUD document?

15 A. To change it in the PUD, yes.

16 MS. CARY: Objection.

17 Q. Now, to your knowledge, has the PUD been
18 amended since 1992 to the present date where it
19 includes an amendment where they changed the
20 maximum building height in South Island, where
21 they've limited it from 42 to 41, to your
22 knowledge?

23 A. To my knowledge, no.

24 Q. Okay. All right.

25 Now, Ann, I'm going to hand you what's

1 been previously marked as Defendant's Exhibit
2 No. 5 to your deposition.

3 (Exhibit No. 5 marked for
4 identification.)

5 Q. This is a building permit. And the
6 building permit was applied for on August 19,
7 2020. It was issued on October 15, 2020, okay?
8 And it deals with the Nortons' property, okay?

9 A. I don't have that.

10 Q. All right. Take a minute to look at it.

11 A. Okay.

12 Q. Okay. Now, you were on the DRB back in
13 July of 2020, correct?

14 A. Yes.

15 Q. Okay. And the Nortons submitted their
16 plans to the DRB, and y'all rejected the plans.
17 And I think there was an email from Bob Moss to
18 the Nortons kind of laying out ten points or what
19 were the reasons why that they rejected the
20 plans.

21 Is that a fair statement?

22 A. Yes.

23 Q. Okay. Now, what the building permit
24 shows is that after the DRB declined the Nortons'
25 construction plans to build their new house,

1 residential house on Lots 407 and 408, what they
2 did is they took the plans prepared by Felix
3 Ayres, the architect -- and one point I want to
4 make too is Felix was a consultant to the DRB
5 back in 2020, correct?

6 A. Yes.

7 Q. Okay. And what I mean by "consultant"
8 is if y'all had questions regarding architectural
9 issues, design issues determining maximum
10 building height, he would be the guy ultimately
11 that -- one of the people, consultants y'all
12 would look to, correct?

13 A. Yes.

14 Q. Okay. And then to the extent there were
15 some legal issues about interpretation, you would
16 look to an attorney. And I think at that time
17 the Master Association's attorney was Elizabeth
18 Saraniti, correct?

19 A. Yes.

20 Q. Okay. So if y'all had interpretation
21 problems and you're trying to figure out what the
22 documents say, you could defer to Mrs. Saraniti,
23 correct?

24 A. Could, but to my knowledge, we never
25 did.

1 Q. She, I think, lived in Panama, right?

2 Panama? She was living in Panama at the time?

3 A. I don't even know.

4 Q. Okay.

5 A. I never met her.

6 Q. Okay. All right.

7 So the City -- based upon that building
8 permit, the City signed off on the Nortons'
9 building plans for Lots 407 and 408 that were
10 prepared by Felix Ayres, the architect.

11 Do you agree with that?

12 A. Yes.

13 Q. Okay. Now, interestingly, I want to
14 make this clear, is that they signed off on that,
15 I think, on October of 2020, which is --

16 A. Yes. October 15th.

17 Q. Yeah. And so how many months -- and I'm
18 rotten at math -- but how many months is that
19 from the date when y'all denied or rejected it?
20 How many months or days had transpired from --

21 A. From July through October.

22 Q. Okay. And that's...

23 A. Three.

24 Q. Four -- three or four. Okay. Yeah.

25 All right.

1 Now, when they -- and were you aware of
2 the fact that Mr. Norton or Mrs. -- the Nortons
3 basically -- the building plans they submitted
4 prepared by Felix Ayres, they had to pay, I
5 think, \$10,000 for the building permit.

6 Were you aware of that?

7 A. No.

8 Q. Okay.

9 MR. BELLAMY: Mark this real quick.
10 Okay.

11 (Exhibit No. 16 marked for
12 identification.)

13 Q. Now, what that is, is that -- let me
14 see. I don't even have it in front of me. I
15 think I could probably from memory, it seems
16 like -- I've been dealing with this.

17 What you've got is, that is a reply that
18 Ben Caldwell filed -- let me kind of lay the
19 foundation. Let me back up for a second. Okay.

20 Once the Master Board of the DRB became
21 informed that the Nortons' building plans
22 prepared by Felix Ayres had been approved by the
23 City of North Myrtle Beach, my understanding is
24 that Dave Jeffers, I think -- was he -- at that
25 time, was he chairman of the board for the DRB?

1 A. Yes.

2 Q. Okay. He files an appeal to the City of
3 North Myrtle Beach Board of Zoning Appeals taking
4 exception that the cupola was not a necessary
5 mechanical feature, okay?

6 A. Yes.

7 Q. And then there was a hearing held by the
8 City of North Myrtle Beach Board of Zoning
9 Appeals, and essentially they reversed
10 Ben Caldwell, who was the zoning administrator
11 for the City of North Myrtle Beach, correct?

12 A. Yes.

13 Q. Now, the point I want to make is, is
14 that in that reply, Ben Caldwell, the zoning
15 administrator cites 23-106, correct?

16 A. Yes.

17 Q. And basically what he says is -- and let
18 me -- take a minute to read through that, and
19 I'll have a follow-up question.

20 A. Okay.

21 Q. Okay. I'm going to try to paraphrase
22 what 23-106 says, so if I misstate something,
23 Ann, tell me.

24 What 23-106 essentially says, if you're
25 not in a floodplain, you start to measure maximum

1 building height from grade essentially. But if
2 you're in a floodplain, you do not measure from
3 grade. You measure from the base certified level
4 1 foot, and then you measure up to the midpoint
5 between the eave and the highest point of the
6 roof. Is that essentially what it says?

7 A. Yes.

8 Q. Okay. And what the position of the City
9 is is that when you're in the floodplain, it's
10 not 41 feet is the maximum building height. It's
11 42, correct?

12 MS. CARY: Objection to the form.

13 A. Yes.

14 Q. And the City's position also is you
15 don't measure from grade when you're in a
16 floodplain. You measure from the base certified
17 level, 1 foot above that to the maximum point,
18 midpoint between the eaves and the highest roof
19 [sic].

20 And one correction is, is that for
21 whatever reason, what the City does, they've
22 changed the 23-106. And basically what their
23 interpretation is that once you determine what
24 the base certified flood level is, that's
25 essentially the first buildable living space,

1 okay?

2 Then 1 foot above that, they're
3 basically saying it's not between the midpoint
4 and the highest point of the roof. It's from
5 that base certified level, 1 foot above that to
6 the highest point of the roof. I think that's
7 what he's saying in there.

8 Do you agree with that?

9 MS. CARY: Objection to the form.

10 Q. You can answer.

11 A. That's what I'm reading.

12 Q. Okay. So my paraphrasing or
13 interpretation of what Ben Caldwell is saying in
14 his response to the appeal is -- that's
15 consistent. I'm not misstating it.

16 Do you agree with that?

17 A. Yes.

18 MS. CARY: Objection to the form.

19 Q. Thank you.

20 MR. BELLAMY: Mark this real quick.

21 (Exhibit No. 17 marked for
22 identification.)

23 Q. Ann, what I'm showing you right here,
24 it's basically part of, you know, the Design
25 Review Board standards, conditions, and

1 requirements, okay?

2 And where it says, The procedural table
3 for new construction --

4 A. Uh-huh.

5 Q. See where I'm talking about on the first
6 page right here?

7 A. Yes, uh-huh.

8 Q. Are you familiar with this language?
9 You know, I can -- I think you --

10 A. Yes.

11 Q. Okay. You know where it says, Review
12 county and city codes, Tidewater Plantation DRB
13 standards for site planning and architectural
14 criteria.

15 Did I read that correctly?

16 A. Yes.

17 Q. What that's basically saying is that the
18 Design Review Board members, one of their
19 responsibilities in order to act in good faith
20 and comply with their duty of care, you know,
21 looking after the members of the association and
22 obviously, you know, the relevant parties, is
23 that they've got to review the county and city
24 codes, and they've also got to review the DRB
25 standards for site planning and architectural

1 criteria in order to comply with their duty of
2 good faith and due care.

3 Do you agree with that?

4 A. No.

5 Q. All right. Explain why you don't agree.

6 A. This procedural table is written for
7 contractors and people who are building houses.
8 And this is a procedure that they're to follow in
9 submitting an application to the DRB.

10 Q. Okay. But you would understand it if
11 you're requiring the contractors, you know, to be
12 familiar with the county, city codes, in order to
13 determine if they're following, you know, the
14 county, city codes and also the DRB standards for
15 planning and architectural criteria, y'all are
16 going to have to review those documents too --

17 MS. CARY: Objection to the form.

18 Q. -- in order to be familiar with them?
19 For example --

20 A. We do not review county and city codes.

21 Q. Well, the PUD is essentially it's an
22 ordinance with the City. Did you know that?

23 A. Uh-huh.

24 Q. Okay. So the PUD is a city ordinance.
25 You are reviewing a city ordinance and code.

1 A. But when they change an aspect of the
2 PUD Agreement, the City should change the PUD
3 Agreement.

4 Q. They should.

5 And what I'm saying is in order to
6 change the PUD Agreement, both the City and the
7 Master Board and the members of Tidewater
8 Plantation have to be on the same page.

9 You don't disagree with that, do you?

10 A. No. They both have to sign any
11 amendment to the PUD, but it's a City document.

12 Q. Right. Okay.

13 A. And the DRB doesn't monitor city
14 ordinance changes.

15 Q. Okay. Well, not to beat a dead horse,
16 but remember when we were talking about the PUD
17 Agreement and the PUD said that if there's not
18 something specifically in the PUD that deals with
19 like, for example, building in a floodplain, you
20 know, in determining maximum building height, it
21 says you look to the city ordinance.

22 Wouldn't that direct the DRB and the
23 Master Board to have to -- wouldn't that say that
24 they have -- in order to discharge their duty,
25 they have an affirmative obligation to go look at

1 the city ordinance to make sure, example 23-106,
2 to make sure that, you know, that they're
3 complying with, you know, the governing
4 documents?

5 MS. CARY: Objection to the form.

6 A. I don't think so because we don't
7 enforce changes to the PUD -- there were no
8 changes to the PUD Agreement. That's the only
9 thing we're obligated to enforce is the PUD and
10 the DRB standards.

11 Q. Okay. Well, Ann, let me say this --

12 A. And until it's changed, we go by what
13 the PUD states.

14 Q. Right. Right.

15 But in order to change the PUD, to amend
16 the PUD, both the City and the Master Association
17 and the membership and the DRB all have to agree
18 on it. You can't unilaterally amend the PUD
19 without the City agreeing to it, correct?

20 A. Right.

21 MS. CARY: Objection to the form.

22 Q. Okay. Okay.

23 A. But we would not be aware of an
24 ordinance change. We would have no way of
25 knowing.

1 Q. Well, let me just say this: I agree
2 with you in the sense that -- if you go back to
3 the PUD Agreement, I think Section 11, if you go
4 to the PUD Agreement, okay?

5 Let me know when you get to it. I think
6 it's Section 11. Am I correct on that?

7 A. Modifications. Section 10, Expansions,
8 Modifications.

9 Q. And then go to No. 11, Section 11. See
10 it?

11 A. Oh, there it is, yes.

12 Q. Okay.

13 A. Recording.

14 Q. Right. In order -- let me say this, in
15 order for the PUD to be effective -- enforceable,
16 it has to be recorded, correct?

17 A. Yes.

18 Q. Okay. So let me just say this, to the
19 extent that there are amendments to the PUD, it's
20 our position that they have to be recorded in RMC
21 office. And if they're not recorded, that
22 creates a problem.

23 A. Yes.

24 Q. Okay. All right.

25 All right. Ann, see if you've got that

1 document right there.

2 Ann, what I've got, the title is 23-100,
3 Conformity With Regulations Required. It's on
4 the top.

5 A. Yes.

6 Q. Top left-hand corner.

7 Did I read that correctly?

8 A. Yes.

9 Q. Okay. And for the record, this is part
10 of the City of North Myrtle Beach Zoning
11 Ordinance, correct?

12 A. Yes.

13 Q. Okay. Now, I'll publish the next
14 sentence. It says, No building, structure, or
15 land shall hereafter be used, and no building,
16 structure, or part thereof shall be erected,
17 reconstructed, converted, enlarged, moved or
18 structurally altered unless in conformity with
19 the regulations as set forth in this chapter.

20 Did I read that correctly?

21 A. Yes.

22 Q. So the PUD Agreement is part of the city
23 ordinance, okay? And based upon that language,
24 Section 23-100 in conformity with regulations
25 required, this Section 23-100 through 23-106 and

1 going forward would also supplement the PUD
2 Agreement?

3 MS. CARY: Objection to the form.

4 Q. Do you agree with that?

5 A. Only when enacted and approved by both
6 parties to the PUD Agreement.

7 Q. Well, let's just say this. My position
8 is is that the way this language is written,
9 because the PUD is part of the City Zoning
10 Ordinance, that this is part of the City Zoning
11 Ordinance too, 23-100, and what this is
12 essentially saying is that you have to rule upon
13 these provisions. In addition to what the PUD
14 says, that these provisions also apply.

15 You don't disagree with that's what the
16 language says.

17 MS. CARY: Objection to the form.

18 A. I'm not comfortable answering that.

19 Q. Well, let's see -- let's just work
20 through it. Let's parse it out a little bit,
21 okay? I'm not trying to be tricky.

22 It says, No building, structure, land
23 shall hereafter be used. No building, structure,
24 or part thereof shall be erected, reconstructed,
25 converted, enlarged, moved, or structurally

1 altered unless in conformity with the regulations
2 set forth in this chapter, okay? Is there
3 anything in 23-100 or 23-101 that basically says
4 that this language does not apply to the PUD
5 Agreement between the City of North Myrtle Beach
6 and the Master Association?

7 MS. CARY: Objection to --

8 Q. Is an heirs and -- is an heir of the
9 original developer, heirs and assigned of
10 original developer.

11 MS. CARY: Objection to the form.

12 Q. You can answer.

13 A. Just let me...

14 Q. Huh?

15 A. I'm not going to answer that one.

16 Q. Okay.

17 A. We don't have access to this as the DRB.
18 It's an ordinance. It's a city ordinance.
19 There's thousands of pages. The DRB does not
20 have access to that. When a change is made,
21 unless it's made to our specific PUD, we would
22 not be aware of it.

23 Q. Okay. Ann, all right, I understand
24 that's your position, okay? So I'm not going
25 to -- okay.

1 The point I'm trying to make is, is
2 that -- remember I showed you the reply from the
3 zoning director Ben Caldwell?

4 A. Yes, uh-huh.

5 Q. And he specifically said that 23-106 was
6 applicable?

7 A. Yes.

8 Q. Okay?

9 A. Uh-huh.

10 Q. Now, the point I'm referring to is
11 that -- for the record, what is the --
12 Defendant's Exhibit what? What number is this?

13 A. 4.

14 Q. 4. Okay. Thank you.

15 (Exhibit No. 4 previously marked
16 for identification.)

17 Q. So Defendant's Exhibit 4 to your
18 deposition -- for the record, we're referring to
19 23-100, Conformity With Regulations Required.
20 And then we've already gone through the language
21 of 23-100 and stated that. And the other thing I
22 want to direct your attention to, and then you've
23 got 23-101, 23-102, 23-104. You've got 23-105.
24 Then you have 23-106, okay?

25 And this is the specific provision that

1 Ben Caldwell was talking about in his reply to
2 the appeal from the DRB to the City of North
3 Myrtle Beach Board of Zoning Appeals back in, I
4 think, somewhere around 2020.

5 So the specific revision that Ben
6 Caldwell is referring to, 23-106, is part of this
7 exhibit.

8 You don't disagree with that?

9 A. No.

10 Q. Okay. Remember when I described what
11 the language -- relevant language of 23-106
12 basically states that if you're in a floodplain
13 that in order to determine maximum height, you do
14 not measure from the grade. You have to
15 determine what the base certified flood level,
16 1 foot above that. And it mentions to the
17 midpoint between the eave and highest point of
18 the roof.

19 My point being is, what this essentially
20 says is, is that when you're in a floodplain you
21 don't measure from grade -- do you agree with
22 that? -- based upon this provision.

23 A. That's what the ordinance states. But
24 our PUD Agreement does not.

25 Q. Well, no, the PUD Agreement does not

1 address 23-106, period. It doesn't state that
2 23-106 is inapplicable, correct?

3 MS. CARY: Objection.

4 A. It doesn't address it.

5 Q. That's what I'm saying. It doesn't
6 address it, so it doesn't say that it's
7 inapplicable, correct?

8 MS. CARY: Objection.

9 Q. I'll get right there. Let me show
10 you -- bring the PUD Agreement. I want to show
11 you something. Okay. Let me walk you through
12 this and see if I can convince you. I may not be
13 able to but I'll try.

14 What we're going to do is, we're going
15 to go back to the PUD again, and we're going to
16 page 1 of 13. And then we go to subparagraph A2.
17 Remember what the last sentence said, okay. It
18 said, Anything not covered in this document shall
19 be governed by the City Zoning Ordinance in
20 Section 8 of this agreement, okay?

21 So let's go to Section 8. Okay. Let me
22 see. Ah. It's on page 11 of 13. Okay. Ann, I
23 want to direct your attention to Section 8 where
24 it says, City regulatory power, okay? That's
25 where I want to -- so you see where I'm talking

1 about?

2 A. Yes.

3 Q. And I'll publish it for the record. It
4 said, quote, The city maintains all regulatory
5 powers as provided by law. This agreement does
6 not preempt any land use regulations not
7 specifically and intentionally changed by this
8 agreement, period, end quote.

9 Did I read that correctly?

10 A. Yes.

11 Q. So we've already agreed -- you've
12 already testified and agreed that this agreement
13 does not specifically address 23-106. It does
14 not say anything in the affirmative or negative.
15 It just doesn't address it.

16 But more importantly, for 23-106 not to
17 apply per paragraph -- what I would say
18 Section 8, this agreement specifically has to say
19 that 23-106 does not apply in order for it not to
20 apply. Because if it doesn't specifically,
21 expressly eliminate and say it's inapplicable
22 pursuant to Section 8, it applies?

23 MS. CARY: Objection to the form.

24 Q. Okay. That's my interpretation. Do you
25 agree or disagree with it?

1 A. That's what it says.

2 Q. Okay. I'll take that. All right.

3 A. The DRB can't enforce something it isn't
4 aware of.

5 Q. Well, all I'm going to say is, is that
6 this is the source document. This is the seminal
7 document that creates the PUD Agreement, correct?

8 A. Yes.

9 Q. Okay. So you would agree that obviously
10 it all originates from here, so any
11 interpretation of what applies or doesn't apply,
12 this would be the document you would look to,
13 correct?

14 A. Yes.

15 Q. Okay. Ann, let me ask you something.
16 Does the DRB have a confidentiality policy?

17 A. I don't think there's anything
18 specifically written.

19 Q. Okay. But even -- let me just say this,
20 even if there's not anything specifically
21 written, have y'all had a nonverbal policy, you
22 know, confidentiality policy y'all utilized over
23 the years?

24 A. Rule of thumb is you don't discuss
25 anyone's DRB fil with anyone other than the owner

1 of that property.

2 Q. So since you've been on the DRB as a
3 member of the DRB board, there is a -- I would
4 say a nonverbal confidentiality policy?

5 Is that a fair statement?

6 A. Yes.

7 Q. Okay.

8 A. And it's mentioned when you're
9 interviewing people and orienting them to the
10 DRB.

11 Q. Okay. So if somebody had submitted an
12 affidavit that indicated that there never was or
13 existed a confidentiality policy with respect to
14 the governing documents of Tidewater Plantation,
15 obviously you would disagree with that?

16 MS. CARY: Objection to the form.

17 A. Do I have to reply?

18 Q. Don't have to reply.

19 A. Say it again?

20 Q. Okay. All right. You just, if I
21 understand your testimony, you just testified
22 that based upon the custom and practice of how
23 the DRB, you know, did business when you were on
24 the DRB, at least the two or three or four times
25 that you served as a Board member of the DRB,

1 there was never anything in writing, but
2 obviously y'all were protective of people's
3 confidential information as set forth in the
4 plans.

5 Is that a fair statement?

6 A. Yes.

7 Q. Okay. That's all. I'll move on. Thank
8 you.

9 Ann, see if you can find this document
10 right here.

11 THE REPORTER: I think that's it.

12 Q. That's it. Okay. And for the record,
13 what exhibit is it?

14 A. 12.

15 Q. Okay. I appreciate that.

16 (Exhibit No. 12 previously marked
17 for identification.)

18 Q. What this is, this is -- I know you've
19 seen this before. This is Tidewater Plantation
20 Community Association. This is a newsletter,
21 correct?

22 A. Yes.

23 Q. And in the upper left -- right-hand
24 corner it's dated August 2016?

25 A. Yes.

1 Q. And then you look at the upper left-hand
2 corner, it says, President's Message, and it
3 indicates Bob Moss as the president, correct?

4 A. Yes.

5 Q. And Bob's sitting here in this
6 conference room today.

7 And when you go down to the third,
8 fourth paragraph he states, The PUD further
9 states that the maximum height of every
10 single-family unit is not to exceed 41 feet.
11 Villas, townhouses, and multifamily units are not
12 to exceed 50 feet at the uppermost point.

13 The only thing I'm asking you is, is in
14 response to this exhibit, is there anything that
15 you're aware ever in the PUD Agreement that
16 specifically -- and I think you've already
17 testified to this -- that specifically indicates
18 that maximum building height is 41 feet?

19 A. No.

20 Q. So that would -- I'm not saying that --
21 that was a misstatement. Would you agree with
22 that?

23 A. Or a typo.

24 Q. Or a typo. All right. Thank you.

25 This is Exhibit 18. Okay.

1 (Exhibit No. 18 marked for
2 identification.)

3 Q. Let me see, Ann. Let me look at that
4 real quick. Let me get it back to you. Okay.
5 All right.

6 Ann, what this is, this is Defendant's
7 Exhibit 18, okay? And this was produced in
8 discovery and it's -- by the plaintiff,
9 Tidewater. It's Bates-stamped Tidewater 0158.
10 And this is what was produced -- we had sent out
11 interrogatories and request to produce, and
12 plaintiff's counsel produced this document, okay?

13 Now, I've only got a couple questions.
14 But what it talks about is, it says, Issue went
15 to collection of fines for violation of TPC Rules
16 and Regulations and Covenants, Conditions, and
17 Restrictions and documents.

18 Is that the correct --

19 A. Yes.

20 Q. And it indicates that the effective date
21 of this document was February 2nd, 2017. Then it
22 says, Annual review date February 2020.

23 What is annual review date? What does
24 that mean?

25 A. These are Board policies. I'm not that

1 familiar with the process for Master Board
2 policy.

3 Q. Okay.

4 A. I think they review them every couple of
5 years.

6 Q. Okay.

7 A. Or as needed.

8 Q. Okay. My question is, this document
9 right here, Defendant's Exhibit No. 18, was this
10 the policy that was in place as far as for
11 issuance and collection of fines in violation of
12 TCB [sic] Rules and Regulations, Covenants,
13 Conditions, and Restrictions, and documents, was
14 this policy in place at the time that the
15 plaintiff, the Master Board, brought the lawsuit
16 against the Nortons?

17 A. I can't answer that question.

18 Q. Okay.

19 A. I don't know.

20 Q. All right. Now, let me ask you this:
21 Does the DRB ever make any recommendations
22 regarding fines and penalties to the Master
23 Association?

24 A. Yes. If there's a violation, the DRB
25 standards, we notify the Board that there's been

1 a violation, and they handle fining -- and there
2 are some fines specified in the DRB standards.

3 Q. Okay.

4 A. And the Contractor Work Rules.

5 Q. Okay. Okay.

6 Are you familiar with the lien that was
7 filed against the Nortons' property?

8 A. No, I'm not.

9 Q. Okay. Where I think the total amount
10 was somewhere around 57,000 for attorneys' fees,
11 assessments, and fines.

12 That seems like -- and I think the fines
13 and other assessments was somewhere around
14 28,000. That seems somewhat excessive. Would
15 you like to comment on that?

16 MS. CARY: Objection to the form.

17 A. I can't address the Board fine policy.
18 I don't know anything about it.

19 Q. But let me say this: The DRB didn't
20 have anything to do with the fines and
21 assessments against the Nortons. That was the
22 Master Board that implemented that?

23 A. We could recommend fining if it was a
24 DRB violation.

25 Q. It was a DRB violation.

1 A. We would notify the Board that there was
2 a violation.

3 Q. Do you remember what the violations
4 were? My understanding is, is that the
5 violations were that they had started
6 construction allegedly without DRB approval.

7 A. Uh-huh.

8 Q. And that they removed trees from the
9 property without DRB approval. And the first
10 fine is \$500, and the second fine is \$2,500. So
11 the maximum fine amount is 3,000. And there's no
12 asterisk by those fine amounts indicating that
13 those fines -- that you can -- that every new day
14 there are additional and -- where you can fine
15 them \$100 every day. There's no asterisk
16 regarding those two fine amounts.

17 Is that consistent with what your memory
18 is? I can pull it up, if you need to.

19 A. Yes. I don't remember the fine schedule
20 specifically. I know it's in the DRB file, so...

21 Q. You can look in the Complaint, and it
22 has the fine schedule in the Complaint.

23 A. Yes. I have it here.

24 Q. Okay. In the Complaint, would you just
25 indicate for the record which ones would be

1 applicable regarding what's alleged in the
2 lawsuit against the Nortons?

3 MS. CARY: Objection to the form.

4 MR. BELLAMY: Well, let her answer
5 them first. Okay.

6 A. Well, he started construction without
7 approval.

8 Q. Okay. That would apply?

9 What else would apply?

10 A. Lot clearing.

11 Q. Okay.

12 A. Removal of trees.

13 Q. Okay. And I think when you add those
14 two fines up together, it's \$3,000?

15 A. 500.

16 Q. And 2,500.

17 A. And 2,500, yes.

18 Q. Okay. And does it have an asterisk on
19 those two fine amounts where it allows the Board
20 allegedly to continue to fine each and every day
21 until the fine amount is paid in full?

22 A. No. I don't see it on this copy.

23 Q. Okay. For the record, did you read with
24 what the asterisk says? I'm going to make
25 sure --

1 A. Subject to repeated fining until
2 corrected.

3 Q. Okay. So if I understand your
4 testimony, the appropriate fines against the
5 Nortons for their alleged violations of the DRB
6 standards would be -- the total fine amount would
7 be \$3,000, is that fair, based on those two
8 violations?

9 A. Yes.

10 Q. Okay.

11 A. That's the math.

12 Q. Thank you.

13 And, again, those two fine amounts,
14 they're not subject to the asterisks where, you
15 know, the Board allegedly has the right to
16 continue to fine them each and every day until
17 they come into compliance. That doesn't apply,
18 correct?

19 A. Not the copy I'm looking at.

20 Q. Now, let me say this: Are you looking
21 at the Amended Complaint?

22 A. No. I'm looking at the DRB standards.

23 Q. What I want you to do is, real quick so
24 we can clear this up, look at the Amended
25 Complaint real quick. Okay.

1 I think it's Exhibit A to the Amended
2 Complaint is the -- see if I'm right.

3 A. Hold on.

4 MS. CARY: It's stapled backwards.

5 Q. Go to A. It think it's A.

6 A. Contractor rules?

7 Q. Yeah, contractor rules. Yeah.

8 A. It's just --

9 Q. Keep going. I think it's like the third
10 or fourth page, the next page.

11 Do you see it?

12 A. There.

13 Q. Yeah. Is it any different than the
14 document you were looking at previously?

15 A. No.

16 Q. Is it the same thing?

17 A. Yes.

18 Q. Okay.

19 A. 500, 25 and 25.

20 Q. Okay. And then -- okay. That's all I
21 wanted to show is that basically what you
22 testified earlier that what's in the Amended
23 Complaint, that's the same fine schedule. Okay.
24 Thank you. All right.

25 MR. BELLAMY: Okay. Let's take a

1 break. Thank you.

2 THE VIDEOGRAPHER: The time is
3 3:32 p.m. We are off the record.

4 (A recess transpired.)

5 THE VIDEOGRAPHER: The time is
6 3:41 p.m., and we're back on the record.

7 MR. BELLAMY: Okay. Thank you.

8 Q. Ann, we had a chance to take a break,
9 and my wife grilled me and Ken grilled me. So --
10 anyway, so...

11 I've got -- the last thing I want to
12 talk about is going back -- and we talked about
13 this earlier during your deposition -- is
14 sometime in 2020, the Nortons did submit their
15 architectural plans to the Design Review Board
16 for y'all's review and consideration, correct?

17 A. Yes.

18 Q. And my understanding is, is before
19 y'all -- during the review process, I think Felix
20 Ayres, the architect, did a presentation. That's
21 my understanding, made the presentation to the
22 DRB.

23 Do you remember that?

24 A. I don't recall Felix making a
25 presentation on his plans. We got the plans. We

1 do our own checklist. It's an established
2 checklist for every house in that neighborhood.

3 Q. Let me ask you about that, the
4 checklist. Tell me about the checklist so I can
5 understand that.

6 A. It's just a summary of everything that's
7 in the DRB standards for each neighborhood in
8 Tidewater.

9 Q. Right. Like maximum building height?

10 A. Yeah. Setbacks.

11 Q. Okay. Setbacks.

12 A. The steps, brick or concrete. The trim
13 on the windows, all the basics.

14 Q. Paint colors?

15 A. Yes, paint colors.

16 Q. Okay. All right.

17 A. And we went through that for every set
18 of plans that come in.

19 Q. Okay. The last thing I'll leave you
20 with is that, you know, based upon -- I mean, you
21 served at least two or -- maybe three or four
22 occasions on the DRB, and you would agree
23 obviously as a Board member that you have the
24 duty of good faith and duty of care to comply
25 with the governing documents, correct?

1 A. Yes.

2 Q. Okay. And then to the extent you seek
3 clarification, the committee can hire an attorney
4 like Elizabeth Saraniti or Taylor Cary or they
5 can get an accountant or they can get an
6 architect as a consultant to clarify issues or
7 disputes or disagreements that members may have
8 or parties may have regarding, you know, what the
9 documents require, the design standards require;
10 is that a fair statement?

11 A. Yes. The Board would engage counsel as
12 necessary.

13 Q. You're talking about the Master Board?

14 A. Master Board.

15 Q. Okay. Have you ever served on the
16 Master Board?

17 A. No.

18 Q. Why is that?

19 A. No. No interest.

20 Q. May I ask why no interest?

21 A. No. I mean, I don't know. I just don't
22 have any -- I worked with three hospital boards
23 for 37 years. I'm kind of tapped out on hospital
24 boards.

25 Q. Is the Master Board for Tidewater

1 Plantation a little bit more difficult to deal
2 with than those hospital boards you had to deal
3 with for over 30 years?

4 MS. CARY: Objection to the form.

5 A. No, not at all.

6 Q. Okay. All right. Fair enough. Thank
7 you, Ann.

8 MR. BELLAMY: I have no further
9 questions.

10 MS. CARY: I have no questions.
11 Thank you.

12 THE VIDEOGRAPHER: This concludes
13 the deposition of Ann Lippincott. The time is
14 3:44 p.m., and we are off the record.

15 THE REPORTER: Did you want a copy?

16 MS. CARY: Yes, please. I'll do an
17 E-tran of both.

18 (The deposition was concluded at
19 3:44 p.m.)

20

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25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA
3 COUNTY OF HORRY

4 I, KAREN BECKMAN, CSR, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness
23 not be affixed to the deposition, the witness
24 shall not have availed himself/herself of the
25 opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on February 25, 2026, at
Myrtle Beach, Horry County, South Carolina.

KAREN BECKMAN, CSR
Certified Shorthand Reporter
My Commission expires
October 3, 2035

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couple (3)
COURT (6)
covenant (1)
Covenants (11)
covered (3)
created (1)
creates (2)
creating (1)
criteria (3)
CSR (3)
cupola (1)
current (1)
currently (1)
custody (3)
custom (1)

< D >

DATE (9)

DATED (8)	discretion (4)	exceed (2)	Firm (2)
Dave (1)	discuss (1)	exceeding (1)	first (11)
day (5)	dispute (3)	exception (1)	flat-out (1)
days (1)	disputes (1)	excessive (1)	flip (9)
dead (1)	document (39)	excluded (1)	flood (3)
deal (9)	documentation (1)	excuse (1)	floodplain (24)
dealing (7)	documents (46)	exercise (1)	focus (3)
deals (11)	doing (3)	EXHIBIT (47)	follow (1)
dealt (2)	DRB (72)	EXHIBITS (3)	following (2)
Decision (2)	Drive (1)	existed (1)	follows (2)
decisions (2)	driveway (1)	expansion (1)	follow-up (4)
Declarant (1)	due (2)	Expansions (1)	foot (6)
Declaration (13)	duly (4)	experience (3)	footnote (1)
Declarations (1)	duties (10)	expires (1)	foregoing (4)
declined (1)	duty (12)	explain (3)	forgot (1)
Deed (9)	dwelling (2)	express (3)	form (38)
Deeds (2)	< E >	expressly (4)	Forman (1)
Defendant (1)	earlier (2)	extent (7)	former (2)
Defendants (3)	eave (2)	< F >	forth (8)
Defendant's (9)	eaves (1)	fact (2)	forward (2)
defer (1)	effective (2)	factual (2)	foundation (1)
denied (1)	eight (1)	fail (1)	four (6)
DEPONENT (1)	either (5)	failure (3)	fourth (2)
deposed (3)	elevation (1)	fair (9)	front (1)
DEPOSITION (14)	eliminate (1)	faith (9)	full (2)
Described (4)	Elizabeth (2)	familiar (15)	further (3)
DESCRIPTION (1)	email (1)	familiarize (2)	future (1)
Design (28)	emails (2)	far (19)	< G >
designs (1)	enacted (1)	feature (1)	General (4)
determination (1)	enforce (5)	February (6)	getting (4)
determine (10)	enforceable (1)	federal (2)	give (3)
determining (5)	enforcement (1)	fees (1)	given (1)
developer (11)	engage (1)	feet (13)	gives (2)
Development (2)	enhance (1)	Felix (8)	go (38)
Developmental (1)	enlarged (2)	figure (2)	goes (1)
DEWITT (1)	EPPS (1)	fil (1)	going (28)
dictate (1)	erected (2)	file (1)	Golf (4)
different (3)	errs (1)	filed (9)	Good (11)
difficult (1)	essentially (12)	files (1)	governed (3)
direct (5)	established (1)	filing (1)	governing (24)
directly (1)	et (1)	financial (1)	grade (8)
director (4)	E-tran (1)	find (2)	GRAVELY (1)
Directors (15)	events (1)	findings (1)	greater (1)
disagree (16)	evidence (3)	fine (18)	grilled (2)
disagreed (1)	EXAMINATION	Fines (11)	guy (1)
disagreements (1)	(4)	fining (3)	< H >
discharge (6)	examined (1)	finished (2)	half (1)
discord (2)	example (5)	firepit (1)	
discovery (1)			

hand (3)	indicated (2)	know (69)	manner (1)
handle (1)	indicates (8)	knowing (1)	Manual (1)
Harbor (1)	indicating (1)	knowledge (15)	March (1)
head (1)	individual (1)	< L >	mark (4)
heading (1)	INDIVIDUALLY	Land (6)	marked (14)
hearing (1)	(4)	language (13)	Master (36)
height (37)	inform (2)	large (4)	math (2)
height (1)	Information (6)	Law (5)	matter (3)
heir (1)	informed (2)	Laws (1)	matters (2)
heirs (7)	in-house (1)	lawsuit (11)	maximum (31)
held (1)	initially (1)	lawyers (2)	mean (7)
hereinafter (1)	instruct (1)	lay (1)	measure (13)
hereto (1)	instructed (1)	laying (1)	mechanical (1)
hereunto (1)	intelligent (1)	learned (1)	meet (1)
hierarchy (1)	intentionally (1)	leave (1)	member (12)
highest (6)	interest (3)	left (1)	members (6)
himself/herself (1)	interested (1)	left-hand (2)	membership (1)
hire (1)	interestingly (1)	legal (3)	memorandum (1)
Hold (1)	interpret (3)	level (6)	memory (4)
holding (2)	interpretation (8)	lien (1)	mentioned (2)
homeowner (2)	interpreting (1)	life (1)	mentions (1)
homeowners (1)	interrogatories (1)	limit (4)	Message (2)
HORRY (5)	interrupt (2)	limited (3)	met (1)
horse (1)	interviewing (1)	LIPPINCOTT (7)	midpoint (4)
hospital (3)	intra (1)	list (1)	mine (2)
house (6)	investigation (1)	listed (1)	minute (6)
houses (1)	involved (2)	little (5)	misstate (1)
HOWELL (2)	Island (8)	lived (1)	misstatement (1)
Huh (1)	Issuance (2)	LIVING (6)	misstating (1)
hypothetically (2)	Issue (1)	LLP (1)	Modifications (2)
< I >	issued (1)	located (1)	modify (1)
identification (11)	issues (4)	LOCATION (2)	monitor (1)
identified (1)	Items (1)	Loft (1)	months (4)
identify (1)	its (3)	longer (1)	MOSS (3)
III (1)	< J >	look (24)	move (4)
implemented (1)	Jeffers (1)	looking (5)	moved (2)
implied (2)	job (1)	looks (4)	moves (1)
impliedly (1)	July (6)	lot (10)	multifamily (1)
important (1)	jurisdiction (1)	Lots (10)	Municipal (1)
importantly (1)	< K >	loud (1)	Myrtle (20)
inapplicable (4)	KAREN (4)	LOVELL (1)	< N >
include (2)	keep (2)	< M >	name (2)
included (1)	Ken (2)	Ma'am (1)	necessarily (1)
includes (2)	KENNETH (7)	Madam (2)	necessary (3)
including (6)	KEVEN (1)	main (2)	need (7)
incorporated (1)	Kevin (1)	maintains (1)	needed (1)
INDEX (1)	kind (10)	making (2)	negative (1)
indicate (1)			neighborhood (2)

neither (1)
 never (11)
 New (7)
 newsletter (1)
 Nods (1)
 nonprofit (5)
 nonverbal (2)
 North (17)
 NORTON (16)
 Nortons (23)
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 Notary (1)
 notes (1)
 Notice (2)
 notify (2)
 number (1)

 < O >
 oath (1)
 Object (1)
 Objection (46)
 objections (2)
 obligated (1)
 obligation (1)
 obligations (2)
 obviously (19)
 occasions (2)
 October (5)
 office (2)
 Office@ClarkBolen.com (1)
 officer (1)
 officers (1)
 official (1)
 officials (1)
 Oh (4)
 Okay (221)
 Once (2)
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 Owners (1)

< P >
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 P.O (1)
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 Paint (2)
 Panama (3)
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 Permit (7)
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 place (2)
 Plaintiff (9)
 plaintiff's (1)
 Planned (1)
 Planning (4)
 plans (26)
 PLANTATION (24)
 PLEAS (1)
 please (5)
 point (31)
 points (1)

policies (1)
 policy (9)
 position (7)
 possession (1)
 power (2)
 powers (4)
 practice (1)
 preempt (1)
 pregnant (1)
 prepared (7)
 PRESENT (2)
 presentation (3)
 president (3)
 President's (2)
 pretty (3)
 previously (6)
 probably (1)
 problem (1)
 problems (1)
 Procedural (3)
 Procedure (2)
 Procedures (3)
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 project (1)
 property (15)
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 provided (3)
 provides (1)
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 provisions (6)
 prudent (1)
 Public (1)
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 PUD (119)
 pull (3)
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 pursuant (4)
 put (3)

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 questions (9)
 quick (7)
 quickly (2)
 Quitclaim (1)

quote (5)

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 railing (1)
 read (28)
 reading (2)
 real (7)
 really (2)
 reason (8)
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 reasons (1)
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 recess (1)
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 Recording (1)
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 refer (6)
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 regarding (11)
 Register (2)
 Regs (1)
 regular (1)
 Regulations (11)
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 rejected (3)
 related (2)
 relevant (7)
 relied (1)
 relying (1)
 remember (10)
 Removal (1)
 removed (1)
 repeated (1)
 reply (6)
 REPORTED (1)
 REPORTER (13)
 represent (6)

represented (1)	seal (1)	speaks (1)	Table (3)
represents (2)	second (10)	specific (6)	take (12)
request (1)	Section (17)	specifically (36)	taken (1)
Requested (1)	Sections (3)	specified (1)	talk (3)
require (3)	See (22)	spot (1)	talked (2)
Required (3)	seek (1)	squeaky (1)	talking (10)
requirements (6)	seen (1)	STAIR (1)	talks (3)
requiring (1)	seminal (6)	standard (1)	tapped (1)
res (1)	sending (1)	Standards (30)	TAYLOR (6)
reserves (1)	sense (2)	stapled (1)	TCB (1)
reside (2)	sent (2)	start (1)	tell (3)
residential (6)	sentence (8)	started (2)	ten (2)
resign (2)	serve (2)	STATE (13)	terms (1)
resolve (1)	served (9)	stated (5)	testified (7)
resort (1)	serving (2)	statement (7)	testify (1)
respect (5)	set (9)	states (12)	testimony (5)
response (2)	setbacks (3)	stenographically (1)	texts (2)
responsibilities (4)	sets (1)	step (1)	Thank (11)
Restated (10)	setting (1)	steps (1)	thereof (3)
restriction (1)	shareholders (1)	Street (1)	thing (12)
Restrictions (10)	She'll (1)	strictly (2)	things (7)
reversed (1)	SHORTHAND (3)	structurally (2)	think (49)
Review (39)	show (5)	structure (12)	Third (12)
reviewed (2)	showed (1)	subassociation (1)	thought (1)
reviewing (1)	showing (1)	subdivision (1)	thousands (1)
revision (1)	shows (2)	subject (9)	three (8)
RICHARDS (1)	sic (2)	submit (1)	thumb (1)
right (69)	sign (3)	submitted (8)	TIDEWATER (35)
right-hand (1)	signature (3)	submitting (1)	TIME (24)
RMC (1)	signed (3)	subparagraph (12)	times (3)
ROBERT (1)	similar (1)	subparagraphs (2)	Title (3)
rocket (1)	single (1)	subpoena (3)	TOBY (3)
roof (8)	single-family (4)	subscribe (1)	today (1)
room (1)	site (2)	subsequent (1)	Today's (2)
rotten (1)	sitting (1)	subset (1)	top (2)
roughly (1)	situation (5)	subsets (1)	total (2)
rule (2)	skills (1)	successors (1)	townhouses (1)
Rules (10)	slowly (1)	sufficient (1)	TPC (1)
RUTENBERG (1)	somebody (3)	summary (1)	TPCA (1)
	somebody's (1)	Summons (1)	transcribed (1)
< S >	Somewhat (2)	supplement (1)	transcription (1)
Saraniti (3)	sorry (4)	supplemental (2)	transpired (2)
saying (18)	sort (1)	sure (6)	trees (2)
says (43)	source (1)	SUZANNE (7)	trick (1)
SC (1)	SOUTH (22)	swear (1)	tricky (1)
schedule (3)	Southern (3)	sworn (4)	trim (1)
school (1)	space (1)		true (5)
scientist (1)	speak (2)	< T >	TRUST (4)
scope (1)	speaking (1)	tabby (1)	TRUSTEE (4)

truth (3)
try (6)
trying (12)
turn (1)
two (11)
type (2)
typo (2)

< U >
Uh-huh (6)
ultimately (3)
understand (8)
understanding (6)
unilaterally (3)
Unit (3)
units (2)
University (1)
upper (3)
uppermost (3)
use (3)
utilized (1)

< V >
VALZ (1)
Verification (4)
Verified (7)
verifying (1)
vice (1)
video (1)
Videographer (7)
Villas (1)
violate (1)
violation (7)
Violations (5)
vires (1)
vs (2)

< W >
wait (2)
waived (1)
walk (1)
want (31)
wanted (5)
way (6)
WEIS (4)
Well (19)
went (4)
we're (13)
we've (3)

wife (1)
willing (1)
windows (2)
within-entitled (1)
witness (9)
Work (4)
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working (1)
write (1)
writing (1)
written (4)
wrong (1)
WWW.CLARKBOL
EN.COM (1)

< Y >
y'all (11)
y'all's (1)
yard (1)
Yeah (8)
years (6)

< Z >
zip (1)
Zoning (23)