STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY CASE NO. 2021-CP-26-04599

TIDEWATER PLANTATION COMMUNITY ASSOCIATION, INC.,

Plaintiff,

vs.

SUZANNE N. NORTON, INDIVIDUALLY; KENNETH R. NORTON, INDIVIDUALLY; SUZANNE N. 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,

Defendants.

DEPOSITION OF: OTIS ALLEN JEFFCOAT, III
DATE: June 11, 2025
TIME: 10:41 a.m.
LOCATION: Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, South Carolina
TAKEN BY: Counsel for the Counterclaim Defendant

REPORTED BY: KAREN M. BECKMAN, CSR
Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEY FOR COUNTERCLAIM DEFENDANT
TIDEWATER PLANTATION COMMUNITY
ASSOCIATION, INC.:
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ATTORNEYS FOR COUNTERCLAIM PLAINTIFFS
SUZANNE N. NORTON, INDIVIDUALLY;
KENNETH R. NORTON, INDIVIDUALLY;
SUZANNE N. 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 LAW FIRM
BY: HOWELL BELLAMY, III
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ALSO PRESENT:
CATHERINE WEIS

(INDEX AT REAR OF TRANSCRIPT)

OTIS ALLEN JEFFCOAT, III

being first duly sworn, testified as follows:

EXAMINATION

BY MS. CARY:

Q. Good morning, Mr. Jeffcoat. My name is Taylor Cary and I represent Tidewater Plantation Community Association in this case.

I know you've been deposed before, but I'll briefly run through the rules.

Please give verbal responses. No shakes of the heads nor nods.

I'll try -- do our best not to talk over each other.

If you have any questions or the question just doesn't make any sense, please, you know, ask me to rephrase or repeat the question.

If you do not do so, I will assume you understand my question; is that fair?

A. Yes.

Q. Okay. Of course, breaks, you can take them at any time. I'd just ask that you answer any pending question that I asked before we take that break.

And you may hear objections to the form. Please still answer unless directed not to.

MS. CARY: I'm going to mark Exhibit 1.
(EXHIBIT 1, Subpoena for Allen Jeffcoat dated May 14, 2025, was marked for identification.)
BY MS. CARY:
Q. Okay. And do you recognize this document subpoena?
A. Yes.
Q. Okay. And did you search for documents in response to receiving that document subpoena?
A. Yes. I had put this aside when it first came in and never got back to actually producing the documents, but I think we got those together yesterday.
Q. Yes.
What did you do to search for the documents requested?
A. We pulled -- mine is fairly simple.
Q. Okay.
A. We pulled whatever was in the file and whatever was in our online system, either emails or stored documents or whatever.
Q. Okay.
A. And I think all of that got sent.
Q. Okay. And what did you do to prep for today's deposition?

A. Well, we've been -- I've been preparing for several days, so it's reviewing the files, applicable documents. I've had conversations with Mr. Bellamy and some of the other experts, but that's been over a period of, I guess, weeks before this.

Q. Okay. And which experts did you talk to?

A. Senior moment. Our architect, Felix Ayres.

Q. Okay.

A. I think that's the main one. I may have been present on a call with Matt Hines. I think that's it.

Q. And when did you last speak with Felix Ayres?

A. I'm sorry?

Q. And when did you last speak to Mr. Ayres about this case?

A. Probably about a week ago.

Q. And what did you discuss?

A. Just the facts of the case and architectural issues they have and the zoning ordinances.

Q. And what about with Matt Hines? When

was the last time you spoke with him?

A. It's been probably a month ago or so.

Q. Okay.

A. And I don't know that I discussed anything in particular with him. I may have just listened in on a conversation.

Q. And what was that conversation about? Just...

A. I think it was his view of the case or the facts of the case. I don't recall specifically other than that.

Q. And did you review any documents to prep for today?

A. Yes.

Q. What documents were those?

A. The city zoning ordinances, the PUD documents and related documents and then some of the correspondence or notices from the City of -- zoning official and some of the pleadings in both lawsuits.

Q. When you say both lawsuits, what are you referring to? Are you referring to --

A. Well, there's this lawsuit which is the --

MR. BELLAMY: Yep.

MS. CARY: Okay. I just want to know what does that mean?

THE WITNESS: I'm thinking there's -- is the caption right here?

MR. BELLAMY: Yeah, that's right. Can we go off the record for a second?

MS. CARY: Yeah.

(Off-the-record conference.)

BY MS. CARY:

Q. Any other documents that you reviewed?

A. No. Just various court opinions as you do legal research, but that's not a document in this case, I suppose.

Q. And were any of those Court opinions cited in your affidavit?

A. Let me look at my affidavit.

Q. Yeah, we can mark it if that's easier.

MR. BELLAMY: They were cited in the supplemental discovery in his opinions.

MS. CARY: Okay.

MR. BELLAMY: That's where they are. I don't think the affidavit cites anything.

THE WITNESS: Yeah, I don't think --

MS. CARY: Okay.

THE WITNESS: Yeah, it refers to

various sections of the zoning ordinance, but it does not mention cases.

BY MS. CARY:

Q. Okay. I know you discussed it, but where did you graduate undergrad from?

A. Princeton, New Jersey.

Q. And what was your degree in?

A. Politics.

Q. Where did you graduate law school?

A. South Carolina.

Q. And do you have any other degrees, certifications, licenses, or formal training?

A. No. I think they're all reflected in my CV. I'm licensed in South Carolina and North Carolina in various courts.

MS. CARY: We can mark this as Exhibit 2.

(EXHIBIT 2, Summary of Qualifications of Otis Allen Jeffcoat, III, was marked for identification.)

BY MS. CARY:

Q. Now, do you recognize the document that we've marked as Exhibit 2?

A. Yes.

Q. And is this the CV that you were

referring to?

A. Yes.

Q. Is this your most up-to-date CV?

A. I think I've updated it --

Q. Okay.

A. -- not anything to do with this case, but I think I've updated it to reflect we're another year later, and I may have one more expert in this engagement that's not reflected here.

Q. Okay.

A. But it would be something that's happened in the last few months if that's the case. I can get you that dated version.

Q. And what type of case was that one that you were recently retained in?

A. Expert witness engagement for -- I think it's a residence. I need to put my glasses on, just a minute. Yeah, it's an expert witness on behalf of a group of homeowners in a residential subdivision in Horry County.

MR. BELLAMY: That's the Arcadian?

THE WITNESS: Yeah, I believe that's one of them.

MR. BELLAMY: Up in Georgetown?

THE WITNESS: Yeah.

BY MS. CARY:

Q. And you were retained as of this year? Okay. And you were retained in that case as of this year?

A. Yes.

Q. It says on your CV that you're a licensed title insurance agent; is that correct?

A. Yes. In the last year, I've given up my real estate practice pretty much. I don't do residential closings anymore because my senior real estate paralegal retired, and I wasn't going to train somebody new. So I've given up my agency appointment with Chicago Title. My license is still current.

Q. Okay.

A. But that's the only significant change in that area.

Q. Okay. And what is your primary practice?

A. Right now it bounces around among about three or four practice areas. Some real estate, although not closings, probate and estate planning. I was doing a good bit of bankruptcy work, commercial bankruptcy work, but I've not done any of that in the last year and a half. So it's --

and then some expert witness engagements. I do a fair amount of organizing businesses, forming LLCs, and that type of thing. That's about it.

Q. Okay. Have you ever represented a community association in your practice?

A. Yes. I am now. This newest expert witness engagement, that's my role there. On most of the subdivisions that I have formed, for a while I've acted as attorney for an HOA, but usually not past the transition period where the homeowners took over.

Q. Okay.

A. There are a few -- there are probably -- there are definitely a few cases where I've been involved to represent the association. Most of that nowadays I refer out to --

Q. Okay.

A. -- especially if it involves litigation.

Q. And why is that?

A. I don't have the staff anymore to sustain a litigation practice.

Q. Okay. And have you ever represented a community association in a litigation?

A. There was a period of time where I did

a lot of lien foreclosures for associations.

Q. Okay.

A. And there is one or two -- this has been some time ago -- where I actually represented the association in something like road transfers or enforcing restrictions.

Q. Okay.

A. But, again, that's looking back over 50-something years.

Q. Okay. So would you say it's not the predominant part of your practice? Would you say it's not the predominant part of your practice?

A. Not now.

Q. Have you ever prepared governing documents for a community association?

A. Oh, yeah. A lot of them.

Q. And when was that?

A. Well, it started pretty soon after I moved to Myrtle Beach. I've been practicing -- what did I say? -- 50, 51 years or whatever. So I've mainly done Charleston County, some Georgetown. Mainly Horry, though. I've done large and small ones.

Q. What communities have you done in Horry County?

A. Myrtle Beach Golf & Yacht Club, which is down in the county. The Market Common, which is a major mixed-use subdivision in Myrtle Beach.

In terms of preparing documents, I've done a good bit of work in the Grande Dunes PUD here but not in preparing their documents.

Q. What did you do for them, if not preparing?

A. Just generally representing the association --

Q. Okay.

A. -- in matters involving the City of Myrtle Beach and some zoning issues --

Q. Okay.

A. -- and like that, but...

Q. And just to clarify, other than Grande Dunes that you said, you have prepared their governing documents? You drafted those?

A. Not in Grande Dunes.

Q. Okay. But on the other ones you listed?

A. Yeah. I mean, there's smaller ones. Of course Briarcliffe comes to mind as one of my earliest ones. That was probably 60 or 80 residential lots in that one. Myrtle Beach Golf &

Yacht Club was probably 1100 units to build out if it went all the way.

I'm trying to go through in my head the ones that we've done. Grande Dunes I've been involved with doing closings and dealing with associations, but that is not something I prepared documents for.

Q. Okay.

A. Governing documents.

Q. So how many associations in Horry County would you say that you've prepared and drafted their governing documents?

A. Over the years --

Q. Uh-huh.

A. -- a couple dozen maybe, maybe more than that.

Q. Okay. And have you ever prepared or drafted a planned development district or planned unit development agreement?

A. I was involved in -- there was multiple counsel on my side -- but the Market Common development here, I was local -- I am local counsel for the developer of that. So I worked with counsel in Chicago. That's probably the largest in terms of dollar value. And so we would do

primarily the real estate side of that drafting the covenants or amendments to covenants to bring in a new phase.

And then condominium regimes that may have been part of those PUDs, I would have done the governing documents for those condominium regimes.

Q. Did you do draft or work on drafting the PUD agreement itself for...

A. Like, with the municipality?

Q. Right.

A. No. I would not have -- I'm trying to think if the -- we go through the process of amending to bring in new sections.

Q. Okay.

A. We would have prepared the amendments to the underlying documents, but I'm not sure -- like, in that case, I think the City's attorney would have prepared that.

Q. Prepared the initial --

A. Yeah.

Q. -- the initial --

A. The amendments to the -- yeah. You have to do both the changes to the PUD document and the underlying real estate restrictive covenants. They've got to dovetail.

Q. Okay. And where do you currently work? Where do you currently work?

A. At my own law firm here in Myrtle Beach, Jeffcoat Law, LLC.

Q. And how long have you worked there for?

A. We formed it 10 or 11 -- 10 years ago. I've been a solo practitioner basically since 1985 here.

There was a period of time, about two and a half years, where I moved my real estate practice -- my whole practice from that arrangement into Turner Padget, a statewide law firm, for about -- like I say, about two and a half years.

But before that and after that, I was solo pretty much. Well, that's not exactly accurate. After I became a solo practitioner, I started growing the law firm, and it ended up being, like, ten lawyers --

Q. Okay.

A. -- that were under my supervision. And then when the real estate crash happened, I shrunk it back down.

Q. Okay.

A. But it's been that kind of private practice since I moved down here in the late '70s.

Yeah.

Q. And have you ever been a party to a lawsuit?

A. Yeah. And that should be in my CV.

Q. Okay. Were those the only two that were listed on page 9?

A. Oh, there we go. I'm sorry.

Yeah, there's three of them. None since the ones that are in the CV. I'm trying to think if I'm party as a trustee. No, I think this is it.

Q. All right. And have you ever received a complaint against your license or a Bar complaint?

A. No. Well, I think there was one that was dismissed quickly by the Bar back in -- it was out of my North Myrtle Beach office. But other than that, none.

Q. When was that about?

A. I'm going to say it was in the late 1980s.

Q. Do you recall the complaint, what the complaint was?

A. I don't. I'm trying to -- I don't even remember the people -- the guy's name.

Q. Yeah.
A. But I don't -- I don't recall what it was.
I think that got as far as the Bar got a complaint from an individual, and they just asked to see my file, which I did, and they dismissed it as soon as they saw that.
Q. Got it.
And do you understand that you've been identified as an expert witness in this case to testify regarding your opinions on the Nortons' design plans and the Association's governing documents?
A. Yes.
Q. In what areas do you consider yourself an expert in?
A. Well, over the years, I've qualified in the cases that are all listed in here primarily in two areas. One is substantive real estate law --
Q. Uh-huh.
A. -- where there's some issue of interpretation of documents or things like that. That's probably about half of them.
The other half is attorney malpractice cases usually involving real estate attorneys as to

whether they acted to the required standard of care. And that's almost exactly 50/50.

Q. Okay.

A. Now, the ones, the substantive real estate is all over the landscape in terms of what particular issues are involved.

Q. Okay. Have you ever been disqualified?

A. You mean to be as an expert?

Q. Yeah.

A. No. I didn't count them up to this deposition, but I think there's about ten of them where I qualified in court as an expert in a real estate matter. The rest of them are cases where either the case didn't get far enough along or -- that's what that would be.

Q. Okay.

A. The difference. But there's about ten of them. But no disqualification.

Q. And is it correct to say that you have not been qualified as an expert in a community association matter or homeowners association matter?

A. Let me just look real quick.

Q. Yeah.

A. I don't want to answer wrong.

Condominium master deed, interpretation of an easement. That's not what you're asking.

Condominium association, interpretation of a master deed and condo documents. Several involving interpretation of master deeds for condominiums.

Q. Were you qualified? Which one are you referring to?

A. The ones where I was qualified -- are you mainly interested in what I was qualified in?

Q. Correct, yes.

A. I'm sorry. I've got here listed just everything where -- if I was hired as an expert, it was --

Q. Okay.

A. So I'm going to go in reverse order. The ones that I was qualified in would be the McElveen case on page 8 involving a claimed violation of restriction of covenants. The Hyatt bankruptcy litigation was commercial leases. I'm just missing the ones where I was qualified by the Court. The one above that, Peoples Federal against Litchfield Plantation, I was qualified in the area of restrictive covenants.

Q. Okay.

A. And then the one above that, Hyatt vs. Kelly was a dispute over marketable title. I mean, I was qualified as an expert in marketable title to real estate.

Q. Okay.

A. And then Rogers against Griffith, qualified as an expert on real estate closings and the attorney's standard of care.

Dunne vs. Harvey was --

Q. Uh-huh.

A. -- I qualified as an expert on the real estate closing attorney standard of care. That was not Horry County. That was down in Beaufort.

Q. All right.

A. And that's --

Q. Yeah, I see there was a few more on page 6. I think you were -- correct me if I'm wrong -- expert on easements.

A. Say it again.

Q. On page 6, there was a few more.

A. Uh-huh.

Q. But it says qualified as an expert on easements.

A. Oh, yeah. I see.

MR. BELLAMY: Could I? Did you put in

there the case we had with the Myrtle Beach Golf & Yacht Club where we were representing the golf course? Did you put that in there? I was looking for that case.

THE WITNESS: I did not, but I don't think I was an expert in that one.

MR. BELLAMY: You were.

THE WITNESS: Was I?

MR. BELLAMY: Yeah.

We can go off the record.

(Off-the-record conference.)

MS. CARY: We're back on the record.

THE WITNESS: Most of the later ones did not -- I'm going in reverse order --

BY MS. CARY:

Q. Okay.

A. -- timewise.

Q. Okay.

A. Most of the later ones didn't get to actual qualification in court.

Q. Okay.

A. A lot of them I was deposed, but then the case settled.

Q. Okay.

A. And I don't see anything more recent.

But I may have missed some here.

MR. BELLAMY: Here it is. Condo-World Development --

MS. CARY: Oh.

MR. BELLAMY: -- in Myrtle Beach.

THE WITNESS: Oh, that's one?

MR. BELLAMY: Yeah.

BY MS. CARY:

Q. Okay.

A. Yeah, it says I was deposed but didn't...

Q. So is it correct to say that you have been qualified as an expert in a homeowners association matter at the time?

MR. BELLAMY: Object to the form.

You can answer.

THE WITNESS: Homeowners --

BY MS. CARY:

Q. Association matter? Regarding the interpretation of homeowners association documents?

A. I may have to go back through these and try to remember.

Q. Okay.

A. So your question is involving homeowner association documents?

Q. Yes, correct. Qualified as an expert in interpreting the homeowners association --

A. Well, as an example, the McElveen case at the bottom of page 8 --

Q. Okay.

A. -- that was a subdivision in Surfside Beach --

Q. Okay.

A. -- which was similar to this. It was not a PUD, but it was a large residential lot subdivision.

And I was brought into that case to testify as to whether those residential covenants, which were homeowners association-type documents, whether they were valid anymore. Would they have been breached so many times that they were no longer enforceable.

And in that case, my opinion was that they had been breached enough that the covenants were no longer enforceable, and the judge agreed with me on the case.

Q. Okay.

A. But it's kind of hard to limit some of these. Like, the Peoples Federal case above that, it's involving the applicability and enforceability

of restrictive covenants. That also was a residential subdivision. It just depends how wide your question goes.

Q. Right.

A. Most of the development around this area of the state is residential primarily development with restrictive covenants or in some cases a mixed-use project where there's some commercial and some residential.

Q. Okay.

A. But it's hard to separate out.

Q. And were these two dealing with residential issues?

A. The McElveen vs. Sandy Shores was all residential.

Q. Okay.

A. And Peoples Federal, I think that was mixed-use. I mean, it was primarily residential.

Q. Was the issue as to the residential side of -- I guess was the restrictive covenant that you, you know, were qualified as an expert on, was that regarding a commercial issue or a residential issue?

A. It would be primarily a residential issue --

Q. Okay.
A. -- in the ones I'm talking about.
Q. Got it.
A. Some of them, like the Dunne vs. Harvey & Battey--
Q. Uh-huh.
A. -- that was a lawyer malpractice case involving how an attorney acted in a residential closing --
Q. Okay.
A. -- whether he got the standard of care. So I had to get in and deal with the documents in that subdivision.
Q. Okay.
A. Otherwise, I don't practice anymore in Beaufort County. I used to do a lot of work there in the '80s -- Oh, Lord, the more we talk I remember.
In answer to your earlier questions, I have done project documents all over Hilton Head.
Q. Okay.
A. But that's back in the early to mid 1980s. But that's all as a developer lawyer or HOA lawyer, not anything involving qualifying as an expert witness.

Q. Okay.

A. And I've been involved in as sort of co-developer counsel in a subdivision just across the state line here in Brunswick County that was a mixed-use residential and commercial called the Vaughan Park. Other than that, I haven't done anything HOA-wise in that county.

So I did a good bit in Beaufort County and pretty much just one good-sized development in Charleston County, which was that Long Point, but that was not a PUD in that it did not involve a municipality.

Q. Okay.

A. But there was a lot of HOA documents there. And then everything else pretty much has been Georgetown and Horry for me. But these expert witness engagements were for cases all over South Carolina.

Q. Okay.

A. Where I would be brought in not knowing anything about that particular county -- I think I had one in Greenwood County -- so I would not be able to say I just do real estate work in any of those counties. That would not be accurate.

Q. Okay. Okay.

And have you ever in your practice represented the City of North Myrtle Beach?

A. I'm hesitating because I can't remember what exactly my role was. There was a case involving the canals in North Myrtle Beach. If you're in the Ocean Drive or Cherry Grove section of North Myrtle Beach, there's some old canals that were dredged out, and there's residential lots along those canals.

And I either represented the City or some property owners there in a fight against the successors entitled to the original developer of North Myrtle Beach, Nixon --

MR. BELLAMY: Nixon family.

THE WITNESS: Huh?

MR. BELLAMY: Was it Nixon family?

THE WITNESS: Yeah. And I think that went to -- we had two trials, and I think it went to Supreme Court maybe twice, at least once.

So I was an expert witness on real estate matters in that case.

BY MS. CARY:

Q. Okay.

A. But I do not know whether I was representing -- it's probably in here -- but I do

not know if I was representing the City of North Myrtle Beach in that one.

Q. Okay. But you were acting as an expert witness. You won't representing them as an attorney?

A. Oh, I see. That's correct.

Q. Has there been any instance where you've represented the City of North Myrtle Beach? Not as an expert witness, but in your private practice?

A. No. They pretty well had in-house counsel the entire time I've been here since the late '70s.

Q. And is that case you were talking about listed in here? Oh, yeah, is it 2010 on page 6, third one from the bottom? Is that the one you were --

A. That's it, Cherry Grove Realty case.

Q. Got it.

A. Yeah. I testified at trial twice.

Q. Okay. And you did testify on behalf of the City of North Myrtle Beach?

A. Say again.

Q. It says, The first trial resulted in a mistrial; the retrial resulted in a jury verdict

for my client, the City of North Myrtle Beach.

A. Right. In between, I think, they appealed after the -- no. No. I'm sorry. I've got the wrong recollection. It was the mistrial that required the retrial. And I do say my client was the City of North Myrtle Beach, so I think that's accurate.

Q. When you say your client, your client was the City of North Myrtle Beach, you were acting as an expert witness for --

A. That's correct.

Q. Okay.

A. That's correct.

Q. Okay. And how many times in the past have you worked with the Bellamy Law Firm in a professional manner?

A. Probably half a dozen or less. And they would all be -- you're not talking about, like, being co-counsel in the case. Are you talking as an expert?

Q. We can start as an expert. So the half a dozen or less, that number refers to as an expert witness?

A. As an expert.

Q. Okay.

MR. BELLAMY: I think you've been adverse to us a couple times too as an expert.

THE WITNESS: Probably, yeah. Joe Griffith's case was probably the first one involving somebody here. And I'm adverse to him now, you know, in a pretty heated case.

MR. BELLAMY: Yeah. It's not our law firm, but it's a lawsuit that they're involved in.

MS. WEIS: Yeah.

BY MS. CARY:

Q. Do you represent both plaintiffs and defendants as an expert witness?

A. Yeah.

Q. And when did you first get involved in this matter?

A. In this case?

Q. Yes.

A. Let me look. November of 2022.

Q. And what document are you looking at that you're refreshing --

A. An engagement letter --

Q. Okay.

A. -- or a bill. But they're all around November of 2022.

Q. Okay.

A. Yeah, my engagement letter is dated November 7, 2022.

Q. And what facts or data have been provided to you that you considered in forming your opinions in this matter?

A. I think I furnished everything we had. It's going to be hard to get to every one of them --

Q. Yeah.

A. -- but it's copies of the zoning ordinances that are involved, copies of restrictive covenant documents that are involved, some of the expert witness opinions in this case, and then copies of various decided court cases, and that's about...

Some of the appeal documents in the City and then some of the pleadings of the Complaint in this case, not all the pleadings but some of them, and that's all I recall right now.

Q. And were you told to assume any facts are true or take a specific position on any matter?

A. I wasn't told any of that. Some of the affidavits from some of the other experts I've -- in rendering my opinion, I've assumed they're true.

Q. Okay.

A. But mainly it's the factual recitations as to, you know, what documents are relevant. But in all those, I would have gone and reviewed the actual documents as part of it.

Q. And do you recall how many hours it took you to review this case and form your opinion?

A. No. I mean, I keep detailed time records, but I wouldn't be able to today tell you how many hours.

Q. And do you have those detailed time records?

A. Uh-huh -- yes. I'm sorry. I'm not supposed to say uh-huh.

Q. And did you ask for any additional documentation or information in evaluating this case?

A. Yes. As I went through this, I would get -- the person I would talk to would be Mr. Bellamy here saying, I need to see X, Y, and Z document.

Q. Okay.

A. And they would produce it for me to look at it. In some other cases, they provided me with documents to look at to see if that made any difference in my analysis.

Q. Do you recall which documents you specifically asked for in this case?
A. No, I don't. I don't.
Q. Okay.
(EXHIBIT 3, Affidavit of Otis Allen Jeffcoat, III dated January 16, 2023, was marked for identification.)
BY MS. CARY:
Q. I just marked Exhibit 3, which is a copy of your affidavit that you're looking at there. So it's the same --
A. Okay.
Q. -- version.
A. So help me clarify this so that -- we've got the caption in my affidavit -- the caption in this case --
Q. Yes.
A. -- that case has been resolved.
MR. BELLAMY: Right.
THE WITNESS: So it's -- okay.
MR. BELLAMY: We can -- I think it's called a scrivener's error. We can fix that.
THE WITNESS: Okay.
BY MS. CARY:
Q. And I was going to ask, so this is your

affidavit, correct?
A. Yes.
Q. Okay. And it's your signature on page 7 of the affidavit?
A. Say again?
Q. And it's your signature on page 7 of the affidavit?
A. Yes.
Q. Okay. And I know we were just speaking about the caption and this case is, you know, is a subsequent action that has been dismissed. Now we're on another one.
Have you ever prepared any other affidavit for Mr. Bellamy and/or the Nortons regarding this matter or the issues?
A. Not that I'm aware of.
Q. Okay. So this is the only affidavit?
A. Yes.
MR. BELLAMY: Let me say for the record, this affidavit was attached to the amended answer, okay? It was a scrivener's error that they didn't change out the caption.
MS. CARY: I just wanted to confirm there's no other affidavits.
MR. BELLAMY: Right.

BY MS. CARY:

Q. And who drafted this affidavit?

A. Primarily me.

Q. Okay.

A. I think the word processing side of this started out maybe with Mr. Bellamy's firm, but we would revise it back and forth because it was my input that led to an affidavit that I was happy with.

Q. All right.

A. Yeah. Yeah, ultimately, by the time it left my desk and I signed it, it was my work product.

Q. Okay.

A. But early on, Mr. Bellamy's office provided me with some rough drafts that I played with.

Q. And do you recall what portions of the affidavit were from that rough draft and which portions have been modified by yourself?

A. I don't. I think this would have gone through several revisions. The ones -- the single-space sections that recite provisions of some of the constituent documents up in Tidewater probably started with the early drafts that

Mr. Bellamy's office started with, and then I filled in a lot of the gaps.

Q. Okay. And if you start at paragraph 5 of your affidavit, it's on page 2.

A. Uh-huh.

Q. You know, it goes through what you've reviewed as part of forming your position, and it says, Relevant portions of the PUD for Tidewater Plantation.

Do you know what specific portions of the PUD that you relied upon? And I can --

A. Not at this time. Well, it would have been the PUD documents and some amendments. I did not get that precise here and recited what I relied on and then the same thing with the next bullet point.

Q. Okay.

A. I use the word relevant provisions. The one above it, relevant portions.

Q. Yeah.

A. It's pretty much the same. And the same with the portions of the city code.

Q. Okay.

A. I was not trying to be too precise on these introductory paragraphs.

Q. Okay. And were those relevant portions that you reference here, those provisions and portions, the ones that you cite further on in your affidavit?

A. Yes.

Q. Okay. Would there be any other portions or provisions of those documents that you would have reviewed that would have not been within your affidavit?

A. No. I mean, I would have reviewed -- I did review the entire documents, for example --

Q. Okay.

A. -- but not all of them were relevant to my opinion here.

Q. Okay.

A. So I'm sure there are because that's why I said relevant portions --

Q. Okay.

A. -- relevant provisions in that case. You know, I read the whole thing, but some of the provisions just didn't matter for my opinion.

Q. Okay. And what were you asked specifically to give an opinion on?

A. On the applicability of either the PUD -- the city ordinances or the PUD documents or

the underlying real estate restrictions whether basically the position of the POA people was appropriate or what portions of the city zoning ordinances affected the Nortons' ability to build the house that they wanted to build and whether the actions of the Association were proper.

Q. Okay.

A. That's very general, I realize.

Q. We'll go through it.

MS. CARY: I apologize. I didn't print another copy of the PUD.

MR. BELLAMY: I've got it. I've got a copy, so it's not a problem.

MS. CARY: Okay.

THE WITNESS: Can I take a break so I can stretch my legs? I'll be right back.

MS. CARY: Oh, yeah. Absolutely.

(EXHIBIT 4, Planned Unit Development (PUD) Agreement, was marked for identification.)

(A recess transpired.)

BY MS. CARY:

Q. All right. So we're looking at what's Exhibit 3, your affidavit. And on page 3 -- oh, we're looking at your affidavit, exhibit --

A. So you're talking about what page?

Q. Page 3.
A. Okay. I thought we were talking --
Q. Yeah.
A. I'm sorry.
Q. We'll come back to that in a minute.
Paragraph A, that the new roofline changes to the DRB standards directly conflict with and violate Section 17.4 of the declaration.
Additionally, the proposed and/or new roofline changes also directly conflict and violate the PUD agreement and its amendments.
What is your basis for determining that it conflicts -- that the DRB standards conflict with the PUD agreement?
A. I think one of the bases is that the City did not sign off on those changes. The third amended document, that's the one we're talking about in A, subparagraph A?
Q. So the DRB standards you're saying directly conflict with the Declaration and the PUD agreement in this paragraph; is that correct?
A. Yes.
Q. Okay.
A. I'm sorry. I've got an issue with my sinus right now so it sounded a little funny.

Q. And so what was your basis for opining that?
A. So to the extent that these changes were not consistent with the PUD agreement, the City did not -- it's a bilateral situation between the developer, in this case the Association, I guess, and the City. Both have to sign off on these changes which was not done.
Q. And what do you recall conflicted? What was it in the DRB standards that conflicted with the PUD agreement?
A. As I sit here, I don't recall.
Q. Okay.
A. I know I looked at it.
Q. And the DRB standards -- here.
MR. BELLAMY: I've got --
MS. CARY: I have two copies, so -- do you have a copy? Is it the September 20th?
MR. BELLAMY: Let me see which one you've got.
MS. CARY: This one. The September 20th.
MR. BELLAMY: I think it's -- the one I'm talking about, they did it September 4, 2022.
MS. CARY: But that would have been

after the submission of the application.
MR. BELLAMY: Right. Right. No, but that's what I'm saying is that what happened is...
We're off the record.
(Off-the-record conference.)
MS. CARY: Back on the record.
(EXHIBIT 5, Design Review Board Standards, Requirements and Procedures dated September 2020, was marked for identification.)
MS. CARY: And this one is Exhibit --
THE REPORTER: 5.
(Off-the-record conference.)
BY MS. CARY:
Q. Okay.
A. I may have read this a little too quickly just then.
Q. What was that?
A. Paragraph A is talking about roofline changes --
Q. Correct.
A. -- and that, that's cupola stuff, isn't it?
Q. Okay. Well, let's go to page 4, paragraph D, which talks about, you know, the allegations of what the Association breached.

And in A, it says, In failing to permit the plaintiffs to construct their residence with a maximum roof height of 42 feet in direct violation of the PUD as well as sections of the Declaration.

Do you recall what the basis for that opinion was based upon?

A. Well, the PUD -- I mean, I don't recall what was right in front of us at that moment.

Q. Okay.

A. I know, for example, the previous page was talking about the cupola issue. But this one is -- the requirements of all the documents read together is a 42-foot height --

Q. Uh-huh.

A. -- allowance.

And then, B, you get to, well, where you start measuring the 42 feet from.

Q. Right.

A. And all together those A, B, and C intended to cover that issue --

Q. Okay.

A. -- created by the various documents.

Q. Okay. Okay.

So we've marked as Exhibit 4 the PUD agreement. Do you recognize this document?

A. Yes.
Q. Okay. And if you flip to page 5.
A. Okay.
Q. Okay. And do you see where it says, All building heights are measured from the uppermost point of the structure to the average finished grade?
A. Under D at the top?
Q. Yes, under D.
MS. WEIS: Taylor, is that the PUD?
MS. CARY: Yes.
THE WITNESS: Yeah. Okay.
BY MS. CARY:
Q. Do you see where it says, All building heights are measured from the uppermost point of the structure to the average finished grade?
A. Yes.
Q. Okay. And so what is your basis for saying that the height has to be measured from the established certified floor elevation to the midpoint between the eave and the highest point of the roof pursuant to Section 23-106 of the city zoning ordinance?
A. So this, the PUD agreement, refers to what they call Tract Q, which is my understanding

this is part of. It's the marina tract. I think from this and the other documents, the applicable -- this is not applying to the marina tract is what I'm saying. But at the time it was not -- you know, front yard setbacks didn't matter.

I'm sorry. I'm having a little trouble with my voice.

And it ends up, since it does not deal with zoning requirement in a flood zone, which is what Tract 7 is, the marina, then that portion that talks about measuring from the finished grade would not apply. There's not a requirement in here applicable to the marina parcel as it's later converted to residential use. That defaults you over to the city zoning ordinance.

When this is silent as to a use or requirement, then you back into the general city zoning ordinance. You have to read this along with 23-106, for example. That's what we say in paragraph B.

Q. So are you --

A. And that reflects -- that still reflects -- I mean, the marina parcel doesn't have applicable setbacks. It's just a marina parcel.

And then later on it becomes obvious

that when the marina parcel is then developed in a flood hazard zone, a different set of covenants, a different set of requirements comes in, and we're back to the general provisions of the city zoning ordinance, which talks about the starting point is 1 foot above the finished -- the vocabulary is sketchy right now -- but it's the certified flood level, 1 foot above that, and then the 42 feet that's mentioned in the A paragraph of my affidavit kicks in.

I don't know if that answers your question.

Q. So is it your position that the Nortons' lots are not subject to the PUD agreement?

A. They are subject to the PUD agreement. It's just what the PUD agreement -- how it applies to it, what standards are used.

Q. So are you saying they're not subject to Section D of the PUD agreement?

A. Section what?

Q. D of the PUD agreement.

A. Well, at the time the PUD agreement was done, it expressly says in the chart, permitted uses.

Q. Uh-huh.

A. It designates that Parcel Q as a marina, which would put it under paragraph 7, commercial marina, the way I'm looking at this now.

But then that use was abandoned, as I understand the facts, when the use of it was converted to residential eventually. But the agreement does not deal with a residential development in a flood hazard area, so the default for that is if the PUD doesn't cover that specific use, then you go back into the city zoning requirements.

And that is where -- the 42 feet is not coming off of -- this is large lot, single family. I don't know if the position of the Association is that it's coming under D1, which is a 42-foot one. This is clearly not a condo, clearly not a townhouse.

But the fact that it just does not make a provision for that because of subsequent events when they abandoned the use of it as a commercial marina, then they went back into the zoning ordinance of the city generally. And the provision -- I don't --

MR. BELLAMY: What are you --

THE WITNESS: I'm looking for -- it's

both 8 -- it's not 8. It's --

MR. BELLAMY: Is this what you're looking for right here, Allen? Is that what you're looking for where it says, Anything --

THE WITNESS: Page 1, I'm in -- I'm buried in the guts of --

MR. BELLAMY: I think you're confused with the way it's -- this is front and back. If you're looking for this, this is under Section 1, Master Site Plan. When you go under paragraph 2, the last sentence says, Anything not covered in this document shall be governed by the city zoning ordinance in Section 8 of the --

THE WITNESS: Yeah, I skipped over. I'm sorry. I'm a little confused because it's double-sided and then...

MR. BELLAMY: It's right there.

THE WITNESS: It's the preamble language, I think.

BY MS. CARY:

Q. Okay.

A. So it may be a matter of semantics. Yes, the PUD does apply to this property.

Q. Okay.

A. But you have to look at, well, what

does that mean in terms of -- any PUD is a fairly complicated multi-use scenario.

Q. Uh-huh.

A. And if, as it turns out, something is not covered by the PUD, the use is not covered by the PUD --

Q. Uh-huh.

A. -- and they -- when it's silent --

Q. Uh-huh.

A. -- then you default -- as I said a minute ago, you default to the city zoning ordinance for an answer.

Q. So what are you saying that isn't there that it then defaults to the city zoning ordinance?

A. There's nothing in here about residential development in a floodplain that has its own set of -- has its own set of characteristics.

Q. But wouldn't you agree that there is a height measurement standard in the PUD agreement saying all building heights are measured from the uppermost point of the structure to the average finished grade, and therefore you could not supplement?

A. No. Because it's not covered, you then

default into the city zoning ordinance, which does have specific language about where it starts -- where the measurement starts, and I think the 42 feet is the right height.

But it's clear that the city zoning ordinance, which takes precedence over something that's not directly addressed in here -- and when I say in here, I mean the PUD agreement.

Q. Uh-huh.

A. -- it becomes a question of where you start your calculation from. And that's where the Association's off base, and the city building permit was issued on that basis, which I think was correct, as mentioned under B. I'm now looking at my affidavit.

Q. Okay.

A. Under paragraph D on page 4 subparagraph B is --

Q. Okay.

A. -- it's not an exhaustive treatment of it, but what Section 23-106 is saying is your starting point is actually the certified floor elevation.

Q. Okay. But wouldn't you agree that there is a height measurement standard that's

provided for in the PUD agreement, and therefore you could not supplement 23-106?

MR. BELLAMY: Object to form.

You can answer.

THE WITNESS: I'm not sure I understand the question.

BY MS. CARY:

Q. In the PUD agreement at D, All building heights are measured from the uppermost point of the structure to the average finished grade, is a height measurement standard, Section 23-106, which I'll pull out --

MR. BELLAMY: Are you looking at --

MS. CARY: Yeah, I'm going to -- we'll mark this as an exhibit next.

(EXHIBIT 6, Code of Ordinances Chapter 23 - Zoning, Article VII, General and Supplemental Regulations, was marked for identification.)

THE WITNESS: Section VII of that part of the PUD, D7 --

BY MS. CARY:

Q. Uh-huh.

A. -- which deals with the marina tract --

Q. Uh-huh.

A. -- does not have anything in it about height measurement.

Q. But there is a later amendment to the PUD.

MR. BELLAMY: Are you talking about this one? I've got it --

MS. CARY: Uh-huh.

MR. BELLAMY: -- right here. Is that the one you're talking about?

MS. CARY: No. Or I don't know which one I'm looking -- it is ordinance dated -- it's December 2nd, 1996, to amend the Table of Permitted Uses contained in the Tidewater PUD. And it adds Tract Q -- it splits it to Q-1, Q-2, and it has --

THE WITNESS: It amends that table?

BY MS. CARY:

Q. Yeah. It's Tidewater 0742. It's Bates-stamped at the bottom.

MR. BELLAMY: Can we go off the record for a second?

MS. CARY: Yeah.

(Off-the-record conference.)

BY MS. CARY:

Q. So to clarify your position, is that because there -- while there is a height

measurement contained within the PUD in 3D, that that doesn't apply solely because the home is in a floodplain?

A. What, the height? You're talking about the height limit --

Q. The measurement.

A. -- in D1?

Q. 3D. Well, yeah, 3D.

MR. BELLAMY: This is the 3D right there.

THE WITNESS: Yeah. So -- I'm sorry, so what's the question?

BY MS. CARY:

Q. So your position is the height measurement contained within Section 3D of the PUD agreement does not apply to the Nortons' lots because they are in a flood zone?

A. Which was at the time not covered by this. At this time, you've got number -- if it's Q, that was my understanding it was in Q --

Q. Uh-huh.

A. -- then there's no provision that you go to. If you go to commercial marina on No. 7 --

Q. Uh-huh.

A. -- there's nothing there in the way of

a particular requirement. When that happens -- and under paragraph 8 that he was just talking about, Section 8 -- you then default into the city zoning ordinance, which gets you into 23-106 --

Q. Okay.

A. -- for defining the way you start going up.

Q. Okay.

A. Instead of grade...

Q. But isn't Section 3D of the PUD covering subsections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the PUD?

MR. BELLAMY: Object to the form.

THE WITNESS: No. I mean, there's no -- under D, the language you're quoting --

BY MS. CARY:

Q. Uh-huh.

A. -- up at the top --

Q. Uh-huh.

A. -- it starts talking about building heights --

Q. Right.

A. -- and they are detailed in the other sections. Except for No. 7, the commercial arena, there's no reference to building heights there.

It's just a use without a height and without a method of calculating height. There's just nothing there.

Q. But wouldn't you agree that the method of calculating the height is in 3D, and that would cover all the subsections 1 through 10?

A. No, I don't.

Q. Why not?

A. It would not cover 7, like I say, a commercial marina, because there are no height provisions under No. 7 to hook onto with D. It says, All building heights, but there's no building height limits or even referring to building heights in 7, which is where I think this property was.

Q. But there's no exception in 7 to the provision in 3D?

A. It is an exception. D is referring to the table and all these different uses that's right before it, and it just doesn't cover what we're talking about with respect to that property.

And what then happens is, okay, we've got a situation where we don't have an applicable portion of the PUD ordinance. What do we do? And under the provisions of the documents, then you default into, well, what's the citywide zoning

ordinance in those settings?

And that's where you get to 23-106 that actually does talk about what Mr. Bellamy just read out, which was the exception in 23-106 for building in a floodplain. There you've got -- there you do have specific property-oriented restrictions, zoning restrictions, which would apply to this parcel.

BY MS. CARY:

Q. So would it be your position that if the lot falls under Section 3D1, 3D2, that the height measurement of 3D applies because it talks about height?

MR. BELLAMY: Objection to form.

THE WITNESS: But that's hypothetical because under the terms of this document as it started out, D, the part of paragraph D that talks about starting from the average finished grade, you go through the various types of uses that are on the table --

BY MS. CARY:

Q. Uh-huh.

A. -- and then you get to paragraph 7 --

Q. Uh-huh.

A. -- which has -- it's sort of

meaningless. It has no height provisions in it.
Q. But wouldn't the building height still have to be measured from the uppermost point of the structure to the average finished grade because of 3D?
A. No, because there's no such -- you know, if you were in the 6, for example, or 8 or whatever --
Q. Uh-huh.
A. -- they have height provisions in them.
Q. Okay.
A. You do not have that in paragraph 7 dealing with the marina parcel. So it's meaningless. The sentence in D at the top --
Q. Uh-huh.
A. -- that you're referring to --
Q. Yeah.
A. -- all building heights, well, there are none in the marina parcel.
Q. Okay. But if we fell into 1 where it says, Uppermost point of the structure 42, are you then saying 3D, that height measurement would apply?
MR. BELLAMY: Object to form.
THE WITNESS: No. I'd say that the

city's zoning ordinance, which is what would have applied.

BY MS. CARY:

Q. Why?

A. Because there's no provision in here for building in a floodplain.

I'm sorry. Excuse me.

(A recess transpired.)

BY MS. CARY:

Q. All right. So what is your reasoning for if, you know, the properties under 3D1 applies, why the building height measurement in 3D would not apply?

A. Because of the first all building heights.

Q. Right.

A. There are no building height requirements for parcel, the marina parcel.

Q. And what if we were in No. 1 of 3D?

MR. BELLAMY: Object to form.

THE WITNESS: Well, at this point it's a hypothetical.

BY MS. CARY:

Q. Uh-huh.

A. I apologize.

If you come in and say we are now governed by D1 --

Q. Uh-huh.

A. -- without more, you're not dealing with the fact that 23-106 would also apply, which changes the application of D -- first paragraph of D. Nowhere in D and the various parcels do they address development in a floodplain area.

Q. Would you agree that Section 3D says, All building heights?

A. I'm not sure about your question.

Q. Would you agree that Section 3D, the second sentence says, All building heights are measured from the uppermost point of the structure to the average finished grade?

A. If you read this document as a whole --

Q. Uh-huh.

A. -- it says that. It has a fairly detailed breakdown of the different uses. The one big hole in it is No. 7, which does not have any height restrictions.

Q. And that's assuming that section applies?

A. Huh?

Q. That's assuming that section applies.

A. If you assume that Section 1 applied at the beginning. But you've got to read it as a whole.

Q. So if we were in 3D1, you would measure from all building heights are measured from the uppermost point of the structure to the average finished grade?

MR. BELLAMY: Object to the form.

THE WITNESS: Subject to my qualification before of you're in an area that's a floodplain --

BY MS. CARY:

Q. Uh-huh.

A. -- and that has separate significant reasons to treat the property differently when you're developing it for residential.

Q. Would you agree that if the developer in the City of North Myrtle Beach intended Section 23-106 to apply, they would have addressed it in Section 3D as they address open spaces as defined in Section 23-109(1) of the North Myrtle Beach Zoning Ordinance?

A. I don't think they needed to.

MR. BELLAMY: Object to form.

BY MS. CARY:

Q. Why don't you think they need to?
A. I don't think they needed to. I think this is adequately addressed along with what I just discussed, which is there's no height limits for that parcel for that zone. I don't know that they would have needed to put any additional provisions in to change that result.
Q. But wouldn't, you know, statutory interpretation and contractual interpretation say that if they are referring to one section of the City of North Myrtle Beach ordinance to apply that they would then have referenced the 23-106 if they intended it to apply?
MR. BELLAMY: Object to form.
THE WITNESS: There's language that says -- and I can't get my hand on it right now -- there's language that says if it's not addressed in here, the city zoning ordinance applies. There's nothing else required to be added to get it there. And when you get into the city zoning ordinance, which expressly deals with development in a floodplain, which this does not.
So you've got an open space an undefined, unregulated issue in subparagraph D that is specifically addressed in the city zoning

ordinance. There's no need to add something to what the City did and the developer did back then, in my judgment.

BY MS. CARY:

Q. Okay. Do you consider land-use regulations to be something separate and apart from zoning regulations?

A. They're all zoning regulations.

Q. So land-use regulations and zoning regulations --

A. I'm sorry?

Q. So land-use regulations and zoning regulations are the same thing?

A. Depending on how it's used. If you're looking at interpreting just a set of private restrictions --

Q. Uh-huh.

A. -- then they'd be different. But land-use regulation is usually at the city level when people are talking about it.

Q. Okay. Exhibit 6 is right there. This is Article VII of the City of North Myrtle Beach Zoning Ordinance under Chapter 23. If you flip to page 2, it has that Section 23-106.

A. Right.

Q. Measurements of and Exceptions to Height.
A. Right.
Q. Would you agree that Section 3D of the PUD agreement contemplates how to measure building height?
A. I'm sorry. You said what?
Q. Would you agree that Section 3D of the PUD contemplates how to measure building height?
MR. BELLAMY: Object to the form.
THE WITNESS: Well, but it -- again, it does not apply to the commercial marina because there are no height restrictions in that zone. I mean, it's nonsensical to say that the second sentence of D would apply there when there are no such regulations.
BY MS. CARY:
Q. And that's assuming that Section 3D7 be applies to the Nortons' --
A. Yes.
Q. -- property? Okay.
If you go -- sorry, we're on Exhibit 3, your affidavit.
A. Okay. Where are you?
Q. And you go to page 5, paragraph G.

A. You say D?
Q. G on page 5.
A. Uh-huh.
Q. Capital G.
A. Oh, capital.
Q. Yeah.
A. Page 5. I don't see a capital D.
Q. Capital G. G, as in Greg.
A. My ears, I think, are stopped up.
Let's see what we've got here. G. All right.
Q. Yes. And it references at the bottom of paragraph G, Article II, Section 6-20, 6-22, and 6-23 of the City Flood Damage Prevention Ordinance. And that, you know, Tidewater and their representative contractors -- oh, sorry, the Nortons, their representative contractors in here are required to comply with the requirements in Section 23-106 in concurrence with Article II, Section 6-20, 6-22, and 6-23.
Do you know what specific portions of those sections you are referring to here?
A. I don't. But let me look at them.
Q. Here is that section of the ordinance.
A. Show me something I can find those.

Q. Yeah. Hold on.
A. 6-20 and 6-22 and 23.
Q. Yep.
A. Is that --
Q. Here.
(EXHIBIT 7, Code of Ordinances, Chapter 6 - Buildings, Construction; Related Activities, Article II, Flood Damage Prevention Ordinance, was marked for identification.)
THE WITNESS: I'm not sure that --
BY MS. CARY:
Q. Is there a specific portion of those sections that you were saying apply or just them generally?
A. No. Just generally. I'm using the phrase in concurrence with. I think that's a lot more general along the lines of what the purpose of the document is.
Q. Okay.
A. There's nothing in particular. What I was highlighting was 106.
Q. The 23-106?
A. 23-106.
Q. Okay. Did you review Article II at all when you were rendering your decision?

A. I think so.
Q. Okay.
A. You know, I don't recall the particular sections of it that we were concerned about there, but I think the description is the --
Q. Okay.
A. -- the requirements of 23-106 are supposed to be consistent with or in concurrence with these sections you're asking me about.
Q. Okay.
A. That's not a very good answer, but that's all I recall.
Q. Okay. And are you aware of any height measurement standards or height maximums that are contained within Article II of the City Flood Damage Prevention Ordinance that you recall --
A. I don't.
Q. -- reading and applying to your opinion?
A. I don't.
Q. Okay.
A. I think what Section 6-20 and 6-22 and 6-23 --
Q. Uh-huh.
A. -- are referring to generally to lot

owners, contractors, and engineers about how you come under compliance with 23-106. And most of this is procedural. When I say this, Article II, sections -- there is a definition.

Bear with me a minute. I thought it was right in here. It's referring to -- this article applies to special flood hazard areas within the city.

Q. Okay.

A. But I thought I was -- what I was looking for was just the definition of the section, but I may be thinking about another document.

Q. 6-21, starting at the bottom of page 2, is definitions. I don't know what definition you're specifically looking for.

A. Well, 4 is the flood. That's not what I was -- I'm sorry. I must have been thinking about something else --

Q. Okay.

A. -- on that. It applies to all the lands within the city that are in special flood hazard zone. Other than that --

Q. Okay. There was nothing specific in here that was --

A. No.

Q. -- changing or modifying your opinion on the height measurement?
A. No. No.
Q. And were you told to assume the fact that the Nortons' lots are in Tract Q?
A. Yes.
Q. Or did you do that analysis yourself?
A. I did not do that analysis myself, but that was what I was...
Q. Okay.
A. I think I did go online and look at the lots, but I did not compare it with --
Q. Okay.
A. -- whether it was within Q or not.
Q. Back to your affidavit, page 4 and then it's capital D, little D. Paragraph capital D and then subsection little D.
A. Capital D, little D.
Q. Yeah. And it says, In acting unreasonably in other ways as such may be revealed during the discovery and as shown at trial of this action.
As of today's date, are there any other acts that you opine were unreasonable?
A. Yeah. The things that come to mind

immediately was sort of the shocking way they handled fines. And the way they went back after the -- I've never seen anything like that -- but where the Association went back and -- after the fines had been assessed and trying to cover their posterior, in my view, after the fact amending provisions --

Q. Uh-huh.

A. -- it's just unconscionable.

Q. Okay.

A. But that's one of the things that appeared to me. And then in connection with their appeal. But that's all that comes to mind at this point for me.

Q. Okay. And on page 6 of your affidavit, paragraph I --

A. Okay.

Q. -- it says, The Association lacked the authority to change and/or amend certain DRB standards, including but not limited to height, and then it cites a height paragraph. What was your basis for opining?

A. Well, I think the underlying thing is that on this third amended restated document --

Q. Uh-huh.

A. -- hang on. I may be reading this wrong.
Q. Okay.
A. I think my underlying point here is the DRB and the Association did not have the power to unilaterally change or amend these standards because those are meant to change in the PUD. And that can only be done with the concurrence of the City.
Q. And what portion of that section --
A. Excuse me?
Q. What portion of that cited section are you referring to that they lacked authority?
A. What portion of which? I'm sorry.
Q. What portion of this -- you know, the cited section of the DRB standards in paragraph I are you referring to that they lacked authority to change?
A. Well, the change is to amend the DRB standards, including -- I'm trying to recall. This changes to 41 feet --
Q. Uh-huh.
A. -- when it should have been 42. The underlying argument there is that Tidewater DRB and the Association does not have the power to make

changes in the documents that would amount to changes in the PUD --

Q. Uh-huh.

A. -- or the application of the PUD without the proper sign-off by the City in the one case and then, depending on what the change is, a meeting of whatever is required under the HOA documents for changes like that.

Q. Okay. Would you agree that a change of 41 feet for a height -- for the overall height restriction is still in compliance with the PUD agreement as the PUD says the uppermost point of the structure is 42 feet?

A. Well, to the extent that reduces a provision in the PUD documents, it's not enforceable without the City -- excuse me, without the City agreeing to it.

I apologize.

Q. You're okay.

But wouldn't you agree that 41 feet still is within the requirements that the uppermost point of a structure be 42 feet?

MR. BELLAMY: Object to the form.

THE WITNESS: I'm not following that. Say it again.

BY MS. CARY:

Q. In the PUD agreement, it says uppermost point of the structure 42 feet. Wouldn't you agree that an overall height restriction of 41 feet is still in line with the uppermost point of a structure being 42 feet?

A. No. If that's -- that's reducing, if I'm reading it right --

Q. Uh-huh.

A. -- or understanding your question.

Q. Uh-huh.

A. This is an attempt to reduce 42 down to 41 feet height restriction.

MR. BELLAMY: Allen, do you need to go to the bathroom?

THE WITNESS: My voice is just quitting on me. I'll be right back.

MR. BELLAMY: Why don't we do this. Let's take a break for lunch.

MS. CARY: Okay.

(A luncheon recess transpired.)

BY MS. CARY:

Q. Okay. Mr. Jeffcoat, did you have any conversations with Mr. Bellamy during the break?

A. No.

Q. Are you aware that the Nortons have not submitted any proposed plans that would be in compliance with the height measurement requirements of the PUD agreement and/or the City of North Myrtle Beach Ordinance 23-106?

MR. BELLAMY: Object to form.

THE WITNESS: I'm not aware of any plans that they've actually submitted at this point.

BY MS. CARY:

Q. Okay. And then the last exhibit -- I'm sorry.

A. Other than the ones that were at the beginning of this, I assume.

Q. Right. That's what I'm referring to.

Are you aware that those aren't in compliance with the City of North Myrtle Beach 23-106?

MR. BELLAMY: Object to form.

THE WITNESS: I don't know. I don't know.

MS. CARY: I'll mark this as an exhibit.

And I'm marking the Supplemental Answers to Interrogatories.

(Off-the-record conference.)

(EXHIBIT 8, Defendant's Supplemental Answers to Plaintiff's Interrogatories, was marked for identification.)

BY MS. CARY:

Q. Mr. Jeffcoat, Exhibit 8 is Defendant's Answers to Plaintiff's -- Supplemental Answers to Plaintiff's Interrogatories. And if you can flip to page 9 of the answers.

A. Okay.

Q. And on pages 9 and 10, you know, it discloses you as an expert witness and discusses the anticipated testimony and opinions that you will provide in this case.

Did you review this response before it went out on pages 9 and 10?

A. No, I don't think so.

Q. Okay.

A. I've reviewed it since, but not within your question.

Q. Okay. And on subsections D and E, which is on page 10 --

A. Uh-huh.

Q. -- it talks about the alleged ultra vires lien that was filed. Do you know where these

numbers are coming from?

A. There was a document that I had reviewed that had attorneys' fees and costs on it. I think it was the claim of lien that was filed. Yeah, it's the -- I mean, it's the same number as the notice of lien that was filed.

Q. Okay.

I believe those are all the questions I have for you today. Thank you very much for your time.

MR. BELLAMY: Okay.

THE WITNESS: Oh, I can still get a nap.

MR. BELLAMY: All right.

MS. WEIS: Well, you can sleep through Howell's questions.

THE WITNESS: I'll get in trouble if that happens.

MR. BELLAMY: Here you go.

MS. CARY: Okay.

MR. BELLAMY: Let's go ahead and mark this.

(EXHIBIT 9, Code of Ordinances, Chapter 23 - Zoning, Article VII, General and Supplemental Regulations, was marked for

identification.)

(EXHIBIT 10, Article II, Zoning Districts and Development Regulations, was marked for identification.)

EXAMINATION

BY MR. BELLAMY:

Q. Allen, I want to hand you what's been previously marked as Defendant's Exhibit 9 to your deposition. And I know you've seen this document before because I've gone over it with you, all right?

A. Okay.

Q. This is Article VII, General and Supplemental Regulations, okay?

A. Okay.

Q. All right. Pursuant to Article VII, it unequivocally -- unambiguously states that regulations set forth in this article clarify, supplement, or modify the district regulations in Article II of this chapter, okay?

A. Okay.

Q. Did I read that correctly?

A. Yes.

Q. Okay. Now, let me show you Defendant's Exhibit 10 to your deposition, okay? It says,

Article II, Zoning Districts and Development Regulations, okay? Did I read that correctly?

A. Yes.

Q. Okay. So I want to make sure we're clear for the record. When you go back to Exhibit 9, it refers to modifies the district regulations in Article II of this chapter, okay? This is Chapter 23, okay?

A. I'm sorry, but you're reading this wrong. Okay.

Q. Yeah.

A. Yes, sir.

Q. Yeah. And this is Chapter 23 to Article XII, correct?

A. Article?

Q. Article XI. I mean Article II, excuse me.

A. Article II, right.

Q. All right. So what I'm saying is Article VII, Chapter 23 modifies, clarifies Article II in Chapter 23.

Do you agree with that?

A. Yes.

Q. Okay. All right.

When you look at -- in one of the

zoning districts in Section 23-16 [sic] is a PUD [sic], correct, Planned Development District, correct?

A. PDD, Planned Development District.

Q. Yeah. Do you see that?

A. Yes.

Q. So the PUD is in -- when it talks about the zoning districts, as far as Section 23-16, it includes the PUD, correct?

A. Yes.

Q. Okay. So what we're clear for the record is, is that Article VII, titled General Supplemental Regulations, okay, it provides that the regulations set forth in this article clarify -- so we're talking about Section 23-106 -- clarifies, supplement, and modify the district regulations in Article II of this chapter, okay?

A. Okay.

Q. All right. So can we agree that Article 23-106 modifies, clarifies provisions in the PUD District?

MS. CARY: Objection to the form.

BY MR. BELLAMY:

Q. You can answer that.

A. Yes.

Q. All right. One second.

(EXHIBIT 11, Section 23-29, PDD Planned Development District, was marked for identification.)

BY MR. BELLAMY:

Q. So, Allen, what I've just done is I've marked this for the record. It's marked as Defendant's Exhibit No. 11 to your deposition. And what I've marked is Section 23-29-PDD, Planned Development District, okay?

And what we're talking about is, as we mentioned earlier, under Section 23 it talks about those sections under 23. We're talking about Article VII, Chapter 23, and it talks about those particular sections, such as 23-106, okay?

A. Right.

Q. If you want to flip to that.

A. Right.

Q. Right there. 23-106 clarifies, modifies Section 23-29 of the PUD District.

Do you agree with that?

A. Yes.

Q. Okay. Is there anything in Section -- Defendant's Exhibit 11 that talks about building height or measuring building height?

Just take your time to review it.

A. Well -- okay.

Q. Let me just go ahead and add this question too. I'm not trying to make it a compound question, but is there anything under the Section 23-29 dealing with PUD district that talks about building in a floodplain?

A. In this document here?

Q. Yeah. Yeah. And take your time. Just go back through it. My two questions are, one, does Section 23-29, dealing with PUD zoning district, does it talk about dealing with height?

And then my next question is, while you're reading through it, does it talk about -- address the issue of dealing with a floodplain?

A. I'm going to get these pages out of order if I'm not careful.

Q. Okay.

(Pause in the proceedings.)

A. All right. I didn't see what you're looking for.

Q. Take your time.

MR. BELLAMY: I don't have that many questions. We're all good. Don't worry.

MS. CARY: Okay.

THE WITNESS: Most of this is what's got to be in the submission. Yeah, okay. I skipped over it.

Well, there's a Section 8. That's just what's got to be identified in the application. Under 3A8, you're supposed to show the approximate heights of all buildings.

BY MR. BELLAMY:

Q. Okay.

A. Again in No. 10 -- oh, that's fences and walls heights.

Q. Let me ask you this, do you see anything that addresses building in a floodplain?

A. No, not so far. Let me look at it. It says they're supposed to disclose in their application any wetlands or ponds or anything like that but not dealing specifically with floodplains. Let me just -- I don't see it. You've got to tell them how much of the application is wetlands, but that's not the same as --

Q. Floodplain?

A. -- floodplain.

(Pause in the proceedings.)

THE WITNESS: I don't see anything referring to building in a floodplain.

BY MR. BELLAMY:

Q. Okay.

A. Nope. Unless I missed it. I looked through it a second time.

Q. So would it be fair to say that the only thing that addresses building in a floodplain is Section 23-106, to your knowledge?

A. Yeah. This one does not. What you just showed me does not.

Q. Okay.

A. The only thing I've seen in all of this that deals with building in a floodplain is 106, strictly 106.

Q. Again, when you look at Article VII, General Supplemental Regulations, that section specifically states, The regulations set forth in this article, Article VII, Chapter 23, this article clarifies, supplement, and modify the district regulations in Article II of this chapter.

A. Right.

Q. And the floodplain requirements are in Article II of the zoning ordinance, correct? It's stated right on top of the document on the right-hand --

A. I'm sorry, you're asking me --

Q. Yeah. Does it not say Article II, Zoning Districts --
A. Yeah.
Q. -- and Government Regulations?
A. Right.
Q. Okay. So I want to make sure we're clear on this, okay? This is important. Article VII titled General and Supplemental Regulations clarifies, supplement, and modifies Article II dealing with, in specific, with planning unit developments, correct?
A. Yes.
Q. Okay. And then specifically Article 23-106, Measurement of and Exceptions to Height, okay?
A. Right.
Q. Okay. That is a specific provision within Article VII, you know, Chapter 23, correct?
A. Yes.
Q. Okay. And I think initially this particular provision, Section 23-106, I think initially there was an ordinance, No. 88-35, so November 1st, 1988, is when this section came into being.
A. That's the '88 orders?

Q. Just look at it right here. See the agreement right here?
A. Yeah, it shows up here on the sources, yeah.
Q. Okay. So Section 23-106 existed before the -- essentially the Planning Unit Development Agreement between the City of North Myrtle Beach, South Carolina and Southern Land & Golf Company, Limited, for the Tidewater Golf & Plantation. I'm just reading right off the PUD document.
A. That's stated in '92, isn't it?
Q. Right. So clearly Section 23-106 precedes as far as the PUD agreement for Tidewater Plantation?
A. Yes.
Q. Okay. Now, what I want you to do is --
MR. BELLAMY: Have we marked the --
MS. CARY: Yeah.
MR. BELLAMY: -- ordinance? Where is that now?
MS. CARY: Exhibit 4.
BY MR. BELLAMY:
Q. All right now, Allen. Okay. What I want you to do is --
A. Do you want to staple these or not?

Q. Yeah. We'll do that in a sec when we're done.

What I want you to do -- and I've got -- mine is actually signed. This one's not signed.

MR. BELLAMY: So do you have a signed one or -- okay.

BY MR. BELLAMY:

Q. What I want you to do is go through pages 1 through 13, okay, of the PUD agreement that was filed on April 30th, 1992 -- I think this is a copy of it. This is not a filed one -- and I want you to read through pages 1 through 13, and I want you to point out any provision in the PUD agreement that deals with building in a floodplain, okay?

A. In, like, generically or just anywhere in there?

Q. Just anywhere. The dimensions it talks about. And go through each page. Take your time.

A. I'll move this back just a little bit.

Q. I would start on page 1 of 13. It's titled Tidewater Golf & Club, Plantation Club.

A. Yeah.

Q. Yeah.

(Pause in the proceedings.)

THE WITNESS: Stop at page 13?
BY MR. BELLAMY:
Q. Yeah.
A. There's nothing there.
Q. So we're clear for the record, my question is is there anything in the original ordinance that was recorded on April 30th, 1992, that specifically speaks to or addresses building residential development within a floodplain?
A. No.
Q. Okay. All right.
Now, let's go back to page -- and for the record, we're referring to -- this is the ordinance agreement. It's Exhibit -- Defendant's Exhibit 4 to your deposition.
Allen, I want to direct your attention to page 1 of the PUD agreement, 1 of 13.
A. Uh-huh. Okay.
Q. Now, the last sentence on -- like, the first thing you've got Section 1, and it's got Master Site Plan, correct?
A. Right.
Q. And you've got upper case A, and then you've got subparagraphs 1 and 2. I want to direct your attention to Section 1A2, okay?

In the last sentence, quote, provides Anything not covered in this document shall be governed by the city zoning ordinance in Section 8 of this agreement, end quote.

Did I read that correctly?

A. Yes.

Q. Now let's go to Section 8. It's on page 11 of 13. And Section 8, the heading is City Regulatory Power.

A. Right.

Q. Did I read -- okay?

And, quote, The City maintains all regulatory powers as provided by law. This agreement does not preempt any land-use regulations not specifically and intentionally changed by this agreement, end quote.

Did I read that correctly?

A. Yes.

Q. All right. As far as the language that states this agreement does not -- basically this agreement does not preempt any land-use regulations not specifically and individually changed.

My reading of that language is if the PUD agreement is going to preempt something, it has to be expressly stated in the PUD agreement.

Do you agree with that interpretation?
MS. CARY: Object to the form.
THE WITNESS: I do.
BY MR. BELLAMY:
Q. Okay. Okay. Now, you just testified earlier that you read pages 1 through 13, went through each paragraph, each sentence, each phrase, each clause, and you didn't see anything in the original PUD agreement that indicated that Section 23-106 was inapplicable regarding residential development in a floodplain?
MS. CARY: Object to the form.
THE WITNESS: That's correct.
BY MR. BELLAMY:
Q. Okay. Now, let me take you back to Article VII, titled General and Supplemental Regulations, and it deals with Section 23-100 and then the relevant section is 23-106.
But what I want you to do is I want you to go back and look at -- and I think we've got this marked.
MR. BELLAMY: Have we got this marked as an exhibit? If not, we can mark it.
THE WITNESS: What does it say at the top?

BY MR. BELLAMY:

Q. Yeah. Article VII, Section 23.

A. Yeah, the font is just different it looks like.

Q. All right. It's Exhibit -- for the record, it's Defendant's Exhibit 9 to your deposition.

What I want you to look at, is there anything in Article VII dealing with general and supplemental regulations, specifically as it pertains to 23-106, is there anything in Article VII, this particular chapter, Article VII, Chapter 23, that in any way limits the application of Section 23-106?

A. No. It actually sets forth what that Section is. There's nothing limiting it.

Q. There's no -- in particular, there's no language -- and let me refer to this. I want to highlight this.

There's no language in there that provides that this article or Section 23 is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions. There's no language in there that specifically says that Section 23-106 is -- to the extent there's a

conflict between 23-106 and the deed restrictions that more restrict control. There's no leading language like that?

A. No, there's not in that, no.

MS. CARY: Object to the form.

BY MR. BELLAMY:

Q. Okay.

MR. BELLAMY: You have a copy of this, don't you?

MS. CARY: No, I don't know if I do.

MR. BELLAMY: Madam Court Reporter, let me go ahead and mark it.

I'll let you look at it. You should have a copy.

(EXHIBIT 12, Ordinance, was marked for identification.)

BY MR. BELLAMY:

Q. Allen, what I've got, what I'm holding is Defendant's Exhibit 12 to your deposition. And this is an ordinance that was signed approved by the City. It's dated -- I think the second reading it was done, ratified, and passed on the 2nd day of October, 1995. And it was signed by the city clerk, city attorney, city manager.

And then it goes through -- they had a

second reading on September 11, 1995, and -- the first reading on September 11, 1995, and the second reading on October 2nd, 1995.

Did I read that correctly?

A. Yeah.

Q. Okay. Now, and Taylor has asked you a lot of questions dealing with Section 3 of the original PUD agreement, and then it refers to permitted uses.

Do you see what I'm talking about that section?

A. The table?

Q. Yeah.

A. Uh-huh.

Q. Now, permitted uses, it's got -- if you can see even with Q, it's got permitted uses under Q would be townhomes and multifamily low density, No. Q, okay? That's the marina district, okay?

Then under T and U, it's got -- it indicates that the single-family large or at least I would just say read out on T and U what the permitted uses are at least under these.

A. T and U is --

Q. Yeah.

A. -- SF large, single-family large; zero

lot [sic]; duplex lot, DUP --

Q. Okay.

A. -- and then townhouse and then multifamily low density.

Q. Okay. All right.

But none of those as far as -- the point I'm saying is that none of them -- they indicate, as far as Q, T, and U, that they're basically tracts that have the symbol that there is a spoilage easement on those tracts, correct?

A. Right.

Q. Okay. Is there any -- how can I say it? -- footnote saying that these tracts are located in a floodplain?

A. Yeah. Right below that.

Q. Well, there's no tracts saying they're in a floodplain.

A. Oh, floodplain, no. They're in a spoilage easement under the Corps of Engineers is my interpretation.

Q. Okay.

A. But not particularly a floodplain.

Q. Now, what I want to do is, I'm holding this --

MR. BELLAMY: Let me see if you've got

a copy of that. Take a minute and look at that, Taylor.

MS. CARY: Uh-huh.

MR. BELLAMY: Okay.

BY MR. BELLAMY:

Q. Now, again, what I'm holding now, I'm holding Defendant's Exhibit 12 to your deposition, okay? And this was what we talked about earlier. This is an amendment to the original PUD, and it was done in 1995 as we discussed earlier.

And under Section 1, it says that Section 3(D) of the PUD agreement be amended to include a new permitted use category and development standards called single family in common designated as Section 3(D)(12) to read as follows, okay?

And then you go down to Section 2, okay? And then I'll quote. It says, quote, that the Table of Permitted Uses be amended to add single family in common to the list of permitted uses and designate Tracts Q-1, QT [sic], T, and U as tracts in which the use single family in common will be permitted, correct?

A. Uh-huh, yeah.

Q. Okay. So what this ordinance basically

is indicating is that not only are they amending Tracts Q-1 and Q-2, but they're amending Tracts T and U so people that are building in Tracts T and U, just like Tracts Q-1, can build in single family, correct?

A. Yes.

Q. Single family common use?

A. Right. Right.

Q. Okay. And this amendment indicates that this shall be amended to add this. So this is a new use, correct?

A. Yes. At least for those tracts, it's new.

Q. Right. Right.

At least the City and the developer saw fit to amend Tracts Q-1 and Q-2, T, and U, I guess because there was some ambiguity or discrepancy to make sure that they could build in those tracts with respect to single family in common designation, correct?

A. Correct.

Q. Okay. So my point being this is a new use for Tracts -- single family in common, you would agree, it's a new use for Tracts Q-1, Q-2, T, and U, correct?

A. The description of single family in common is something I had not -- it's an unusual name, but that's why I was hesitating. But you're right.

Q. Right. It's not listed as a permitted use under the original PUD agreement on page 4 of 13?

A. No. No.

Q. Okay.

A. The closest it gets is whether it's a single-family large, but that's not this.

Q. Right. This is a totally new use district, correct?

A. Yes.

Q. Okay. And it indicates that the maximum building height is 42 feet; is that correct? If you go back to --

A. Yes. And the table is amended also.

Q. Okay.

A. Right.

Q. And you would agree when Ken and Suzanne Norton built their homes on Lots, I think, 407 and 408, they built it under the use of a common -- as far as -- I want to make sure -- single family in common district, correct?

MS. CARY: Objection.
THE WITNESS: That's my understanding.
Excuse me. I didn't mean to jump ahead of you.
BY MR. BELLAMY:
Q. Yeah. I'm not sure I heard you correctly.
Do you agree with that?
A. Yes. I thought I was over-talking Taylor, but I didn't mean -- I was jumping in too quick.
Q. So for the record, I want to make sure we're clear on this. Obviously they've got plans to build a house on Lots 407 and 408, okay, and they're building in the single family common --
A. In common.
Q. -- district? Yes.
A. Yes.
MS. CARY: Objection.
THE WITNESS: That's my understanding.
BY MR. BELLAMY:
Q. Okay. And under the amendment, that is a new use, correct?
A. Yes.
Q. And under the single family in common

district, permitted use district, it indicates that the uppermost point of the structure is 42 feet, correct? See right there?

A. Yes.

Q. Okay. Does it say 41 feet?

A. No. 42.

Q. All right. Hang on a second.

A. Did the two of y'all ever determine which of these Q districts the Nortons' house is, or that's an open question?

Q. It's in U.

A. Oh, in U?

Q. Yes.

A. Perfect.

Q. Okay.

MR. BELLAMY: Let's mark this as an exhibit.

(EXHIBIT 13, Warranty Deed, was marked for identification.)

MR. BELLAMY: Madam Court Reporter, let's go off the record for two minutes.

(A recess transpired.)

(EXHIBIT 14, Fw: Meeting Tomorrow WEIS/NORTON 6, was marked for identification.)

(EXHIBIT 15, A1-21 Appeal of the

Decision of the Zoning Administrator, was marked for identification.)

(EXHIBIT 16, Email from Design Review Board to Ken Norton and Tom Winslow dated January 19, 2021, was marked for identification.)

(EXHIBIT 17, City of North Myrtle Beach Building Permit BLD-20-3121, was marked for identification.)

(EXHIBIT 18, Thirty-Third Supplemental Declaration of Covenants, Conditions and Restrictions for Tidewater Plantation (South Island), was marked for identification.)

BY MR. BELLAMY:

Q. Allen, I may not necessarily go in order, but the first thing I wanted to show you is, what I'm holding is Defendant's Exhibit -- let me put this right here -- Defendant's Exhibit 14 of your deposition. It is an email. It's from Cathy Weis. I think it's -- or at least it's an email between Cathy Weis and Mike Mahaney, who was the former town manager for the City of North Myrtle Beach.

And what I'd like you to do is publish it starting on Tuesday, June 22nd, 2021.

MS. CARY: We can stipulate it says

what it says.
BY MR. BELLAMY:
Q. Okay. Well, just publish it and then I'll have some follow-up questions. Beginning on --
A. Just start there?
Q. Yeah.
A. On Tuesday, June 22, 2021 --
Q. Read it so everybody can hear you.
A. From -- it says, Mike Mahaney wrote: Cathy, we will have the plans and staff go over your questions in detail. To help, below are our general procedures and staff's analysis of the situation. See you tomorrow.
Then it says, We normally measure height to the midpoint of the roof, but in Tidewater PDD, it is to the peak. And it is measured in flood zones from the first finished floor.
Further, architectural projections can exceed that height if they are less than 15 percent of the roof area. The cupola on the plans exceeds the 42-foot height, but it constitutes less than 15 percent of the roof area. The plan conforms with our ordinances.

Q. Okay. That's it right there.
Now, when he said the plan conforms with the ordinance, he's referring to Felix's architectural drawings, correct?
MS. CARY: Objection.
THE WITNESS: That's my understanding.
BY MR. BELLAMY:
Q. Well, what other document would it be referring to, Allen?
A. Let me just --
Q. Think about it.
A. It would have to --
Q. It would have to be the plans.
MS. CARY: Objection.
THE WITNESS: The only thing in front of the City at that point was the plans.
BY MR. BELLAMY:
Q. And let me show you right here.
MR. BELLAMY: Madam Court Reporter, let me get those documents right there.
THE WITNESS: The whole --
BY MR. BELLAMY:
Q. The whole, yeah.
So at least the City's position is that 23-106 controls as far as measuring height in a

floodplain, correct?
MS. CARY: Objection.
THE WITNESS: Yes.
BY MR. BELLAMY:
Q. Okay. All right. Here we go.
I'm going to hand you what's been previously marked as Defendant's Exhibit No. 17.
And is that the building permit?
A. Yes, sir.
Q. Okay. Did the City approve the building permit for Ken to build his house on Lots 407 and 408 in accordance with the architectural plans?
A. Yes. They have to do it that way. Yes.
Q. Okay. And I can get the architectural plans, but prior to your deposition today, did you have an occasion to review Felix's architectural plans for Ken's house?
A. I did. It's been a few weeks, but I did.
Q. But his architectural plans complied with 23-106?
MS. CARY: Objection.
THE WITNESS: Yes. I mean, this is

prima facie evidence -- that is, the issuance of a building permit is prima facie evidence that the City, all of its staff, determined that the plans were consistent with all the zoning requirements, which would include 23-106.

BY MR. BELLAMY:

Q. Okay. Now, the next thing I'm going to hand you is Defendant's Exhibit No. 15 to your deposition. This is where Ben Caldwell -- he's the zoning administrator for the City of North Myrtle Beach, correct?

A. Yes.

Q. Okay. And you're aware that -- I think his name -- Dave Jeffers, he was the DRB president following an appeal to Felix's plans or Ken's plans based on the fact that they take exception that the cupola was a necessary mechanical feature.

A. That's correct.

Q. Okay. And what I'm handing you is Ben Caldwell's response to the appeal. What I'd like you to do is, for the record, just read where it says, under A-1-21 [sic] Appeal of the Decision of the Zoning Administrator -- and I'm reading from the heading on Defendant's Exhibit 15.

What I'd like you to do is publish this

in the record right there, the second paragraph.

A. Just that part right there?

Q. Yeah.

A. All properties in the city have a maximum height limitation that is regulated by the zoning ordinance. The way height is measured varies by whether or not a property is located in a flood zone or not.

When a property is located in a flood hazard zone (4628 South Island Drive is located within a flood hazard zone), the height is measured from the first finished floor to the midpoint between the ridge of the roof and the eave. In Tidewater Plantation, the building height is capped at 42 feet at the peak of the roof.

If a property is located in a flood hazard zone and in Tidewater I measure -- did I read that right? If a property is located in a flood hazard zone, and in Tidewater Plantation I measure the distance from the first finished floor (at least 1 foot above the flood zone) to the peak of the roof.

Section 23-106 is located in the general and supplemental section of the zoning ordinance and applies to all zoning districts

unless an ordinance (Tidewater Plantation PDD) specifically states something to the contrary -- something contrary to what is stated in 23-106.

What is different in Tidewater is that the text reads, quote, to the peak, closed quote, and not to the midpoint like most districts. The rest of 23-106 still applies where 42 feet is measured from.

When a property is located in a flood hazard zone, in Tidewater, the height is measured from the first finished floor above the flood hazard elevation to the peak of the roof. Included in Section 23-106 are exceptions to height.

Q. That's when he talks about the cupola; is that right?

A. Yeah. That's one of the exceptions.

Q. Okay.

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

Q. All right. Finish that second paragraph.

A. Yeah. I'm to there.
Q. Okay. All right. I've got a couple questions. So clearly the City agrees that as far as measuring the maximum height within the Nortons on their property, Lots 407 and 408 on South Island, which is on a floodplain, is pursuant to Rule 23-106; is that correct?
A. That's correct.
MS. CARY: Objection.
BY MR. BELLAMY:
Q. Okay. Now, did you agree with Ben Caldwell's interpretation that you measure it to the peak instead of the midpoint between the eave and the highest point of the roof?
A. No, I don't agree with that part of it.
Q. Okay. So your interpretation would be that 23-106 would apply that -- once you determine the base flood height and 1 foot above that, which is the first certified floor level, then you measure the maximum height all the way up to the midpoint between the eave and the highest point of the roof; is that your opinion?
A. That's correct. That's what 23-106 says. I think he's got just -- what he's got wrong is just the one point of is it the peak of the roof

or is it the midpoint? And the ordinance says midpoint. But, otherwise, it's the same.

Q. Okay. Now, and also the city manager at the time back in 2021, Mike Mahaney, if I'm pronouncing that correctly, it was also his position that 23-106 applied too as far as determining the maximum height of the Nortons' property, Lots 407 and 408, South Island property, in a flood zone.

Do you agree with that?

A. Yes.

Q. Okay.

MS. CARY: Objection.

BY MR. BELLAMY:

Q. Okay. All right.

Let me show you -- Allen, I'm going to show you Defendant's Exhibit 13 to your deposition. This is a warranty deed where it indicates that Ken and Suzanne, as far as Trustees of the Suzanne N. Norton Living Trust dated May 8, 2014, they purchased lots. I think it's 2004 and 2008 -- Lots 47 and 48.

A. 407 and 408.

Q. Okay. All right.

In the derivation clause, does it refer

to Deed Book 2012, page 281?

A. Oh. That's not the derivation clause. That's actually the legal for that lot. That book and page number is for where the covenants were recorded. The derivation is down here.

No, where is it? There it is.

Q. There it is. Okay.

Does it refer to Deed Book page 2012 and page 281?

A. Yeah. That's in the description of the covenants.

Q. Okay. All right.

Now, what I'm holding up is Exhibit 18 to your deposition, okay? And this is titled Thirty-Third Supplemental Declaration, May 11th -- 11th day of February, 1998, by Southern Land & Golf Company, Limited, a South Carolina Corporation, hereinafter called the Declarant.

Did I read that correctly?

A. Yes.

Q. Okay. Now I want to flip to Exhibit C as far as of the Thirty-Third Supplemental Declaration. And it's on page 20 of the actual document. And as far as the Deed Book page, it's on page 300.

Did I read that correctly?

A. That's right.

Q. Okay. And Exhibit C under Building Height, it indicates that the maximum building height is 42 feet, correct?

A. Yes.

Q. Okay. And then what I'd like you to do is publish the last sentence where it says, quote, However -- I'll publish it -- quote, However, that all heights shall be subject to the provisions of the PUD agreement of April 4, 1998 [sic], and as may be amended.

Did I read that correctly?

A. Uh-huh -- yes.

Q. All right. Okay.

All right. We'll move on to Defendant's Exhibit 16 to your deposition. For the record, this is from the Design Review Board. This email was sent on Tuesday, January 19, 2021, at 1:37 p.m. It was sent to Ken Norton, Tom Winslow. And the subject is Lots 407-408. And it talks about New Construction - Height Restriction Variance. It's addressed to Ken.

And what I'd like you to do is just publish as far as the opening and then paragraphs 1

and 2 under that. And I reckon I'll have some follow-up questions.

A. Starting up here at the --

Q. Yeah. Yeah.

MS. CARY: I might just stipulate that it says what it says.

MR. BELLAMY: I'm just putting it in the -- yeah.

BY MR. BELLAMY:

Q. Go ahead and read it.

A. It says, Mr. Norton: At a meeting held on January 18, 2021, the DRB considered the request from your attorney to allow for a significant variance in the height of your proposed house.

Representatives of the DRRB met with the North Myrtle Beach chief official on January 14, 2021.

Based on information garnered at the meeting, it was a unanimous decision of the DRB to deny such variance request for the following reasons:

No. 1, the FEMA floodplain does not impact the maximum height limitation for houses on South Island. FEMA requires the finished floor to be 1 foot above the floodplain, and the plans for

your house meet that requirement.

The city building official also offered that only garages, storage areas, and entrance stairs are permitted to be at ground level, which would require an adjustment to your plans that currently include a bathroom and gym on the ground floor level.

Paragraph 2, the Planned Unit Development, PUD, with the City of North Myrtle Beach requires a maximum height of 42 feet. However, Tidewater DRB Standards require a maximum height of 41 feet. The PUD also says that, quote, all building heights are measured from the uppermost point of the structure to the average finished grade, closed quote.

The city building official confirmed the requirement for measurement of building height as detailed in the PUD and further indicated the City would not dispute Tidewater's established standards for height restriction of 41 feet.

Q. That's it right there.

A. Okay.

Q. So the first thing I'd like to ask you, under paragraph 1, he says that the FEMA floodplain does not impact the maximum height limitation for

houses on South Island.

Do you agree with that statement?

A. No.

Q. Explain why for the record.

A. FEMA has its own requirements -- the FEMA level that's calculated off the maps and other data is the starting point for all of 23-106 and the related provisions. So the FEMA requirements are very much part of that calculation. That's really the starting point.

Q. And you would agree the FEMA requirements do change, they do impact the maximum height limitation for houses in South Island, correct?

A. Yes.

Q. For example, so if I understand the FEMA guidelines, you have to get either an architect, surveyor, or an engineer to go out and determine -- there's a calculation or a formula they have to follow -- and they come up with the base flood level, okay, which could be, let's say, in this particular case is 8 feet, okay?

If it's 8 feet, then 1 foot above that is the first certified floor level.

Would you agree with that?

A. Yes.
Q. That basically 23-106 references, correct?
A. Yes.
Q. And then from that point, you measure -- the maximum height is 42 feet, so you measure 42 feet from that certified first floor level up to the midpoint between the eave and the highest point of the roof, correct?
A. That's correct.
Q. And that's part of the -- that Section 23 is ultimately -- that's a FEMA standard that comes from the FEMA requirements, correct?
A. That's correct.
Q. That were adopted by the City of North Myrtle Beach pursuant to their Flood Damage Control Ordinance, correct?
A. Right.
MS. CARY: Objection to the form.
BY MR. BELLAMY:
Q. Okay. So when Dave Jeffers of the DRB says that the FEMA floodplain does not impact the maximum height limitation for houses in South Island, he's clearly dead wrong on that.
Would you agree with that?

A. Yes.
Q. Okay. Now, on paragraph 2, let me read this into the record. It says, Planned Unit Development Agreement, and it's got a parenthetical, PUD, with the City of North Myrtle Beach requires a maximum height of 42 feet. That's correct.
A. Correct.
Q. Okay. But it says, However, Tidewater DRB standards require a maximum height of 41 feet.
Now, what he's basically saying is is that because their height restriction can be more restrictive than that would control over the PUD.
Do you agree with that?
MS. CARY: Objection.
THE WITNESS: It would not control unless there was an amendment to the ordinance.
BY MR. BELLAMY:
Q. You mean the PUD? Yeah, the PUD.
A. The PUD. The ordinance adopting the PUD.
Q. Right.
A. The City has to take action. It can't be unilateral.
Q. Right.

And remember we were talking about earlier there was an amendment to the PUD to change Q-1, Q-2, T, and U, which are -- essentially they're in a floodplain. All four of those properties are in a floodplain, and they're subject to spoilage easement, correct?

A. Yes.

Q. And the use was changed to a single family in common, correct?

A. Yes.

Q. And remember, pursuant to the amendment, it indicated under single family in common, the maximum height would be 42, correct?

A. That's correct.

Q. So then also pursuant to -- obviously Mr. Jeffers has never read 33 Supplemental Declaration of Covenants, Conditions, and Restrictions for Tidewater Plantation, which is part of their declaration, okay?

And as we indicated, for the record, it's Defendant's Exhibit 18. Remember when you were reading at paragraph C? And under Exhibit C, Supplemental Use Restrictions, and it talks about building height. This is paragraph 2, building height. It indicates for the 31 lots in Tidewater

that the maximum building height is 42 feet, correct?

A. Correct.

Q. And it further says that, again, for the record, it says, However, all heights shall be subject to the provisions of PUD agreement of April 4th, 1998 [sic], and as may be amended, correct?

A. Yes.

Q. So Mr. Jeffers is clearly wrong that pursuant to the PUD agreement, pursuant to the amendment to the PUD, and pursuant to an amendment, the 31st Supplemental Amendment to the Third Amended Declaration of Restricted Covenants for Tidewater Plantation, they all indicate the maximum building height is 42 feet, correct?

A. That's correct.

Q. So in his letter to Mr. Norton, he's dead wrong that they have the right to limit the maximum roof height to 41 feet.

Do you agree with that?

MS. CARY: Objection.

THE WITNESS: Yes.

BY MR. BELLAMY:

Q. Okay. Now, I want to refer you again

to the Defendant's Exhibit No. 15. And part of the Exhibit No. 15 to your deposition is the Application for Administrative Appeal by the Board of Zoning Appeals, correct?

A. Right.

Q. Okay. And then it's signed by G.D. [sic] Jeffers, correct, on 6/25/2021?

A. Yes.

Q. Okay. And when you flip it over, it lists the grounds for the appeal, okay? Take a minute to look at that.

And I think prior to your deposition today, you had a chance to review the appeal, correct?

A. Yes. I reviewed this some time ago as well.

Q. All right. Just take a minute and reread it and refresh your memory.

(Pause in the proceedings.)

THE WITNESS: Okay.

BY MR. BELLAMY:

Q. Okay. Now, regarding the DRB's appeal of the plans and building permit that was issued to Ken Norton and his wife regarding residential construction on Lots 407 and 408, South Island, in

a floodplain, do they take exception to the building height as far as 42 feet?

A. No.

Q. Okay. Do they take exception to the way that Felix utilized 23-106 as far as determining the maximum building height as far as how you measure it? Instead of measuring it per grade, you determine what the certified base flood level is, 1 foot above that, and that's the certified first floor level.

Do they take exception to how Felix determined the maximum building height within a floodplain?

A. No.

MS. CARY: Objection to the form.

BY MR. BELLAMY:

Q. Is that "no"? Your answer to that is "no"?

A. They did not mention it. They did not take exception.

Q. Okay.

A. If that's what your question was.

Q. Yes, sir. Yes.

So for the record, they had an opportunity -- because they were obviously upset

about the cupola. They didn't think it was a necessary mechanical feature. And they appealed on that ground, correct?

A. That's correct.

Q. Was there anything preventing Dave Jeffers and DRB challenging the maximum height being 42 feet, because they obviously appealed and said, no, we think it's 41, correct?

MS. CARY: Objection.

BY MR. BELLAMY:

Q. They could have done that.

A. They could have. On the contrary, paragraph 3 of this appeal assumes that 42 feet is the right number.

Q. Okay.

A. It's asking the question about the cupola and all that. That's the only basis they used to appeal. But he says, Was the reclassification made solely to bring the height within the PUD 42-foot height requirement? That's the only mention he makes of it, and he seems to understand that that's the law of the case.

Q. Okay. But more importantly, there's no appeal or they don't take exception to how Felix determined the maximum as far as measuring -- it's

obvious the City's position you have to measure it from the grade up until the peak to determine, you know, the maximum height?

MS. CARY: Objection to the form.

THE WITNESS: No. No.

BY MR. BELLAMY:

Q. The City takes the position that you have to, at least they're now taking that position.

MS. CARY: Objection to the form.

THE WITNESS: Not the grade. No. The City is taking the position that the starting point is not grade; it's the certified floor elevation, unless I'm understanding your question wrong.

BY MR. BELLAMY:

Q. No. No. No, never. All the questions that Ms. Taylor has asked you -- or Ms. Cary has asked you indicated that as far as the PUD, they measure starting from the actual grade.

A. Okay.

Q. We don't agree with that obviously.

A. Your question was does the City take that position? That's the question I was answering.

Q. Yes.

A. But I think what you were asking me was

does the Tidewater Association take the position --

Q. Oh, I apologize. Thank you for correcting me.

Does the Tidewater Association Board of Directors as well as the DRB take the position that you have to measure it from the grade?

MS. CARY: Objection.

THE WITNESS: That's correct. That's my understanding.

BY MR. BELLAMY:

Q. And my question is that obviously you reviewed Felix Ayres's plans, the architect, and his position was that 23-106 applies as far as how you measure maximum building height. It's not from grade. It's from the certified first floor level up to, you know --

A. Whatever that number is above that.

Q. Right.

A. It's 42 feet.

Q. Okay. And the City did not take exception -- I mean, excuse me -- the DRB, Dave Jeffers, did not take exception to that, correct?

MS. CARY: Objection.

THE WITNESS: In particular, he's mentioning it twice in this appeal that it's the --

23-106 is governing and that it's 42 feet.
BY MR. BELLAMY:
Q. Okay. Now, let me ask you this, the date of the appeal is -- the record will indicate what the date of the appeal is.
A. It's filed June 25th, 2021.
Q. Okay.
A. And that's when it's stated it's filed.
Q. All right. And this is the letter that was issued on January 18, 2021, correct? So would it be --
A. Yes.
Q. -- fair to say that he's modified his opinions from -- as far as his email to Mr. Norton on January 18, 2021, which is marked as Defendant's Exhibit 16 to your deposition, and he's changed his view, so to speak. It is 42 feet maximum height?
MS. CARY: Objection to the form.
THE WITNESS: That's my interpretation of Exhibit No. 15 that we're talking about.
BY MR. BELLAMY:
Q. And does he indicate, in your opinion, that 23-106 controls?
MS. CARY: Objection to the form.
THE WITNESS: That's the way I'm

reading the appeal, yes.
BY MR. BELLAMY:
Q. Okay. All right. Give me one second.
Allen, you've read the affidavits of Matt Hines, correct? You read his affidavit?
A. Yes.
Q. You read the affidavit -- at least the two affidavits of Felix Ayres, the architect?
A. Yes.
Q. Then you read the affidavit of, I think, Jim Mahurin?
A. Uh-huh, yes.
Q. Do you agree with their findings and conclusions in their affidavits?
A. I do.
Q. Okay. And as I go through your affidavit, on paragraph D, Defendant's DRB and the Association have breached the covenants, conditions, or restrictions contained in their governing documents as well as certain provisions of the city zoning ordinance by committing the following ultra vires acts.
I'm not going to read them into the record, but I'm reading from page 4 of 7, subparagraph D.

Is subparagraph A, B, C, D of paragraph D, are those still your opinions for the record?

A. Yes.

Q. And we're talking about the subparagraphs on page 4 of 7 of your affidavit?

A. That's right.

Q. And your affidavit, for the record, we're talking about Plaintiff's Exhibit No. 3 to your deposition, all right?

Now, what I'm reading from -- go to page 3 of 7, and it's paragraph C. I want to publish this.

It says, The PUD agreement, including the covenants, conditions, and restrictions contained in the Third Amended Restated Declaration and Bylaws for Tidewater Plantation -- you've got a parenthetical in quote, governing documents, constitute a contract between the Defendants, the DRB and the Association on the one side and the Plaintiffs on the other side.

The failure of Defendants, the DRB, and the Association to comply with and/or enforce the covenants, conditions, and restrictions contained in their governing documents gives rise to an

action for breach of contract by the Plaintiffs as aggrieved owners.

Specifically, Article 19, Section 19.4 of the Third Amended Restated Declaration provides in pertinent part:

To comply with local ordinances, state laws, and the governing documents, including developmental standards and requirements in the PUD agreement and by not acting in good faith and dealing fairly with the Plaintiffs regarding their --

MS. CARY: Where are you?

MR. BELLAMY: -- construction of their residence in one or more of the following particulars, to wit:

MS. CARY: I think you're reading the wrong section. Yeah. This one.

THE WITNESS: Where was that? I'm not following you.

MS. CARY: Yeah.

MR. BELLAMY: No, that's okay.

MS. CARY: No, you went from --

MR. BELLAMY: Oh, oh, oh.

MS. CARY: Yeah, you're reading from the wrong portion.

MR. BELLAMY: Oh, okay.
THE WITNESS: I see it now. Under E?
MS. CARY: Yeah.
MR. BELLAMY: Oh, I see it. Okay.
MS. CARY: Yeah.
MR. BELLAMY: I'm sorry. Okay. I apologize.
MS. CARY: It's double-sided.
Starting from the last thing --
MR. BELLAMY: Oh. We'll strike that from the record.
What I want to do -- I apologize for that.
MS. CARY: We can stipulate.
BY MR. BELLAMY:
Q. You want to refer to paragraph 3 and -- paragraph F, excuse me. It says, The Defendants, DRB, and the Association have breached their duty of due care as set forth above, were negligent, grossly negligent, reckless, willful, and wanton in failing to comply with the local ordinances and state laws and their governing documents, including the developmental standards and requirements contained in their PUD agreement by not acting in good faith and dealing fairly with the Plaintiffs regarding the construction of the residence in one

or more of the following particulars, to wit: And then you list subparagraphs A, B, C, and D of paragraph F.

Are those still your opinions?

A. Yes.

Q. And I understand that subparagraph D deals with in acting unreasonable in any such ways as may be revealed. And I think you answered that dealing with the fine amounts and the attorneys' fees that were charged --

A. Right.

Q. -- to Mrs. Norton regarding this lawsuit.

Okay. Is there anything in Defendant's Exhibit No. 3, as far as your affidavit, that you would change or modify based upon having your deposition taken today?

A. No.

Q. Okay.

MR. BELLAMY: Taylor, I want to make sure that on the Defendant's Supplemental Answers to Plaintiff's Interrogatories --

MS. CARY: Uh-huh.

MR. BELLAMY: -- that we marked that as an exhibit.

MS. CARY: Yeah. That was 8.

MR. BELLAMY: 8. Okay. I just want to make sure. I have it, I think, right here.

THE WITNESS: I've got another copy of it here.

MR. BELLAMY: Here it is. I've got a copy of it.

BY MR. BELLAMY:

Q. Allen, what I'm referring to for your deposition is Defendant's Supplemental Answers to Plaintiff's Interrogatories. It's marked as Defendant's Exhibit 8 to your deposition.

And prior to your deposition today, did you have a chance to review Defendant's Exhibit 8?

A. The one you're holding?

Q. Yes.

A. Yes.

Q. Okay. The part of Exhibit 8 starting on page 10 of 15 -- let me back up for a second. I apologize. Okay.

With respect to Exhibit 8, you're listed as an expert witness. You're identified as an expert witness in the case, right?

A. Yes.

Q. Okay. And it indicates that -- it

gives your background and history and then essentially restates what your opinions are that are stated in your affidavit under subparagraphs A, B, C, and D. Those are essentially the same opinions that are in your affidavit?

A. Yes.

Q. Okay. And then let me back up for a second. Paragraphs A, B, and C come from your original affidavit, correct?

A. That's correct.

Q. Okay.

A. A, B, and C, yes.

Q. Okay. And then subparagraph D and E were subsequently -- were not part of your affidavit, correct?

A. That's correct.

Q. And with respect to your opinions as listed in paragraphs A, B, C, D, and E, the two new paragraphs, are those still your opinions today?

A. Yes.

Q. Okay. Allen, have you been -- all the information that I've provided you and the information that Mrs. Cary has provided to you today during your deposition, have you seen anything where the City of North Myrtle Beach has

changed their position that 23-106 would not be applicable as far as determining the maximum, you know, building height of the Nortons' residence on Lots -- or be constructed on Lots 407 and 408, which is in a floodplain?

A. 23-106 would be applicable.

Q. Right.

Is there anything that -- has she presented you any documents that the City has changed its position that 23-106 would not be applicable?

A. No. The only disagreement I have with the City's position is not whether it's applicable or not, is that one entry where the zoning administrator said 41 feet, and he was just wrong. I think that's the one --

MS. CARY: I think you're talking about the midpoint.

THE WITNESS: Where it's 42 feet, but he was using --

BY MR. BELLAMY:

Q. Right.

A. But anyway, other than that, no.

Q. So we're clear on this, Ms. Cary hasn't presented you any document today that the City now

takes the position that 23-106 is not applicable?

A. That's right.

Q. Okay. And your position is 23-106 applies as far as to new construction on Lots 407 and 408 in a floodplain regarding the Nortons' lot, correct?

A. That's correct.

Q. And the only thing that you take exception with as far as the City is, is that you measure the maximum height not to the highest point but between the midpoint, between the eave and the highest point, correct?

A. Yeah. I want to correct what I just said. It was not a 42 versus 41. It was that issue, that I think the comment from the zoning administrator was not correct.

Q. Okay. Now, based upon the questions that Ms. Cary has asked you today, it is clearly the DRB and the Association's position that you measure maximum flood height from grade, okay, instead of the base certified first floor level.

MS. CARY: Objection to the form.

THE WITNESS: That is correct.

BY MR. BELLAMY:

Q. Okay. It is obviously your position

that the Association and the DRB are incorrect in asserting that's how you determine the maximum flood height by measuring from the grade instead of the base certified level, which is -- and then up to the midpoint between the eave and the roof.

MS. CARY: Object to the form.

BY MR. BELLAMY:

Q. You can answer.

A. That's correct.

MR. BELLAMY: Allen, I don't think I have any more questions. Ms. Cary may have a couple more questions, but, yeah, I'm finished with my questions, at least at this point.

MS. CARY: No further questions.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 3:17 p.m.)

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 3:17 p.m.)

CERTIFICATE OF REPORTER

I, Karen M. Beckman, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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 this 19th day of June, 2025, at Myrtle Beach, Horry County, South Carolina.



Karen M. Beckman
Court Reporter
My Commission expires
September 2, 2025

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Otis Allen Jeffcoat, III
ajeffcoat@jeffcoatlaw.com

June 25, 2025

RE: Tidewater Plantation Community Association, Inc. v. Norton, Suzanne N., Et Al
6/11/2025, Otis Allen Jeffcoat, III (#7351999)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-carolinas@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

Tidewater Plantation Community Association, Inc. v. Norton, Suzanne N., Et Al

Otis Allen Jeffcoat, III (#7351999)

E R R A T A S H E E T

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REASON_____

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Otis Allen Jeffcoat, III Date

Tidewater Plantation Community Association, Inc. v. Norton, Suzanne N., Et Al
Otis Allen Jeffcoat, III (#7351999)

ACKNOWLEDGEMENT OF DEPONENT

I, Otis Allen Jeffcoat, III, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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