

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

4 DEPOSITION OF BEN CALDWELL
5 JUNE 18, 2025

6 TIDEWATER PLANTATION COMMUNITY ASSOCIATION, INC.,

7 Plaintiff,

8 vs. CASE NO. 2021-CP-26-04599

9
10 SUZANNE N. NORTON, Individually; KENNETH R.
11 NORTON, Individually; SUZANNE N. NORTON, As
12 Trustee of the Suzanne N. Norton Living Trust
13 Dated May 8, 2012; and KENNETH R. NORTON, As
14 Trustee of the Kenneth R. Norton Living Trust
15 Dated May 8, 2014,

16 Defendants.

17 TIME: 10:03 AM

18 LOCATION: BELLAMY LAW FIRM
19 MYRTLE BEACH, SOUTH CAROLINA

20
21
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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

COPELAND STAIR VALZ
BY: TAYLOR CARY
40 Calhoun Street
Suite 400
Charleston, SC 29401

ON BEHALF OF DEFENDANTS:

BELLAMY LAW FIRM
BY: HOWELL BELLAMY
1000 29th Avenue North
Myrtle Beach, SC 29577

Also Present: Cathy Weis

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

4 EXAMINATION

5 BY MR. BELLAMY:

6 Q. Ben, I think we've met before. It's
7 been a while.

8 A. Uh-huh.

9 Q. But my name is Howell Bellamy. I'm an
10 attorney with the Bellamy Law Firm. And I
11 represent essentially Ken and Suzanne Norton.
12 And this is a lawsuit that was brought by the
13 association and civil action number
14 2021-CP-26-04599 and that the Tidewater
15 Plantation essentially in this lawsuit is seeking
16 declaratory judgment relief and they're also --
17 we're seeking an injunction. And it deals with
18 the construction on the Nortons' lots, which are
19 507 and 508 [sic].

20 And one of the issues are -- is that --
21 one of the remaining issues in the case is what
22 is the building height, is it 41 or 42. And in
23 order to determine what the maximum height is, do
24 you measure it from grade, or do you do it based
25 upon what the flood elevation level is for

1 that -- in that floodplain for that lot and then
2 1 foot above that and then between the --
3 measuring from the first certified floor level up
4 to the midpoint between the eave and the highest
5 point of the roof.

6 That's kind of where we are. That's
7 what your -- essentially your deposition is
8 about.

9 A. All right.

10 Q. And I think you and -- I deposed you I
11 think -- it's been a while. Maybe about '17,
12 '18. About the -- it was Tilghman Beach
13 Racquetball lawsuit.

14 A. Yes, I remember. Over building
15 maintenance, for the most part. Yes, I remember.

16 Q. But as an officer of the court, I've got
17 -- I need to kind of go over some rules of the --
18 pursuant to the Rules of Civil Procedure that
19 when -- obviously your deposition is being
20 recorded by the court reporter, MacKenzie. So if
21 I ask a question, I need you to respond verbally
22 yes, no, and you can explain. Shaking your head
23 up or sideways, you know, nonverbal, the court
24 reporter can't record it.

25 And if I ask a question, please let me

1 finish it. I know you may anticipate where I'm
2 going -- so that we don't talk over each other.
3 And the other thing that I wanted to -- also one
4 of the -- if I ask a question and you answer it,
5 you would agree that obviously -- that you
6 understood my question?

7 A. Correct.

8 Q. And if at any time --

9 A. I understand.

10 Q. And when I'm asking you, I want your
11 answers to be complete. And if you need to look
12 at any document to refresh your memory, please
13 ask me. If I have the document, I'll hand it to
14 you and let you review it. I'm not one of those
15 attorneys that says, "Answer my questions first,
16 and I'll show you the document later." But I
17 want to --

18 A. I refer to the documents a lot in my
19 daily job. I don't typically rely on memory to
20 answer some questions, because the zoning
21 ordinance is rather lengthy, and I don't deal
22 with the entirety of it on a daily basis.

23 Q. Right.

24 A. So I do refer to documents a lot when I
25 -- before I answer questions.

1 Q. And Defendants' Exhibit 1 to your
2 deposition is a letter that we sent to you
3 regarding your Notice of Deposition. And then
4 Exhibit A is where we specifically requested
5 certain documents.

6 (Defendants' Exhibit No. 1 was
7 marked for identification.)

8 Q. And pursuant to our subpoena, you did
9 produce those documents today. And my paralegal,
10 Tracy, is essentially copying them right now.
11 But that is -- Defendants' Exhibit 1 to your
12 deposition is your Notice of Deposition and
13 Subpoena?

14 A. Right.

15 Q. And pursuant to attachment A of the
16 subpoena, you did produce documents, for the
17 record?

18 A. I did. I did not have some of the
19 things requested on here. And I -- I just didn't
20 have them. Like a rate schedule or a curriculum
21 vitae.

22 Q. Some of that may be -- my paralegal may
23 have attached something that was more -- you are
24 probably an expert. But I'm saying it's for an
25 expert regarding a party expert for the

1 plaintiffs or defendants.

2 A. I gave you what I had.

3 Q. That's all I can ask.

4 (Defendants' Exhibit No. 2 was
5 marked for identification.)

6 Q. Ben -- is it all right to call you Ben?
7 Is that all right?

8 A. Yes.

9 Q. Ben, I've handed you what's been marked
10 as Defendants' Exhibit 2 to your deposition.
11 This is an appeal that you filed I think back in
12 -- I think it was filed on August 7, 2021. And
13 you signed it; is that right?

14 A. I did not file the appeal. A member of
15 the Tidewater Plantation Community Association
16 Design and Review Board filed the appeal of my
17 decision.

18 Q. I apologize. This is your response --

19 A. Staff report.

20 Q. Yeah.

21 A. Yes, sir.

22 Q. Now, what I'd like you to do is -- for
23 the record is to publish that second paragraph,
24 and then I'll have some follow-up questions.

25 A. What would you like me to do?

1 Q. Just read it into the record.

2 A. Okay. Where it starts, "All
3 properties"?

4 Q. Yeah.

5 A. "All properties in the city have a
6 maximum height limitation that is regulated by
7 the zoning ordinance. The way height is measured
8 varies by whether or not a property is located in
9 a flood zone or not. When a property is located
10 in a flood hazard zone (4628 South Island Drive
11 is located within a flood hazard zone) the height
12 is measured from the first finished floor to the
13 midpoint between the ridge of the roof and the
14 eave.

15 "In Tidewater Plantation, the building
16 height is capped at 42 foot at the peak of the
17 roof. If a property is located in a flood hazard
18 zone and in Tidewater, I measure the distance
19 from the first finished floor (at least 1 foot
20 above the flood zone) to the peak of the roof.

21 "Section 23-106 is located in the
22 general and supplemental section of the zoning
23 ordinance and applies to all zoning districts
24 unless an ordinance (Tidewater Plantation PDD)
25 specifically states something contrary to what is

1 stated in 23-106. What is different in Tidewater
2 is that the text reads to the peak and not to the
3 midpoint like most zoning districts" -- or "most
4 districts." I'm sorry.

5 "The rest of 23-106 still applies to
6 where the 42 foot is measured from. When a
7 property is located in a flood hazard zone in
8 Tidewater, the height is measured from the first
9 finished floor to the flood hazard elevation" --
10 "above the flood hazard elevation to the peak of
11 the roof. Included in section 23-106 are
12 exceptions to height.

13 "The Nortons explained to me that they
14 needed the cupola to access the roof. Since the
15 cupola does not occupy more than 15 percent of
16 the roof area, I determined that the cupola was a
17 necessary mechanical feature that would not
18 factor into determining the overall building
19 height."

20 Q. Is that still your opinion today?

21 A. Well, I don't really know how to answer
22 that, because it was my opinion prior to the
23 appeal. And the Board of Zoning Appeals didn't
24 agree with my opinion that the cupola was a
25 necessary mechanical feature. So in going

1 forward, if a cupola was part of a roof that
2 extended above the maximum height, I would
3 probably make the determination that it wasn't a
4 necessary mechanical feature.

5 Q. Now, let me just say that that issue has
6 kind of been resolved because the Nortons did not
7 choose to file an appeal to the circuit court.
8 So --

9 A. Okay.

10 Q. But with respect to -- is it still your
11 opinion today that 23-106 still applies to the
12 Nortons' property as far as how to measure the
13 maximum height?

14 A. Yes. That wasn't part of the appeal.
15 The appeal was just whether or not that cupola
16 was a necessary mechanical feature. If a
17 neighboring lot wanted to try to obtain a
18 building permit, I would look at it the same way
19 as I looked at this one and how I would measure
20 height.

21 Q. And you would measure height by first
22 determining what the base flood elevation is.
23 And I think --

24 A. Yeah. We receive a -- I'm sorry.

25 Q. Go ahead.

1 A. We receive an elevation certificate.
2 And our building department requires that the
3 first finished floor be at least one -- they call
4 it freeboard foot above whatever that flood zone
5 is. So I would measure from that first finished
6 floor in Tidewater to the peak of the roof.

7 Q. And, Ben, I think that -- and correct me
8 if I'm wrong. But I think that the flood
9 elevation -- base flood elevation was either 11
10 feet or 12 feet?

11 A. I don't know.

12 Q. Well, whatever it was, if it's 11 feet
13 or 12 feet, it's 1 foot above that is the first
14 certified floor level. And then you measure up
15 to -- at least per 23-106, you measure up to the
16 midpoint between the eave and the highest point
17 of the roof?

18 A. Generally. If it was a lot elsewhere
19 in, say, an R-1 zoning district, we would measure
20 to the midway point because that's how height is
21 measured in our zoning ordinance. What is
22 special about Tidewater is they -- when the
23 document was created for the PDD, they specified
24 where you measure to. So I used a combination of
25 the allowance to measure from the first finished

1 floor when you're in a flood hazard zone to the
2 peak in this case, because it's defined that way
3 in the Tidewater PDD.

4 Q. Is it Tidewater's position at least -- I
5 want to clarify this. But first, let me ask you
6 this. Under section 23-106, when you're not in a
7 floodplain, the measurement is -- you measure --
8 the height of the building shall be measured from
9 the mean elevation of the finished grade at the
10 front of the building or structure to the
11 midpoint between the eave and the highest point
12 of the roof?

13 A. That is correct.

14 Q. That's how you measure when you're not
15 in a floodplain?

16 A. Right.

17 Q. Now, as far as in the Nortons' case
18 because they're in a floodplain, you would not
19 measure from the -- you wouldn't measure from the
20 mean elevation of the finished --

21 A. In the average finished grade at the
22 front of the house, I would not measure from
23 there.

24 Q. Okay.

25 A. I would measure from the first finished

1 floor if the home was in a flood hazard.

2 (Defendants' Exhibit No. 3 was
3 marked for identification.)

4 Q. Ben, the court reporter has handed you
5 what's been previously marked [sic] as
6 Defendants' Exhibit 3 to your deposition. This
7 is the original PUD agreement that was filed with
8 Horry County on April 30, 1992. And what I'm
9 going to ask you -- to just briefly review the
10 13 pages. And my question are -- so I'm assuming
11 you're reviewing them. Is there anything in the
12 original PUD agreement between the City of North
13 Myrtle Beach and the Southern Land and Golf
14 Company on behalf of the Tidewater Golf Club &
15 Plantation that talks about building in a
16 floodplain? That's the first question.

17 The second thing is: is there anything
18 in the original PUD agreement that specifically
19 and intentionally excludes the application of
20 23-106 from properties located in South Island
21 Plantation [sic]?

22 MS. CARY: Objection to the form.

23 A. On South Island Drive?

24 Q. Yeah.

25 A. As I'm reading through here, could you

1 please repeat --

2 Q. Sure.

3 A. -- your questions that you asked me to
4 try to find in here?

5 Q. Sure. The first question is: is there
6 anything in the PUD agreement, Exhibit Number 3
7 -- original PUD agreement filed on April 30th of
8 1992 -- or '93 [sic] that specifically addresses
9 building in a floodplain?

10 A. Okay. I have not found anything yet on
11 that.

12 Q. Okay. If you do, I'll be surprised, but
13 I have to ask you anyway.

14 A. I do not find anything about flood
15 hazard zones in this document.

16 Q. So for the record, you've had an
17 opportunity to review Defendants' Exhibit Number
18 3, which is the original PUD agreement?

19 A. I did.

20 Q. And were you able to locate any specific
21 information or language that dealt with building
22 in a floodplain in the -- within the PUD district
23 or in any of the sub associations that comprise
24 the PUD district of essentially Tidewater Golf &
25 Club Plantation?

1 A. I didn't find anything about the flood
2 zone.

3 Q. What I want to do now is -- Ben, I want
4 to take you to the first page of the --
5 Defendants' Exhibit 3, PUD agreement. And under
6 section 1 master site plan, let me direct you to
7 subparagraph A2. And then take a minute to read
8 that.

9 A. A2?

10 Q. Yeah. And if you would publish that for
11 the record.

12 A. "All future development for the project
13 shall conform to the standards described herein.
14 Each phase shall require prior approval by the
15 city. Approval of the planning commission, city
16 council, and any other regulatory agencies may
17 also be necessary. Review shall be as stated in
18 sections 9 and 10 of this agreement. Anything
19 not covered in this document shall be governed by
20 the city zoning ordinance in section 8 of this
21 agreement."

22 Q. So specifically the PUD agreement,
23 Exhibit 3 to your deposition, does not cover or
24 speak to building residential -- residential
25 construction in a floodplain?

1 A. No, it does not.

2 Q. Let me then refer you to -- let's go
3 to -- what I want to do is direct you to
4 section 8. It's titled City Regulatory Power.
5 And it's on page 11 of 13. And I'll publish this
6 for the record. Section 8, city regulatory power
7 provides -- or, "The City maintains all
8 regulatory powers as provided by law. This
9 agreement does not preempt any land use
10 regulations not specifically and intentionally
11 changed by this agreement."

12 Did I read that correctly?

13 A. You did.

14 Q. Is there anything in this agreement that
15 specifically speaks to -- that section 23-106 is
16 not applicable regarding residential construction
17 in the -- as far as in the floodplain in South
18 Island?

19 A. I'm sorry. Can you repeat that?

20 Q. Is there anything in the PUD agreement,
21 Exhibit Number 3 -- Exhibit 3 to your deposition,
22 that specifically and intentionally nullifies or
23 preempts the application of 23-106 as it would
24 apply to residential construction in a floodplain
25 in the PUD?

1 A. No. I believe section 8 bolsters that
2 idea, that general supplemental does apply to
3 these properties.

4 Q. Right, right. That would be my opinion.
5 Specifically -- let me restate it. The argument
6 is is there's nothing in the PUD agreement that
7 specifically nullifies section 23-106 regarding
8 residential construction in a floodplain,
9 specifically on lots 407 and 408 that are owned
10 by the Nortons. Do you agree with that?

11 MS. CARY: Objection to the form.

12 A. I agree with that, yes.

13 (Defendants' Exhibit No. 4 was
14 marked for identification.)

15 Q. Ben, that's Exhibit Number 4 to your
16 deposition. That was the building permit that
17 was approved by the City of North Myrtle Beach
18 regarding the construction on lots 407 and 408
19 which were owned by the -- Ken and Suzanne Norton
20 or the trust. Do you agree with that?

21 A. Yes.

22 (Defendants' Exhibit No. 5 was
23 marked for identification.)

24 Q. Ben, this is Exhibit Number 5 to your
25 deposition. Ben, those are the plans -- the

1 drawings and plans. And I think there's some --
2 probably engineering plans. But those are Felix
3 Ayres' plans regarding the -- showing the
4 elevations and other relevant information
5 regarding the construction of Ken and Suzanne
6 Norton's house on lots 407 and 408.

7 And my specific question is: were those
8 the plans that -- take a minute to review them --
9 that were approved by the City regarding the
10 residential construction on the Nortons'
11 residential lots, 407 and 408?

12 A. It appears the cupola is still on these
13 plans. And I was under the impression that that
14 was not going to be built.

15 Q. Right, right.

16 A. But these are, from memory, the plans --

17 Q. That were --

18 A. -- that we reviewed initially for the
19 construction of this home.

20 Q. And I think the planning department --
21 they were approved by you-all in accordance with
22 the permit in -- I think back in 2020?

23 A. The understanding was that the cupola
24 was not going to be part of the construction.

25 Q. Right, right.

1 A. Right.

2 Q. Now, what's happened now is we're going
3 to submit a revised set of plans. They're going
4 to remove the cupola where it currently is on the
5 plans and bring it under the 42 feet. But the
6 point I'm trying to make is: initially when the
7 building permit was issued to the Nortons, it was
8 issued in accordance with those plans?

9 A. Correct.

10 Q. And that plans, they were prepared by --
11 the architectural plans that were prepared by
12 Felix Ayres clearly show that he utilized the
13 methodology in 23-106 as to measure the maximum
14 building height in a floodplain. Do you agree
15 with that statement?

16 A. You know, I can't read these numbers.
17 But in my own measurement in reviewing the
18 documents, I measured from the first finished
19 floor to the peak of the roof.

20 Q. You didn't measure it from the grade?

21 A. I did not, no.

22 Q. Aside from the cupola issue, Ben, to
23 your knowledge, is there anything else wrong with
24 the plans from the City's standpoint?

25 MS. CARY: Object to the form.

1 A. From a zoning standpoint --

2 Q. Zoning perspective.

3 A. -- I don't believe there is anything
4 else wrong with the plans.

5 Q. Just the one thing that was -- the
6 appeal regarding the cupola not being a necessary
7 mechanical feature?

8 A. Yes.

9 (Defendants' Exhibit No. 6 was
10 marked for identification.)

11 Q. Ben, the court reporter just handed you
12 what's been previously marked as Defendants'
13 Exhibit 6 to your deposition. For the record,
14 this is article VII, general supplemental
15 regulations. And under the heading, it provides,
16 "This regulation set forth in this article
17 clarify, supplement, or modify the district
18 regulations in article II of this chapter."

19 Did I read that correctly?

20 A. Yes.

21 Q. And what you're talking about is
22 district II of -- article II of chapter 23,
23 correct?

24 A. Correct.

25 Q. And that refers to -- as far as -- it

1 talks about -- I've got a copy of it.

2 (Defendants' Exhibit No. 7 was
3 marked for identification.)

4 Q. Ben, what I've got -- what's been
5 previously marked as Defendants' Exhibit 7 to
6 your deposition. This is article II of the
7 zoning districts and dealing with regulations.
8 And it's section 23-16 [sic]. And then it's got
9 the heading Zoning Districts. And including
10 those zoning districts -- and those zoning
11 districts would include the PUD; is that correct?

12 A. That's correct.

13 Q. And my question is: is article VII the
14 general supplemental regulations, including
15 23-106, that they clarify, supplement, and modify
16 the district regulations, including article II of
17 chapter 23 which has been previously marked as
18 Exhibit 7 to your deposition? Do you agree with
19 that statement?

20 A. I do.

21 Q. Ben, is there anything in Exhibit 6 and
22 Exhibit 7 to your deposition that in any way
23 limits the application of section 23-106 with
24 respect to the Nortons' properties located in a
25 floodplain and the -- I guess in the South Island

1 area of the PUD, so to speak?

2 A. I don't think there's anything in
3 Exhibit 6 or 7 that would limit that. But I
4 would say that because height was defined in the
5 Tidewater PDD, I used a combination of what's
6 allowed in general supplemental for building
7 height where you measure from the first finished
8 floor usually to the midway point between the
9 ridge and the eave.

10 Q. Right.

11 A. I measured from the first finished floor
12 to the peak using a combination of both the
13 zoning ordinance general supplemental and the
14 Tidewater PDD.

15 Q. But there's nothing that would -- in
16 this -- in Exhibit 6 and 7 -- my question is --
17 that would limit the application -- I understand
18 how you applied it.

19 A. Okay.

20 Q. But it wouldn't limit the application
21 23-106 in its entirety? Do you see what I'm
22 saying?

23 MS. CARY: Object to the form.

24 A. I do.

25 Q. You can answer that.

1 A. I agree.

2 Q. There's not anything that would
3 eliminate any -- from section -- section 23-106
4 in its entirety?

5 A. I don't believe so, no.

6 Q. At least our experts and the case
7 lawyers and our -- lawyers, engineers, and
8 architects seem to agree with me on that.

9 MS. CARY: Objection to the form.

10 Q. Ben, per the PUD agreement, the maximum
11 building height in South Island would be 42 feet.
12 Do you agree with that?

13 A. I agree with that.

14 Q. To your knowledge, the PUD has not been
15 amended by the City and/or the Tidewater
16 Association -- Tidewater Board and/or Association
17 to further restrict it from 42 to 41, to your
18 knowledge?

19 A. Not to my knowledge. I have heard that
20 they have a maximum of 41. But I don't recognize
21 it as a maximum, because I don't see it in a PDD
22 document.

23 Q. Right, right. And per the PUD
24 agreement -- and the PUD controls over any -- as
25 far as any architectural review board standards

1 and regulations -- as far as -- if the City --
2 excuse me. Let me back up and restate that.

3 If the association wanted to limit it
4 from 42 to 41, they do have the -- a remedy as --
5 they would have to amend the PUD in order to do
6 that, which the City would have to agree to it.
7 And they would have to have public hearings, and
8 the planning department would have to sign off on
9 it. But they would have to go that route as
10 opposed to -- basically meaning their own
11 individual documents which the City didn't
12 approve?

13 MS. CARY: Object to the form.

14 A. I would say that the City and myself, if
15 I was reviewing the plans from a zoning
16 perspective, would go by the -- by what the PDD
17 document claims as the height. That could be
18 amended by anyone in Tidewater. It could be
19 attempted to be amended by anyone in Tidewater or
20 the board. If they wanted to amend the PDD
21 document to lower the building height, that would
22 be the process, going through the planning
23 commission and city council. But as of today, we
24 recognize the PDD document 42 foot as the height
25 limitation.

1 Q. You thoroughly answered my question.
2 Thank you. Ben, you are the zoning director for
3 the City of North Myrtle Beach, correct?

4 A. Zoning administrator, yes.

5 Q. Zoning administrator. And how long have
6 you held that position?

7 A. Since 2020.

8 Q. And would you briefly for the record
9 describe what your duties and responsibilities
10 are as the zoning administrator for the City of
11 North Myrtle Beach?

12 A. Administering, interpreting, and
13 enforcing the zoning ordinance.

14 Q. Which would include the PUD between the
15 City of North Myrtle Beach and Tidewater
16 Plantation?

17 A. Yeah. The PDD is a zoning designation.
18 And it's unique. Each one is unique. Each PDD
19 within the city is unique. They have their own
20 development standards, their own requirements.
21 They are unique. And it is part of my
22 responsibility to review the new construction in
23 those PDDs and ensure that they meet the minimum
24 standards of the PDD.

25 (Defendants' Exhibit No. 8 was

1 marked for identification.)

2 Q. Ben, I'm going to hand you what's been
3 marked as Defendants' Exhibit Number 8 for your
4 deposition. For the record, this is an e-mail
5 exchange between Cathy Weis and Mike Mahaney.
6 And I think he was the former city manager with
7 the City of North Myrtle Beach. Am I right about
8 that?

9 A. You are.

10 Q. And what I'm going to ask you to do is
11 where it says -- just publish the part that --
12 with Mike. I think this is on -- this e-mail is
13 dated Tuesday, June 22, 2021. And Mike Mahaney
14 and -- I think wrote -- and if you would publish
15 that for the record, and then I'll just follow up
16 with questions.

17 A. Sorry. I started reading it while you
18 were talking.

19 Q. That's okay.

20 A. Where do you want me to start?

21 Q. Where it says, "Cathy, we" --

22 A. "Cathy, we will have the plans, and
23 staff will go over your questions in detail. To
24 help, below are our general procedures and
25 staff's analysis of the situation. See you

1 tomorrow.

2 "We normally measure height to the
3 midpoint of the roof. But in Tidewater PDD, it
4 is to the peak, and it is measured in flood zones
5 from the first finished floor. Further,
6 architectural projections can exceed that height
7 if they are less than 15 percent of the roof
8 area. The cupola on the plans exceeds the
9 42-foot height, but it constitutes less than 15
10 percent of the roof area. The plan conforms with
11 our ordinances."

12 Q. At the time that he wrote that e-mail to
13 Cathy, obviously -- I don't think there was an
14 appeal at that point regarding whether the cupola
15 was a necessary mechanical feature. But
16 essentially what he's stating in the -- in his
17 response to Cathy -- because she's inquiring
18 about measuring maximum height in a flood zone.
19 But essentially his analysis is pretty much the
20 same as your analysis. Would you agree with
21 that?

22 A. I would say that someone probably
23 e-mailed the city manager, Mike Mahaney, that
24 paragraph that starts, "We normally measure
25 height."

1 Q. Right.

2 A. And he copied and pasted and responded
3 to Cathy. That's my assumption. But I don't
4 think that I wrote that.

5 Q. No, no, no. I'm not saying you wrote
6 that. Obviously he adopted it. He didn't write
7 it. Mike Mahaney adopted that when he published
8 it to Cathy. My question is, Ben, is that -- as
9 far as what the -- his adoption of what he's
10 saying of how you do it, you know, as far as how
11 you measure maximum roof height or building
12 height in a floodplain, his analysis of how you
13 do that is similar to what your analysis was and
14 your reply to the appeal?

15 A. I would agree with how he is responding
16 to Cathy about our procedure and measuring
17 building height.

18 Q. What I'm saying is he's consistent with
19 -- as far as what your opinion was?

20 A. Yes.

21 Q. About how to measure the building height
22 in a floodplain?

23 A. Yes.

24

25 (Defendants' Exhibit No. 9 was

1 marked for identification.)

2 Q. Ben, I'm going to hand you what's been
3 previously marked as Exhibit 9 to your
4 deposition. This is part of the production --
5 document production. And I'm not going to go
6 through all of it. But I would -- but obviously
7 you produced it because it may be relevant as far
8 as the Nortons' case.

9 Is there anything in here -- I just want
10 to -- if I can get clarification on why you
11 included this as part of your production.

12 A. Last week I was asked by someone from
13 your office -- and I forget her name.

14 Q. Tracy probably.

15 A. -- Tracy through e-mail that you would
16 like a copy of the building permit. And that's
17 what I printed out here.

18 Q. I'm going to go ahead and just -- and
19 that's what you produced. That's a building
20 permit that you produced pursuant to our subpoena
21 and document production. I'm just going to go
22 ahead and -- that's the -- for the record, that
23 is the building permit document initially that
24 you had produced pursuant to your subpoena that's
25 marked as Defendants' Exhibit 9. Am I correct on

1 that?

2 A. You are.

3 Q. I'm just going to make that a part of
4 the record. Okay?

5 A. Okay.

6 Q. I'm not going to go through all of it
7 with you. But I just want to -- yeah, as part of
8 your deposition.

9 (Defendants' Exhibit No. 10 was
10 marked for identification.)

11 Q. Ben, the court reporter, MacKenzie, just
12 handed you what's been previously marked as
13 Defense Exhibit 10 to your deposition. That's
14 part of your document production pursuant to the
15 subpoena. And I think those are the e-mails that
16 are in your file that relate to -- as far as the
17 permitting, plan approval, and as far as the
18 future construction work on the Nortons'
19 properties located on lots 407 and 408 in South
20 Island?

21 A. So far it appears that that is correct.

22 Q. And if you could flip through that
23 exhibit, Defendants' Exhibit 10, and just confirm
24 those are the e-mails that you produced pursuant
25 to the subpoena. And then what I'll do is just

1 go ahead and make them a part of the record.

2 A. All of the e-mails I see in here are
3 relating to the Norton case and their home. And
4 there's also an agenda from the Board of Zoning
5 Appeals in here that was not an e-mail.

6 Q. That was part of their -- I guess their
7 appeal?

8 A. Yeah, that was part of the appeal. And
9 then there's the staff report that's part of the
10 appeal, the decision of the board on the appeal,
11 motions for the appeal signed by our Board of
12 Zoning Appeals members. There's the decision
13 letter sent to Tidewater. I believe that was via
14 mail. And then another e-mail from -- pertaining
15 to the Norton case. And a FOIA request from
16 Mr. Norton asking for the Tidewater appeal
17 information.

18 Q. Ben, what I'm holding is what's been
19 previously marked as Defendants' Exhibit Number
20 11.

21 (Defendants' Exhibit No. 11 was
22 marked for identification.)

23 Q. This is a part of your document
24 production pursuant to our subpoena. And this
25 document usually deals with the appeal process,

1 decision, correspondence, so on and so forth that
2 you produced. If you would just, Ben, confirm
3 that for the record.

4 A. Yes, that's correct. Uh-huh.

5 MR. BELLAMY: Taylor, I just want
6 to go ahead and make -- I think exhibits --
7 Defendants' Exhibit 9, 10, 11, which are -- as
8 far as the document production pursuant to the
9 subpoena, just make this a part of this
10 deposition.

11 MS. CARY: (Nodded.)

12 (Defendants' Exhibit No. 12 was
13 marked for identification.)

14 Q. Then the -- Ben, this last thing I want
15 to ask you about, this is Defendants' Exhibit
16 Number 12. We've already kind of discussed your
17 reply to the appeal process, but I included the
18 appeal application. And if you flip to the
19 second page, I have some questions. But the
20 appeal application is filed by JD Jeffers. And
21 he was, at the time, the DRB chairman for
22 Tidewater Plantation. And if you look to their
23 grounds on the back -- I think it's the third
24 page.

25 A. Yes. I see what they are saying -- what

1 Mr. Jeffers is saying is the grounds for appeal.

2 Q. Right. And the grounds for appeal, the
3 DRB did not appeal as far as the maximum building
4 height arguing that it's 41 instead of 42 feet.
5 They didn't appeal that?

6 A. That was not appealed.

7 Q. And as far as the grounds for appeal,
8 the DRB for Tidewater Plantation did not appeal
9 how you measure maximum height in a floodplain.
10 They're arguing you have to measure it from
11 grade. Our position is, is that pursuant to
12 23-106, the Nortons' position is that you have to
13 determine what the base flood level is, 1 foot
14 above that, that's the first certified floor.
15 Then you measure up to the midpoint or at least
16 -- midpoint between the eave and the roof.

17 And I think in this particular case,
18 because of their documents indicating you measure
19 to the peak, instead of to measuring the
20 midpoint, the City or the planning department --
21 the zoning department approved measuring to the
22 highest point of the peak instead of the
23 midpoint?

24 A. That's correct.

25 Q. But for clarification purposes, the DRB

1 did not appeal as far as the issue of how you
2 measure in a floodplain?

3 A. I believe they only appealed my decision
4 that the cupola was a necessary mechanical
5 feature that wasn't included in the measurement
6 of height.

7 MR. BELLAMY: Ben, that's all I've
8 got right now. Please answer any questions that
9 Ms. Cary may have for you.

10 EXAMINATION

11 BY MS. CARY:

12 Q. Hi, Ben.

13 A. Hi.

14 Q. My name is Taylor Cary, and I represent
15 Tidewater Plantation. I just have a few
16 questions for you. Were you instructed on how to
17 interpret how the PUD agreement and article VII
18 of City of North Myrtle Beach's zoning ordinances
19 interact in the manner that you testified about,
20 or did you perform that interpretation on your
21 own?

22 A. I can't point to a specific situation
23 where I was instructed on how to do that. But I
24 worked under the former zoning administrator for
25 15 years. Our offices are right next to each

1 other. And any time I ever had any question
2 about how to interpret something, I would go to
3 him. He had been the zoning -- by the time he
4 retired, I think it was over 30 years that he was
5 the zoning administrator for the City.

6 He was the zoning administrator when
7 Tidewater first came into the City. So he would
8 have been the only other zoning person to make
9 decisions based upon how the PDD interacts with
10 the rest of the zoning ordinances. But it was my
11 understanding when I reviewed this plan that the
12 general and supplemental sections of the zoning
13 ordinances apply to all properties within the
14 City. And I assume that I got that to that
15 through conversations with the former zoning
16 administrator.

17 Q. And who was the former --

18 A. Paul Blust. Can I add to that
19 statement?

20 Q. Yeah, of course.

21 A. For those 15 years that I worked with
22 Paul, I did the -- all single-family house
23 review. And I learned how to do that review
24 through close work with Paul. So I can't state
25 exactly that he explained that, but he had to

1 have over the years.

2 Q. Okay. And over the years, you have
3 assessed proposed home plans to be built in South
4 Island within Tidewater?

5 A. Yes.

6 Q. And did those homes all begin with the
7 measurement from the first finished -- like 1
8 foot above the certified floor elevation?

9 A. Without having any of those approved
10 plans in front of me, I would say yes. I applied
11 the same method of measuring building height.

12 Q. And so those homes are compliant with
13 section 23-106 of the City of North Myrtle Beach
14 zoning ordinance?

15 A. I assume so, yes.

16 Q. In Exhibit 2 to your deposition --

17 A. Yes.

18 Q. And it's in that second paragraph that
19 you read into the record. You state that
20 section 23-106 is located in the general and
21 supplemental section of the zoning ordinance and
22 applies to all zoning districts unless an
23 ordinance in parentheses, Tidewater Plantation
24 PDD, closed parentheses, specifically states
25 something contrary to what that is stated in

1 23-106.

2 My question is: doesn't the Tidewater
3 PDD state something contrary in section 3D of the
4 PUD regarding how all of the building heights
5 should be measured?

6 MR. BELLAMY: Object to the form.

7 You can answer.

8 Q. And that would be on page 5 of the PUD.

9 A. Would you like me to read section D?

10 Q. Yeah, you can read it to yourself.

11 A. "All front yard setbacks shall be
12 measured from the edge of the 50-foot street
13 right-of-way. All building heights are measured
14 from the uppermost point of the structure to the
15 average finished grade. (Chimneys are not
16 included in measuring building height in
17 single-family structures.) Open spaces as
18 defined in section 23-109(1) of the North Myrtle
19 Beach zoning ordinance."

20 Q. So would you agree that the PDD does
21 state something contrary to section 23-106 --

22 MR. BELLAMY: Object to the form.

23 Q. -- as to how to measure building
24 heights?

25 A. I understand how it's written in the PDD

1 document. But I still believe that section 103
2 doesn't prohibit houses in the flood hazard area
3 from being as big as houses that are not in the
4 flood hazard area. So I still believe it
5 applies.

6 Q. So what would need to be stated to be to
7 the contrary in those circumstances?

8 A. What I meant in that second paragraph of
9 Exhibit 2 is that I measured to the peak of the
10 roof from the first finished floor, because
11 that's how height is defined as being measured
12 and determined in Tidewater PDD.

13 Q. And that says uppermost point of the
14 structure, or is it -- because it's -- because
15 the uppermost point of the structure in that
16 height measurement?

17 A. Yes, ma'am.

18 Q. Is it typical that PUD agreements do or
19 do not have how to measure height in a
20 floodplain?

21 A. I would say that generally height is not
22 defined as how to measure in a PDD. It is just
23 stated what the building height is. And then we
24 would rely on section 23-106 to determine how to
25 measure that height that is defined.

1 Q. So is it unusual that it states how
2 height is measured?

3 A. I believe so, yeah. I think back to
4 other PDDs and it's not usually stated how to
5 measure heights.

6 Q. And how did you determine that height is
7 measured from the peak regardless of whether the
8 property is in a floodplain or not? Is that from
9 that sentence that -- in section 3D?

10 A. Yes. I would measure to the peak
11 because it's stated in the PDD document.

12 Q. Would you agree that you can comply with
13 both section 23-106 regarding how you measure
14 height in a floodplain and the Tidewater PUD?
15 You know, how you measure all building heights.
16 Would you agree that you can comply with both
17 measurements?

18 A. Yeah, I think so.

19 MR. BELLAMY: I'm kind of confused
20 by your question.

21 Q. Can a home design plan comply with
22 measuring from the first finished floor to the
23 height of the structure at, you know -- within
24 the uppermost point of the structure being within
25 42 feet and being measured from all building

1 heights measured from the average finished grade
2 to the uppermost point of the structure?

3 A. The Nortons' house wouldn't have been in
4 compliance if I had measured from there.

5 Q. Right. But could a house --

6 A. Yeah, there's houses -- there's other
7 houses in Tidewater and in other PDDs and other
8 zoning districts that are not in a flood hazard
9 zone we measured from the average finished grade
10 to the front of the house to the midway point.
11 And I assume all of those ones that we've looked
12 at have been able to be approved.

13 Q. And could they also be approved --
14 having their first finished floor 1 foot above
15 the certified floor elevation and compliant
16 within being under 42 feet while also being
17 compliant with measuring from the average
18 finished grade uppermost point of the structure?

19 MR. BELLAMY: Are you talking in a
20 floodplain?

21 MS. CARY: In a floodplain.

22 MR. BELLAMY: Object to the form.

23 A. I wouldn't measure it from the average
24 finished grade in a flood zone.

25 Q. Right, right.

1 A. I'd measure it from the first finished
2 floor. And if it was in compliance, we would
3 approve it.

4 Q. Was the building permit, Exhibit 4 to
5 your deposition, was that building permit
6 nullified when the Board of Zoning Appeals
7 reversed your decision regarding the Nortons'
8 proposed cupola?

9 MR. BELLAMY: Object to the form.

10 A. It's my opinion that it wasn't nullified
11 but that we -- that the approved plans for this
12 application issuance would need to be revised to
13 remove the cupola or get it down to the maximum
14 height allowed.

15 Q. And the Nortons would have to submit
16 home design plans without a cupola to the City in
17 order to have an active building permit?

18 A. Revised plans, yes.

19 Q. Did they ever --

20 A. Yes, or a new building permit. They
21 could have requested to void this one and could
22 issue a new permit based upon revised plans.

23 Q. And did they ever submit those revised
24 plans to you?

25 A. Not to my knowledge.

1 Q. Did you ever discuss the City's building
2 codes and requirements as they relate to
3 floodplains with anyone from the Tidewater board
4 or design review board?

5 A. I would hope not, because I don't review
6 building code. Only zoning. I stay in my lane.

7 Q. That's what I meant. Did you ever
8 discuss the City's zoning code and requirements
9 as they relate to floodplains with anyone from
10 the Tidewater board or design --

11 A. I would have talked with Mr. Jeffers.
12 I'm sorry to interrupt. But I believe I talked
13 to Mr. Jeffers about building height and my
14 decision to allow the cupola as a necessary
15 mechanical feature prompting the appeal.

16 Q. And do you recall when that was around?

17 A. On these documents, it has his appeal
18 that was submitted.

19 Q. So around that time?

20 A. Around 2021, I think.

21 Q. Okay.

22 A. Sometime in 2021.

23 Q. Yeah, his appeal was June 25, 2021.

24 A. Okay.

25 Q. So it would have been around that time?

1 A. It would have been weeks prior to that
2 or a month maybe.

3 Q. And did you discuss -- and was anyone
4 else from Tidewater --

5 A. I mean, I believe I was in a meeting
6 with --

7 THE WITNESS: I'm sorry. What's
8 your name again?

9 MS. WEIS: Cathy.

10 THE WITNESS: Cathy. I believe you
11 were in a meeting with the City manager when this
12 was discussed in his conference room. I don't
13 recall anybody else. I don't remember any names.

14 Q. Was that discussing the cupola or how
15 you measured height specifically?

16 A. I believe it was all about the cupola.

17 Q. Were you aware of a meeting between --
18 it's Delane Stevens -- that the Tidewater DRB
19 chairman, Mr. Jeffers, and the DRB vice chair, Ed
20 Boyer, had in January of 2021? Were you aware or
21 at that meeting?

22 A. I don't believe I was at that meeting if
23 there was a meeting between the three.

24 Q. Do you determine how to calculate the
25 base flood elevation for a proposed home, or do

1 you rely upon an elevation certificate?

2 A. So our building department requires that
3 certified floor elevation from a surveyor. And
4 they require that the first finished floor be one
5 freeboard above that flood hazard area. In
6 determining how to measure -- or in determining
7 height, just look at Felix Ayres' plans which
8 show what that height is from a first finished
9 floor.

10 Q. You could read the height on those
11 plans --

12 A. Yes, I could.

13 Q. -- when you reviewed them at the time?

14 A. Yeah, I could zoom in.

15 Q. They're very difficult to read. And
16 when you -- before you were the zoning
17 administrator, what was your role?

18 A. Assistant zoning administrator.

19 Q. And were you the assistant zoning
20 administrator when you reviewed the Nortons' --

21 A. I think when I first reviewed them and
22 first started communicating with them, I believe
23 I was still the assistant. And then at some time
24 during the process, I became the interim zoning
25 administrator when Paul retired and then the

1 zoning administrator after that. But the time
2 table of all of the dealings back and forth with
3 the Nortons, I don't recall the timeline exactly.

4 Q. Has the City of North Myrtle Beach ever
5 sought to amend the Tidewater PUD to expressly
6 state how to measure a proposed structure within
7 a floodplain?

8 A. Not to my knowledge.

9 Q. Do you know why that is that they
10 haven't done that?

11 A. The City doesn't attempt to amend PDDs.
12 That would be from -- anyone owning property in a
13 PDD could ask to amend it. The board could ask
14 to amend it, the Tidewater board. But the City
15 generally, to my knowledge, has not initiated
16 amendments to a PDD.

17 Q. Is it unusual to -- when you supplement
18 a section -- or supplement a PDD agreement with a
19 zoning ordinance from article VII, is it typical
20 that you piecemeal the zoning ordinance? Like
21 you only take a portion of that specific zoning
22 section?

23 A. From the general supplemental
24 regulations?

25 Q. Yes, yes.

1 A. Yes. It is quite normal to do that.
2 Quite often. I can give you an example. Like
3 there's things that are allowed to encroach in
4 the required setbacks in the general supplemental
5 section. Like ground-level patios. If it's not
6 more than a foot off the ground, it can go all
7 the way to the property line. We interpret that
8 to mean -- also in a PDD if it doesn't say
9 otherwise, that yes, there, too, a ground-level
10 patio can go all the way to a property line.

11 Q. But that section itself deals with more
12 than just --

13 A. It deals more with just building height,
14 yes.

15 Q. Got it.

16 MS. CARY: I believe those are all
17 the questions I have for you.

18 MR. BELLAMY: I've got just a few
19 follow-up questions.

20 EXAMINATION

21 BY MR. BELLAMY:

22 Q. Ben, I want to, again, go back to -- for
23 you to -- Defendants' Exhibit 3 to your
24 deposition, which is the PUD agreement that was
25 recorded on April 30, 1992. And again, I want to

1 refer you to -- under section 1, master site
2 plan, subsection A2. In that last sentence of
3 that paragraph, it says, "Anything not covered in
4 this document shall be governed by the City
5 zoning ordinance and section 8 of this
6 agreement."

7 Did I read that correctly?

8 A. Yes, sir.

9 Q. And as part of your deposition, you had
10 a chance to review the original PUD agreement
11 pages 1 through 13 and the attachments. And you
12 did not find anything in the PUD agreement that
13 specifically addressed building within a
14 floodplain in the South Island area of Tidewater
15 Plantation?

16 A. No, I did not.

17 Q. And further, you didn't find anything in
18 the PUD that specifically and intentionally said
19 that section 23-106 was not applicable to the
20 construction of lots within a floodplain --
21 within the floodplain within South Island of
22 Tidewater Plantation, correct?

23 MS. CARY: Objection to the form.

24 A. Correct.

25 Q. And essentially, when you -- Ms. Cary

1 asked you about section 3D of the PUD agreement
2 where it talks about -- it's titled Development
3 Standards. And it's on page 5 of 13.

4 A. Yes.

5 Q. And she specifically indicates that --
6 where she quotes -- or at least the language that
7 she highlights, "All building heights are
8 measured from the uppermost point of the
9 structure to the average finished grade."

10 My point being is, is that that part of
11 the developmental standards obviously can apply
12 to properties within Tidewater Plantation as far
13 as the residential construction or building
14 duplexes or condominiums that are not in a
15 floodplain. Okay?

16 MS. CARY: Object to the form.

17 Q. As far as that language would apply --
18 because if you go back to 23-106, it indicates
19 that you measure from the mean average grade up
20 to the midpoint between the eave and the highest
21 point on the roof. And so my argument is, is
22 that that sentence applies to specifically the
23 building of particular structures or townhouses,
24 residential -- for example, the different
25 criteria -- like you've got large lot

1 single-family, zero lot single-family. And if
2 you flip over, you've got semi-detached or duplex
3 or townhouse.

4 Regarding those particular permitted
5 uses, that specific language would apply to those
6 properties that are not in a floodplain as far as
7 determining what their maximum roof height is.
8 Would you agree with that statement?

9 MS. CARY: Object to the form.

10 A. Could I say -- and you can ask me a
11 follow-up question if I'm not clear or if I'm not
12 answering what you're trying to get an answer to.
13 23-106 general and supplemental allows that
14 measurement of building height from the first
15 finished floor in flood zones for single-family
16 and duplex only, not for townhomes or
17 multi-family.

18 Q. Right, right. And what saying is -- and
19 I probably -- let me -- I didn't artfully ask my
20 question. What I'm saying is as far as the
21 application of -- because you notice -- or let me
22 put -- put 23-106 aside.

23 A. Okay.

24 Q. Dealing with 3D, development standards,
25 where they talked about building heights are

1 measured from the uppermost part of the structure
2 to the average finished grade, my argument is
3 that specific language would apply to properties
4 or residential construction within the PUD.
5 Those properties are not located in the
6 floodplain?

7 A. That is how we would measure building
8 height for a single-family or duplex that was not
9 measured in a flood hazard area.

10 Q. And that's the point of what I'm saying.
11 That language is not useless language. It does
12 apply regarding residential construction within
13 the PUD that's not located in the floodplain. My
14 argument is, is that there's -- as you testified
15 earlier, there's nothing in the PUD -- the
16 original PUD agreement that was previously marked
17 as Exhibit Number 3 that deals with construction
18 within a floodplain?

19 A. Correct.

20 Q. And when the PUD is pursuant to its own
21 language and interpretation, when it's silent
22 regarding a particular standard or regulation,
23 you have to resort to the PUD -- you have to
24 resort to the City's zoning ordinance, correct?

25 MS. CARY: Object to the form.

1 A. Correct.

2 Q. And more specifically to the zoning
3 ordinance under section 23-106 dealing with
4 article VII, supplemental regulation standards
5 specifically addresses that point that the PUD
6 agreement doesn't address. Do you agree with
7 that statement?

8 A. Yes.

9 Q. And as far as the Nortons, you
10 understand that we're in a lawsuit right now. So
11 we're trying to litigate the issues regarding
12 maximum height and how you measure it within a
13 floodplain. And to the extent that we're able to
14 work it out, the Nortons do plan to resubmit the
15 plans regarding the original permit. And
16 obviously they would have to comply with removing
17 the cupola as a necessary mechanical feature.

18 But to the extent they do that and they
19 resubmit the plans, the Nortons can still use the
20 original permit and the revised plans as far as
21 the City is concerned regarding the residential
22 construction of their house on lots 408 and 407.
23 Do you agree with that?

24 A. What I would agree with is that from a
25 zoning perspective, I would review the plans the

1 same as I did before if they were to resubmit at
2 any time.

3 Q. Okay.

4 A. I don't know about building codes. They
5 may have changed over the five years.

6 Q. Right. That's fine.

7 A. So from a zoning perspective as of right
8 now, nothing has changed in my mind. I would
9 review it the same way as before if I were to do
10 a review.

11 Q. And for the record, they can use their
12 original permit that they got back in 2020. And
13 then when they submit a revised set of the plans
14 removing the cupola or putting it under the 42
15 feet, from a zoning standpoint, they would be in
16 compliance. Do you agree with that?

17 A. I would agree that they would need to
18 reapply. In 2020, we had different building
19 software. So they couldn't submit the same
20 application, but they could apply with our new
21 portal the same plans from a zoning perspective
22 that could gain approval from a zoning
23 perspective.

24 Q. Under the original permits?

25 A. The original documents included in the

1 permit could be approved from a zoning
2 perspective without the cupola.

3 Q. Thank you.

4 MR. BELLAMY: I have no further
5 questions.

6 MS. CARY: No further questions.

7 (The deposition was concluded at
8 11:16 AM)

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1 DEPONENT CORRECTION SHEET
2 I, the undersigned, BEN CALDWELL, do hereby
3 certify that I have read the foregoing deposition
and wish to make the following clarifications
and/or corrections, if any.

4	PAGE	LINE	CHANGE	REASON
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19 _____
20 BEN CALDWELL Date

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

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

13 Should the signature of the witness
14 not be affixed to the deposition, the witness
15 shall not have availed himself/herself of the
16 opportunity to sign or the signature has been
17 waived.

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

21 Witness my hand, I have hereunto
22 affixed my official seal on June 19, 2025, at
23 Charleston, Charleston County, South Carolina.
24
25

26 MACKENZIE ALLEN

27 My commission expires
28 August 30, 2029

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codes (2)		duplex (3)	feature (9)
combination (3)	< D >	duplexes (1)	feet (10)
commission (3)	daily (2)	duties (1)	Felix (3)
COMMON (1)	Date (1)		file (3)
communicating (1)	Dated (3)	< E >	filed (6)
COMMUNITY (2)	deal (1)	earlier (1)	find (5)
Company (2)	dealing (3)	eave (7)	fine (1)
complete (2)	dealings (1)	Ed (1)	finish (1)
compliance (3)	deals (5)	edge (1)	finished (29)

FIRM (3)	heading (2)	issuance (1)	< M >
first (32)	heard (1)	issue (4)	MA (1)
five (1)	hearings (1)	issued (2)	ma'am (1)
flip (3)	height (57)	issues (3)	MACKENZIE (5)
flood (28)	heights (8)	its (3)	Mahaney (4)
floodplain (32)	held (1)	< J >	mail (1)
floodplains (2)	help (1)	January (1)	maintains (1)
floor (24)	hereunto (1)	JD (1)	maintenance (1)
FOIA (1)	Hi (2)	Jeffers (5)	manager (3)
follow (1)	highest (5)	job (1)	manner (1)
following (1)	highlights (1)	judgment (1)	marked (23)
follows (1)	himself/herself (1)	JUNE (4)	master (2)
follow-up (3)	holding (1)	< K >	maximum (15)
foot (11)	home (7)	Ken (3)	mean (5)
foregoing (3)	homes (2)	KENNETH (3)	meaning (1)
forget (1)	hope (1)	kind (5)	meant (2)
form (14)	HORRY (2)	know (10)	measure (44)
former (4)	house (7)	knowledge (7)	measured (24)
forth (3)	houses (4)	< L >	measurement (6)
forward (1)	HOWELL (2)	Land (3)	measurements (1)
found (1)	< I >	lane (1)	measuring (9)
freeboard (2)	idea (1)	language (8)	mechanical (9)
front (5)	identification (12)	large (2)	meet (1)
full (1)	II (6)	LAW (4)	meeting (6)
further (6)	impression (1)	lawsuit (4)	member (1)
future (2)	include (2)	lawyers (2)	members (1)
< G >	Included (6)	learned (1)	memory (3)
gain (1)	including (3)	lengthy (1)	met (1)
general (12)	indicates (2)	Letter (3)	method (1)
Generally (3)	indicating (1)	level (4)	methodology (1)
give (1)	individual (1)	limit (4)	midpoint (11)
given (1)	Individually (2)	limitation (2)	midway (3)
go (17)	information (3)	limits (1)	Mike (5)
going (16)	initially (3)	line (3)	mind (1)
Golf (5)	initiated (1)	litigate (1)	minimum (1)
governed (2)	injunction (1)	Living (2)	minute (2)
grade (13)	inquiring (1)	locate (1)	modify (2)
ground (1)	instructed (2)	located (12)	month (1)
ground-level (2)	intentionally (4)	LOCATION (2)	motions (1)
grounds (4)	interact (1)	long (1)	multi-family (1)
guess (2)	interacts (1)	look (4)	MYRTLE (13)
< H >	interested (1)	looked (2)	< N >
hand (4)	interim (1)	lot (7)	name (4)
handed (4)	interpret (3)	lots (8)	names (1)
happened (1)	interpretation (2)	lower (1)	necessary (10)
hazard (14)	interpreting (1)		need (6)
head (1)	interrupt (1)		needed (1)
	Island (10)		neighboring (1)

neither (1)	particular (4)	Production (8)	relate (3)
new (4)	party (2)	prohibit (1)	related (1)
Nodded (1)	pasted (1)	project (1)	relating (1)
nonverbal (1)	patio (1)	projections (1)	relevant (2)
normal (1)	patios (1)	prompting (1)	relief (1)
normally (2)	Paul (4)	properties (11)	rely (3)
North (12)	PDD (25)	property (9)	remaining (1)
NORTON (11)	PDDs (4)	proposed (4)	remedy (1)
Nortons (20)	peak (14)	provided (1)	remember (3)
Norton's (1)	pending (1)	provides (2)	remove (2)
Notary (1)	percent (3)	public (2)	removing (2)
Notice (4)	perform (1)	publish (5)	repeat (2)
nullified (2)	Permit (17)	published (1)	reply (2)
nullifies (2)	permits (1)	PUD (40)	report (2)
number (10)	permitted (1)	purposes (1)	REPORTED (1)
numbers (1)	permitting (1)	pursuant (11)	REPORTER (8)
< O >	person (1)	put (2)	represent (2)
Object (10)	perspective (7)	putting (1)	request (1)
Objection (4)	pertaining (1)	< Q >	requested (3)
objections (2)	phase (1)	question (17)	require (2)
obtain (1)	piecemeal (1)	questions (14)	required (1)
obviously (7)	Plaintiff (2)	quite (2)	requirements (3)
occupy (1)	plaintiffs (1)	quotes (1)	requires (2)
office (1)	plan (7)	< R >	residential (12)
officer (1)	planning (5)	R-1 (1)	resolved (1)
offices (1)	Plans (33)	Racquetball (1)	resort (2)
official (1)	PLANTATION (17)	rate (1)	respect (2)
Okay (15)	PLEAS (1)	read (13)	respond (1)
ones (1)	please (4)	reading (2)	responded (1)
Open (1)	point (21)	reads (1)	responding (1)
opinion (7)	portal (1)	really (1)	response (2)
opportunity (3)	portion (1)	reapply (1)	responsibilities (1)
opposed (1)	position (4)	REASON (1)	responsibility (1)
order (3)	Power (2)	recall (3)	rest (2)
ordinance (17)	powers (1)	receive (2)	restate (2)
ordinances (4)	preempt (1)	recognize (2)	restrict (1)
original (12)	preempts (1)	record (18)	resubmit (3)
overall (1)	prepared (2)	recorded (3)	retired (2)
owned (2)	Present (1)	refer (4)	reversed (1)
owning (1)	pretty (1)	refers (1)	review (16)
< P >	previously (8)	refresh (1)	reviewed (5)
PAGE (9)	printed (1)	regarding (19)	reviewing (3)
pages (2)	prior (3)	regardless (1)	revised (7)
paragraph (5)	probably (6)	regulated (1)	ridge (2)
paralegal (2)	Procedure (2)	regulation (3)	right (31)
parentheses (2)	procedures (1)	regulations (8)	right-of-way (1)
part (20)	Process (5)	regulatory (4)	role (1)
	produce (2)		roof (20)
	produced (6)		room (1)

route (1)
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 Tilghman (1)
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< V >
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VII (6)
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< Y >
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< Z >
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