IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
HORRY COUNTY

DEPOSITION OF ROBERT DEWITT MOSS

TIDEWATER PLANTATION COMMUNITY ASSOCIATION, INC.,

Plaintiff,

Case No. 2021-CP-26-04599

vs.

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

Defendants.

DEPONENT: ROBERT DEWITT MOSS

DATE: February 11, 2026

TIME: 10:14 a.m.

LOCATION: Bellamy Law Firm
Myrtle Beach, South Carolina

REPORTED BY: KAREN BECKMAN, CSR
CERTIFIED SHORTHAND REPORTER
CLARK BOLEN, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM
Office@ClarkBolen.com

A P P E A R A N C E S

ON BEHALF OF TIDEWATER PLANTATION COMMUNITY ASSOCIATION, INC.:

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

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

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

ALSO PRESENT:

KEVEN CARVAJAL
Videographer

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

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ROBERT DEWITT MOSS - FEBRUARY 11, 2026

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THE VIDEOGRAPHER: We're on the record in the video deposition of Robert Moss in the matter of Tidewater Plantation Community Association, Inc., vs. Suzanne Norton, et al.

Today's date is February 11, 2026. The time is 10:14 a.m.

The court reporter is Karen Beckman. My name is Kevin Carvahal, videographer for Clark Bolen.

Will counsel please identify themselves for the record.

MS. CARY: Counsel for Plaintiffs and Counter-Claim Defendant, Taylor Cary.

MR. BELLAMY: Howell Bellamy with Bellamy Law Firm, counsel for the defendants.

THE VIDEOGRAPHER: Court Reporter, please swear in the witness.

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

ROBERT DEWITT MOSS,

having been first duly sworn, was examined and

testified as follows:

EXAMINATION

BY MR. BELLAMY:

Q. For the record, my name is Howell Bellamy. I'm an attorney with the Bellamy Law Firm. And in this lawsuit regarding Civil Action No. 2021-CP-26-04599, I represent Suzanne N. Norton Individually, Ken R. Norton Individually, Suzanne N. Norton as Trustee of the Suzanne N. Norton Living Trust dated May 8th, 2012, and Kenneth R. Norton as Trustee of the Kenneth R. Norton Living Trust dated May 8th, 2014.

They're the defendants in this lawsuit, okay?

A. Okay.

Q. And you're aware the plaintiff in the lawsuit is Tidewater Plantation Community Association, Inc., correct?

A. Yes.

Q. Per the caption.

I'm here to take your deposition today, and one of the things that -- before we get started, what I like to do is kind of -- first let me ask you, is it -- your full name, is it Robert D. Moss?

A. Yes.
Q. And you go by Bob?
A. Bob.
Q. Is it all right to call you Bob?
A. Sure.
Q. Bob, what I like to do is -- first let me ask you, have you ever been deposed before?
A. No.
Q. In our South Carolina Rules of Civil Procedure, we have certain rules of etiquette, procedures that I need to go over with you.
As you can see the court reporter is taking down the testimony. So the questions that I ask and as far as you're answering, she's recording that, okay?
A. Okay.
Q. So your responses, when I ask a question, it has to be verbal. You have to say yes, no, and you can explain. Doing uh-huhs, huh-uh, moving your head up and down like yes or sideways like no, she can't record that. So please say yes or no and then you can respond.
A. I understand.
Q. Okay. If I ask a question that is unclear or you don't understand, it could be a

bad question. Please ask me to restate it, okay, if you don't understand my question.

A. Will do.

Q. Okay. And if I ask a question and you answer it, can we agree at least that you understood my question?

A. Okay.

Q. Now, during the deposition, once the deposition begins, if you have any questions, you need to direct them to me, not your attorney, okay?

Once the deposition begins, you cannot look to your attorney for advice or ask questions or say, Am I doing okay or how do I answer this question?

During the break, you can talk to your attorney about other matters beyond the deposition, like sports or the weather, okay?

A. Understood.

Q. Now, if during the deposition your attorney asserts a privilege, okay, at that point in time, then you can stop. But if she's not going to assert a privilege, then if I ask a question, you have to answer, okay?

A. Yes.

Q. And during the deposition, a lot of times I'll ask a question and your attorney will object to form, okay? And the reason why we say that as pursuant to our rules is that we don't want speaking objections where she's trying to telegraph to you how to answer. So she can't do it. I can't do it.

So all we can do is, if she -- for some reason if I ask a question and she thinks it's leading or it's hearsay or it's a compound question or I'm referring to things, facts outside of the record, or for whatever reason, she may object to form, and that's something we'll take up with the Court at a later date.

But once she does that -- and a lot of times if I ask a question, you might want to listen to see if she's going to object to form, and then after she does that, you can answer.

A. Okay.

Q. Okay?

And during your deposition, if you need to take a break, it's not a marathon. We can take a break. The one thing that I ask, if I ask a question before you need to take a break, if you would just answer it, and then we can take a

break.

A. Understood.

Q. Okay.

MR. BELLAMY: Let's go off the record for a second. I'm going to mark some depositions [sic].

THE VIDEOGRAPHER: The time is 10:19, and we're off the record.

(Off-the-record conference.)

(Exhibits 1-7 were marked for identification.)

THE VIDEOGRAPHER: The time is 10:21 a.m., and we're back on the record.

Q. Bob, I'm going to hand you what's previously been marked as Defendant's Exhibit 1 to your deposition.

(Exhibit No. 1 marked for identification.)

Q. And for the record, it's a Notice of Deposition of Robert Dewitt Moss, and it includes an attached subpoena. Take a minute to look at that.

A. I had a copy of that before. Okay.

Q. Okay.

A. Do you want this back?

Q. No. You can have it for your copy.

Bob, did you receive a copy of your subpoena in the mail?

A. I did.

Q. Okay. Did you get a chance to review it?

A. I did.

Q. Now, in your subpoena there was an attached -- in your notice of deposition, excuse me, there was an attached subpoena, correct?

A. Yes.

Q. Okay. And the attached subpoena requested documentation.

A. Yes.

Q. Did you get a chance to review the documentation --

A. Yes.

Q. -- that was requested pursuant to the subpoena?

A. Yes.

Q. Did you have any documents in your possession, custody, or control that pertain to this lawsuit, to your knowledge?

A. No.

Q. Okay. All right.

Bob, in preparation of your deposition today, how did you prepare? Did you do anything?

A. Not really other than tried to -- I actually tried to get into the files, but I could not. I was denied access to the files.

Q. Okay.

A. So I could refresh my memory.

Q. Okay. And that's why I gave you a bunch of documents --

A. Yeah.

Q. -- to review before we started the deposition.

A. Right.

Q. The documents that I requested pursuant to the subpoena as far as the PUD Agreement, the Third Amended Declaration of Covenants, Conditions, Restrictions and Bylaws, those are documents that you're familiar with, correct?

A. Yes. Yes.

Q. Okay. And we're going to talk --

A. I'm not all that familiar with the PUD Agreement.

Q. Okay. But you understand the PUD Agreement for Tidewater Plantation is the controlling document. It's the seminal document

that all the other documents originate from. You don't disagree with that, do you?

A. No.

MS. CARY: Objection to the form.

A. No. I don't know that for a fact.

Q. You're not aware that the PUD is the controlling document in this lawsuit? You're not aware of that?

A. No.

Q. We'll talk about that. We'll get to that.

Before I start asking you questions about documents, you know, 3, 4, 5, and 6 to your deposition, what I want to do is kind of cover a little bit of personal history, okay?

Can you give us the benefit of your educational background?

A. Yeah, I graduated Michigan State University with a BS degree and then got a DVM, Doctor of Veterinary Medicine in --

Q. What year was that?

A. 1963.

Q. Okay. And --

A. A BS in '61 and a DVM in '63.

Q. I think you're currently 86 years old?

A. Yes.
Q. Okay. And you were a veterinarian?
A. I'm a retired veterinarian, yes.
Q. And you practiced in Virginia?
A. I did practice in Virginia for 45 years.
Q. And you moved down to, I think, the Little River area of Horry County back in 2000?
A. Yes.
Q. And specifically you moved into Tidewater Plantation, correct?
A. Yes. Yeah.
Q. Okay.
A. Well, prior to that, I had a property out at Woodside Plantation for a while -- not at Woodside, but -- what the hell is it called?
Q. That's all right.
And this is -- I'm going to hand you what's been previously marked as Defendant's Exhibit 6 to your deposition.
(Exhibit No. 6 marked for identification.)
Q. It's a quitclaim deed. And for the record, it was filed just recently on -- it looks like it was August 19th of 2025. Take a look at it.

Do you recognize Defendant's Exhibit No. 6 for the record?

A. Yes.

Q. That's the most current deed to your property in Tidewater Plantation? Do you agree with that statement?

A. It was a cleaned up deed, yes.

Q. I understand. It's a corrected deed, but --

A. Right.

Q. -- that's the most current?

A. Yes.

Q. And for the record, if you can state what your current address is in Tidewater Plantation?

A. 945 Heshbon Drive, North Myrtle Beach, 29582.

Q. Okay. And you've lived there since -- let me ask you this: You've lived in Tidewater Plantation since roughly 2000?

A. Well, two -- yes, yeah.

Q. And per your deed that states that obviously that your property, your lot and your property, are subject to restrictive covenants.

A. Yes.

Q. Correct? Okay.

I'm going to hand you what's been previously marked as Defendant's Exhibit 2 to your deposition.

(Exhibit No. 2 marked for identification.)

Q. This is the PUD Agreement, the Planned Unit Development Agreement, between the City of North Myrtle Beach, South Carolina and Southern and Golf Company Limited Partnership. And it's recorded in Deed Book 1544 at page 1391. And here it is. It's marked as Exhibit 2 to your deposition.

Now, let me ask you this: Before I ask you about the PUD Agreement, when was -- my understanding is you have served on the Tidewater Board of Directors, correct?

A. Yes.

Q. When was the first year that you served on the Board of Directors for Tidewater Plantation?

A. Probably 20- -- I'm not sure, but probably 2013.

Q. Okay. And how long did you serve on the board, the Tidewater Board?

A. I completed a term of Denny Heddington and I finished his term. I want to say it's about three years.

Q. If you can give the dates and times?

A. I don't know the dates. That's something I can't tell you for sure.

Q. Let me ask you this: When you served on the Board of Directors for Tidewater Plantation, did you also serve on the DRB at the same time?

A. I started out on the DRB, and I was asked to move over to the Master Board.

Q. Okay.

A. And the answer is no, I didn't serve simultaneously on both boards.

Q. Okay. And so the first board that you served on was the Design Review Board, correct --

A. Right.

Q. -- for Tidewater Plantation?

Do you know exactly what year that was?

A. Probably -- again around the 2013, 2012, 2013 timeframe.

Q. Okay. And if I understand your testimony, you subsequently served on the Master Board for Tidewater Plantation?

A. Right.

Q. Okay.
A. For at least seven years, I think.
Q. For about seven years.
Roughly what time period? From, like, 2013 to 2020?
A. Probably. That sounds right.
Q. Okay. Did you ever serve as president of the Tidewater Board or the Master Board?
A. Yes.
Q. Okay. How long did you serve as president?
A. I served as president for one year, the first year that it was turned over from a developer to the membership.
Q. Okay.
A. Yeah.
Q. Okay. Okay.
And then my understanding is is that you subsequently served as the Board president for the Design Review Board, correct?
A. Uh-huh. A very short period of time.
Q. Okay. Now, are you familiar with Mr. and Mrs. Norton?
A. Not really except I attended a hearing at the city hall.

Q. Okay.
A. When the question of the addition or the cupola, whatever it was called.
Q. We'll get to that.
A. Yeah.
Q. But you understand that they --
A. I saw him there. That's the only time I've ever seen him.
Q. Okay. They had Lots 407 and 408 in South Island in Tidewater?
A. Right.
Q. You understand that. Okay.
And they bought their property, I think, sometime in 2016 and 2017; is that your recollection?
A. I have no idea when they bought their property.
Q. Okay. I've got their deed and we can show that.
A. Yeah.
Q. When they submitted their -- let me ask you this: You know Felix Ayres, don't you, correct?
A. Yes.
Q. He's an architect.

A. Yes.
Q. And Felix used to serve on the Design Review Board.
A. Yes.
Q. Okay. Do you remember that?
A. Well, he didn't serve on the Board. He was our --
Q. Consultant?
A. Consultant, yeah.
Q. And can you remember what period of time that he served as a consultant for the Design Review Board?
A. Not really.
Q. Okay. Okay. Now, back in 2000, in 2000, the Nortons submitted their plans, drawings, and specifications for new construction?
A. Right.
Q. Okay. And that was submitted sometime before July of 2020. And I've got documentation to support that, okay?
A. I think it was our first meeting in July, yes.
Q. Okay. And I think you had a meeting with the Design Review Board, and subsequently

you sent a letter to the Nortons' email indicating that their plans were denied. And I think you listed roughly about eight or nine --

A. Yeah.

Q. -- reasons.

A. Correct.

Q. Is that your recollection, Bob?

A. Yes.

Q. Okay. Now, what I want to do now is I just want to kind of get a little background history about your service on the Master Board and also your service on the Design Review Board for Tidewater Plantation.

A. Sure.

Q. And what I would like to direct your attention to is if you would look at the PUD Agreement.

A. You gave me one.

Q. I did. Yeah, you got that.

A. You actually gave me two.

Q. If you would hand one back to me. Here it is. I've got one right here. Okay.

So we're clear for the record, the one I'm referring to, I think it's marked as Defendant's Exhibit No. 3?

A. This one?
Q. Yeah.
A. Okay.
Q. Is that the exhibit number on there, Bob?
A. Actually, it's 2.
Q. 2. Okay. All right.
So what I've got is what I refer to as Defendant's Exhibit No. 2 to your deposition.
A. Yes, sir.
Q. And when you served on -- let me ask you this: This particular document, Defendant's Exhibit No. 2, have you ever seen this document before?
A. No.
Q. Okay. When you served on the Master Board and also served on the Design Review Board, you never reviewed this document or talked about this document, the PUD Agreement?
A. Not on the time that I served on the Board.
Q. When you say "served on the Board," you're talking about both the Master Board and the Design Review Board?
A. We referred to it from time to time, but

I never had it in my hand, never read it.

Q. Okay. So you never read this document before?

A. No.

Q. Okay. What I'm going to do is -- I'm not going to go through every single paragraph, section -- I'm just going to cherry-pick some relevant sections and go over them with you, okay?

A. Okay.

Q. Bob, what I'm going to do is, I may refer you to a specific page or a paragraph, and I may ask you to publish it for the record because I want you to read it into the record, and then I'll have some follow-up questions, okay?

A. Okay.

Q. The first page that I want to direct you to is page 1 of 13, or it's page 902 as far as the deed book and page number. It's page, I think, 392.

Just let me know when you get there.

A. I'm there.

Q. And what I'd like you to do is read the first -- publish the first page and then stop

when you get to Section 2, Legal Description, okay?

So you'll start with where it says, Tidewater Golf Club Plantation PUD, Planned Unit Development, and then it says, The City of North Myrtle Beach and just -- if you would publish that in the record, and then I'll have some follow-up questions.

A. Tidewater Golf Club & Plantation PUD, Planned Unit Development, City of North Myrtle Beach, South Carolina, a South Carolina municipal corporation and Southern Land and Golf Company, Limited, herein referred to as the "Developer" hereby convey [sic] and agree to bind their successors and assignees [sic] as follows. Section --

Q. All right. I apologize. But I want to sit here and say what's important is, it says right here, The Developer and the City covenant and agree to bind their successors and assigns as follows, which would include the Master Board and Design Review Board and all the members of Tidewater Plantation.

You don't disagree with that?

A. I don't agree. I don't know if it's

correct or not.

Q. Well, it says right there, it says, Hereby covenant and agree to bind their successors and assigns as follows.

We're talking about the successors and assigns of the City of Myrtle Beach and the Developer, correct?

A. Is a Design Review Board a successor?

Q. Yes. It's a subset of the Master Board.

A. Then I guess I would agree with that then.

Q. I'm not trying to trick you.

A. No, you're not. It's legalese as far as I'm concerned.

Q. Okay. Continue on. I'm listening.

A. Oh. Section 1: Master Site Plan. A, the City has received a request from the Developer to annex some 506.7 acres as per survey of the land to the City of North Myrtle Beach. The Developer has also submitted a request that this property be zoned a PUD, Planned Unit Development, upon --

Q. It's annexation.

A. It's annexation -- yeah, the printing's all smeared up there -- into the City, and has

submitted a Master Site Plan (Exhibit A) for the proposed future development of the aforesaid 506.7 acres.

Oh, you want me to keep on going? 1, Future development of the 506.7-acre parcel may include -- and, again, my printing's smeared on that.

Q. Here, do you want me to read it for you?

A. 53.11 or is it 153.11?

Q. Here, I'll read it.

A. I guess it's 153 --

Q. -- .11, yeah.

A. It would be an awful small golf course at 53 point --

Q. 153.11, yeah.

A. -- acre commercial golf course, a 10.33-acre tract for housing and commercial marina, and -- is it 1.13 --

Q. 1-3.

A. -- acre commercial tract for a convenience parcel [sic] facility, and a remaining 342 point, it looks like, 13 acres to be divided into subtracts as depicted on the site plan and future [sic] defined as to densities in Section --

Q. 3C.
A. -- 3C, yeah.
Q. Okay. No. 2 -- I'll read this into the record for you. No. 2, All future development for the project shall conform to the standards described herein.
Did I read that correctly?
A. I guess so. Again, that's all smeared on my copy.
Q. Here. It says right -- right here, see where I've got my finger on that?
A. Yeah. Yeah.
Q. This is my copy. What you've got is a copy of what I've got. But it says, All future development for the project shall conform to the standards described herein.
Did I read that correctly?
A. Yes. Yes. Again, I have to assume that's correct.
Q. Okay. That's what it says.
A. Okay. I said yeah, I agree with you.
Q. All right. It says, Each phase shall require prior approval by the City. Approval by the Planning Commission, City Council, and other regulatory agencies may also be necessary. The

ruling [sic] shall be as stated in Sections 9 and 10 of this Agreement. Anything not covered in this document -- let me see -- this document shall be governed by the City Zoning Ordinance and Section 3 of this Agreement. Okay.

A. All right.

Q. So the main thing I want to emphasize, it says, All future development of the project shall conform to the standards described herein.

So what we're talking about, we're talking about the standards that are set forth in the PUD Agreement.

A. Agreed.

Q. Okay. Bob, what I want you to do is go to 3D, Development Standards, okay? It starts on page 5 of 13. Let me know when you get there.

A. Okay.

Q. Okay. Do you see where you've got the heading Development Standards?

A. Yes.

Q. Okay. The first thing I want you to look at is a large lot single family, okay? Do you see where I'm referring to, No. 1, a large lot single family?

A. I do.

Q. And it's got a bullet point. And it says, The uppermost point of the structure. What is indicated?

A. 42 feet.

Q. Okay. And then No. 2 says, Zero lot land [sic] single family. And what I want you to do is go to the bullet point where it says, The uppermost point of the structure. What is indicated? This is the last bullet point.

A. The last one. Oh, down here. Where?

Q. Right here. It says, The uppermost point of the structure.

A. Okay.

Q. What's indicated?

A. 42 feet.

Q. Okay. Then I want you to flip over to page 6 of 13, and then No. 3 is the semi-detached or duplex. And what I want you to do is go to the last bullet point, and it says, The uppermost point of the structure. What is indicated?

A. 50 feet.

Q. Okay. And I want to go to No. 4, the townhouse, and go to the last bullet point and -- let me see. Maybe not the last one, the second to last one, it says, The uppermost point of the

structure. What is indicated?

A. 50 feet.

Q. Okay. And No. 5 says, low density multifamily. And flip over to the next page. And in the second to last bullet point, it says, Uppermost point of the structure. What is indicated?

A. 50 feet.

Q. Okay. And No. 6, the medium density multifamily and go to the second to last bullet point where it states, The uppermost point of the structure. What is indicated?

A. 50 feet.

Q. Okay. And then No. 8 says, neighborhood and convenience store, it says, The maximum height. What is indicated as far as the second to last bullet point?

A. 45 feet.

Q. Okay. Now, did -- when we were going through the design standards, they were under 3D of the PUD Agreement, did you indicate -- did you see anything that indicated that the uppermost point of any structure was 41 feet?

A. No.

Q. Okay. And the PUD Agreement has been

amended. And obviously if you're not familiar with the original PUD Agreement, you probably haven't seen any amendments to the PUD Agreement, have you?

A. No.

Q. Okay. Are you aware of any amendments to the PUD Agreement where they changed the maximum building height from 42 to 41?

MS. CARY: Objection to the form.

Q. You can answer.

A. No.

Q. Okay. Bob, again, for the record, we're referring to Defendant's Exhibit No. 2, the PUD Agreement for Tidewater Plantation. What I want to do is direct you back to page 1 of 13. Let me know when you get there.

A. Okay.

Q. Okay. The last sentence provides, quote, Anything not covered in this document shall be governed by the City Zoning Ordinance and Section 8 of this agreement, end quote.

Did I read that correctly?

A. Yes. Okay.

Q. Okay. Now -- and one of the reasons, Bob, that I asked you to read Defendant's Exhibit

No. 2 prior to your deposition taking place so you would kind of get familiar with the provisions and the language of the PUD Agreement.

Is there anything in the PUD Agreement that specifically addresses building a residence in a floodplain --

MS. CARY: Objection.

Q. -- in Tidewater Plantation?

MS. CARY: Objection to the form.

Q. You can answer.

A. Not that I know of.

Q. Okay. Based upon the time you've had to review the PUD Agreement, you know, prior to your deposition and looking through it during your deposition, again my question is is there anything that specifically says in a floodplain this is how you determine the maximum height of a building?

A. No.

MS. CARY: Objection.

Q. Thank you.

For the record, the answer is "no" to that question?

A. That's correct.

Q. Okay. The other thing I want to make

clear is is that specifically because there's nothing in the PUD Agreement you testified to that specifically addresses building a residence, you know, in a floodplain, then per the PUD Agreement it says you have to refer to what's -- you know, as far as -- basically the City Zoning orders will control, correct?

A. I don't know that as a fact.

Q. Well, again, let me say, just for the record, it says, Anything not covered in this document shall be governed by the City Zoning Ordinance.

Did I read that correctly?

A. You read it correctly, yes.

Q. And you've already testified there's nothing in the PUD Agreement that deals with building in a floodplain as far as determining maximum building height, correct?

MS. CARY: Objection to the form.

Q. You already said no to that, correct?

A. I assume I did, yeah.

MS. CARY: Objection to the form.

Q. Okay. So what I'm asking is because the PUD Agreement doesn't specifically address building a residence in a floodplain as far as

determining maximum building heighth, you would have to look to the City Zoning Ordinance, correct?

MS. CARY: Objection to the form.

Q. That's what the document says. Do you agree with that?

A. I agree with it. If that's what the document says, yes.

Q. Okay. All right.

So, again, let me ask you this: Are you familiar with 23-106?

A. No.

Q. Okay. You're not familiar with that provision?

A. No.

Q. It's part of the City of North Myrtle Beach Zoning Ordinance. And I'll get to that. Okay.

Bob, let me refer you to page 11 of 13.

A. Got it.

Q. You're on page 11 of 13?

A. I am, yes, sir.

Q. Okay. I want to direct your attention to Section 8, City Regulatory Power. And I'll publish this for the record. It says, The City

maintains all regulatory powers as provided by law.

Did I read that correctly?

A. Yes.

Q. Okay. This agreement does not preempt any land use regulations not specifically and intentionally changed by this agreement.

Did I read that correctly?

A. You did.

Q. Okay. Is there anything in this agreement that specifically says that 23-106 of the City of North Myrtle Beach Zoning Ordinance is not applicable?

MS. CARY: Objection to the form.

A. I don't know because I'm not familiar with that section. What section was it?

Q. I'm just talking about the agreement.

A. Okay.

Q. Okay? So what I'd like you to do is you've got a copy of Defendant's No. 2 to your deposition, the PUD Agreement. What I want you to do is look through it, 13 pages, and I want you to tell me if there's any written provision that specifically says that 23-106 is not applicable to the Tidewater PUD, okay?

Do you understand that?

A. I understand that's what you're asking me to do.

Q. See if you can find anything in the PUD Agreement that basically -- that expressly states that 23-106 is inapplicable to this PUD Agreement, okay?

(Pause in the proceedings.)

Q. Bob, if you need to meet with your attorney, Taylor, I don't have a problem with that. I just want your answers to be complete and straightforward. I'm not asking you to speculate or anything like that. I just want you -- just take your time to review the document, please.

(Pause in the proceedings.)

A. I don't see where 23-106 is referenced at all.

Q. My question is there's nothing in Defendant's Exhibit No. 2 to your deposition that specifically states that 23-106 is inapplicable -- as far as that particular regulation, it's inapplicable to the Tidewater PUD subdivision?

MS. CARY: Objection to the form.

A. Well, once again, my answer would be I don't see where it's referenced at all.

Q. So there's nothing in the PUD Agreement, Defendant's Exhibit No. 2, that basically says that 23-106 is inapplicable as far as the Zoning Ordinance regulation applying to the Tidewater subdivision, correct?

MS. CARY: Objection.

A. It also says it's not -- nothing says it's applicable.

Q. Well, all I'm asking is you answer my question, okay?

A. The answer is no, there's nothing in here.

Q. There's nothing in here?

A. Right.

Q. And let me take you back to Section 8 again. What I'm referring to, again, in Section 8, it says, City Regulatory Power, quote, The City maintains all regulatory powers as provided by law.

Did I read that correctly?

A. Where are you again now?

Q. Page 11 of 13.

A. Okay.

Q. Okay. Again, do you see the heading where it says, Section 8, City Regulatory Power?

A. I do.

Q. And it says, The City maintains all regulatory powers as provided by law?

Did I read that correctly?

A. Yes.

Q. And it goes on to say, This agreement does not preempt any land use regulations not specifically and intentionally changed by this agreement. We're talking about the PUD Agreement.

Is there anything in the PUD Agreement -- you looked through it -- that indicated that Section 23-106 does not apply to this PUD?

MS. CARY: Objection --

Q. Tidewater PUD?

MS. CARY: Objection to the form.

A. No. And, again, I would say there's nothing that says it does.

Q. Well, the first sentence says, The City maintains all regulatory powers as provided by law.

A. I'll reconfirm my answer, no.

Q. No. That the PUD Agreement does not directly make 23-106 inapplicable. That's my question.

MS. CARY: Objection to the form.

A. I can't answer that in the affirmative.

Q. I just want to make sure we're clear that you didn't find any language in the PUD Agreement that basically stated that 23-106 did not apply?

MS. CARY: Objection to the form.

Q. What's your response?

A. My response is I don't see anything in there, yes.

Q. Okay. Thank you.

A. Do you have a different document now?

Q. Yeah. Bob, what we're doing is we're going to Defendant's Exhibit No. 3, okay?

(Exhibit No. 3 marked for identification.)

Q. And for the record, this is the Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Tidewater Plantation.

A. Okay.

Q. Now, before your deposition began, I

handed you Defendant's Exhibit No. 3. Did you have a sufficient time to look at it?

A. I've looked at it. I think I --

Q. Okay.

A. -- had sufficient time.

Q. Okay. Prior to your deposition today, Bob, have you ever reviewed Defendant's Exhibit No. 3, the Third Restated Declaration of CCRs and Bylaws for Tidewater Plantation?

A. Have I reviewed them?

Q. Prior to today.

A. Yes.

Q. Okay. I assume you reviewed it when you were on the Master Board of Directors for Tidewater Plantation?

A. Right.

Q. Okay. And did you also review it when you served as the president for the Design Review Board?

A. From time to time, yes.

Q. Okay. And for the record, this document, the Third Amended Restated Declaration of Covenants, Conditions, and Restrictions and Bylaws for Tidewater Plantation, this document was the controlling document when the Nortons

bought their property?

MS. CARY: Objection to the form.

A. I guess it was. Although I can't remember when we did change it. It's been reviewed and changed, like you said, three times. And I think I've been involved with two of those changes.

Q. All right. Let's do this --

A. What's the date on this one?

Q. It was -- here, I'll see if I can help refresh your memory real quick.

Bob, I'm getting ready to hand you what's been previously marked as Defendant's Exhibit No. 8 to your deposition. This is the Summons -- let's go off the record for a second.

THE VIDEOGRAPHER: The time is 10:57, and we're off the record.

(Pause in the proceedings.)

THE VIDEOGRAPHER: The time is 10:58 a.m., and we're back on the record.

Q. All right. Bob, I'm going to -- what I'm going to hand you is what's been previously marked as Defendant's Exhibit No. 8.

(Exhibit No. 8 marked for identification.)

Q. This is a copy of the Amended Verified Complaint, and the Case Number is 2021-CP-26-04599. It's the lawsuit where Tidewater Plantation sues, essentially, the Nortons.

So when I refer to, you know, Suzanne N. Norton Individually and Kenneth R. Norton Individually and Suzanne 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 8th, 2014, Defendants, what I'm going to do, I'm just going to refer to that as the Nortons; is that all right?

A. Sure.

Q. Okay. So this is a lawsuit that was brought by Tidewater Planned Community Association, Inc., Plaintiff, and it was -- the Amended Complaint was filed on August 30, 2021, okay?

And do you need a minute to look at the Amended Complaint, to look through it real quick?

MS. CARY: You haven't given it to him.

Q. Here. I'm sorry. I'll get it to you.

I apologize. Here we go.

A. What am I supposed to be looking at, just the whole document?

Q. Why don't we just do this: The first page starts off -- page 3 is the Amended Verified Complaint and indicates The Parties, and then what I want to do is direct your attention to page 4 of Defendant's Exhibit 8 where it says, Tidewater Plantation and its Covenants, okay?

And then what I'll do is paragraph 8, okay, I'll read this into the record. Tidewater Plantation (the "Association" or the "Development") is a Planned Unit Development ("PUD"), which exists and may be developed in accordance with certain terms and conditions by agreement dated April 4, 1989, with the City of North Myrtle Beach and Southern Land Golf Company, LTD, which is incorporated herein by reference the Tidewater PUD Agreement.

Okay. So it references the PUD Agreement.

A. Uh-huh.

Q. And then the next page, paragraph 9 references the governing documents for Tidewater Plantation as of August 30, 2021.

And subparagraph e [sic] mentions the Third Amended Restated Declaration of Covenants, Conditions, and Restrictions for Tidewater Plantation. It was recorded in Horry County Register of Deeds Deed Book 3831, page 1733. And it talks about amended in Deed Book 4013, page 1043, in Deed Book 4388 at page 2409, okay?

Do you see that?

A. Sure.

Q. Okay.

A. Yes.

Q. And the next document, subparagraph b, is Property Owners Rules and Regulations Manual, recorded in Horry County Register of Deeds in Deed Book 4369, page 1318. And it's got the parenthetical (the "Rules and Regulations").

And subparagraph c talks about Design Review Board Standards, Requirements, and Procedures. And it's got August 6, 2020, recorded in the Horry County Register of Deeds Deed Book 4275, page 2053. It's got in parenthetical (Design Review Board Standards).

And then subparagraph d, Contractor Work Rules, March 2021st [sic]. It's got a parenthetical (the Contractor Rules). And it

says it's attached herein as Exhibit A.

So subparagraphs a, b, c, and d were the governing documents that were in place at the time the lawsuit was brought against the Nortons.

Do you agree with that?

A. When was the lawsuit brought?

Q. It was brought on -- it was recorded on August 30, 2021. That's the amendment, the amended date. The original date of the lawsuit was July 12th, 2021.

A. Okay. What was your question again?

Q. My question was -- let me direct your attention to paragraph 9 of the Amended Complaint.

A. Right.

Q. It talks about -- it says roughly, The relevant Tidewater Plantation Community Association, Inc., governing documents, were hereafter [sic] incorporated by reference, hereafter [sic] collectively referred to as the governing documents, include but are not limited to, and then you've got subparagraph a, b, c, and d.

Did I read that correctly?

A. Yes, you did.

Q. And my question is, Bob, the documents listed in subparagraph a, b, c, and d were the governing documents that were in place at the time that this lawsuit was filed? Again, it's the Nortons.

MS. CARY: Objection to the form.

Q. You can answer.

A. Okay. The lawsuit was --

Q. The original lawsuit was filed on -- let me see -- July 12, 2021?

A. And these were all recorded in -- when? August 2020?

Q. These were the documents that were all recorded that were -- as far as that were -- they were the applicable controlling documents of the association.

A. All right. The only date on any of those was Item c. A and b don't have no dates on them.

Q. Okay. Well, the point, paragraph 9, basically, this is the lawsuit brought by Tidewater Plantation Community Association, Inc. They're the plaintiff. And their attorney, Amanda Bailey, who's the attorney for the Association, is indicating that when they sued

the Nortons in this lawsuit, in this Amended Complaint, they indicate in paragraph 9 these were the controlling governing documents that applied in subparagraph a, b, c, and d.

Do you either agree or disagree with that?

A. I agree that that was what was said. It's right here.

Q. And you would agree also that in paragraph 8 that Mrs. Bailey, the association's attorney for the Board of Directors, indicated the PUD obviously was an applicable agreement and was controlling.

Do you have any reason to disagree with that?

A. I don't have any reason to disagree with it, but it doesn't necessarily mean I agree with it because I wasn't privy to --

Q. Is it your position that you don't think the PUD is the controlling document?

A. No. I didn't say that.

Q. Okay. Okay. One second. So what I'm going to do now is I'm going to hand you what's been previously marked as Defendant's Exhibit 3 to your deposition. This is a Third Amended

Restated Declaration of the Covenants and Restrictions For Tidewater Plantation.

A. Uh-huh.

Q. Okay. My question is, Bob, is there anything in Defendant's Exhibit No. 3, the Third Amended Restated Declaration of Covenants, Conditions, and Restrictions for Tidewater Plantation that indicates the maximum building height is 41 feet?

MS. CARY: Objection to the form.

A. I'm not sure, to be honest with you.

Q. Let me direct your attention to Article 9, Architectural Standards.

A. That's what I was looking for because that's our part that governs the formation of the Design Review Board.

Q. Okay. Yeah, go to Article 9.

A. I'm on my way.

Q. Okay.

A. Okay.

Q. Bob, just for the record, regarding Article 9, Architectural Standards --

A. Uh-huh.

Q. -- it starts on 9.1, General, on page 26, and it stops on page 30. I think the

last -- yeah.

Do you agree with that?

A. Yes.

Q. Okay. So what I want you to do is look at pages 26 through 30 and see if there's any reference in those sections, subsections that indicates that the maximum building height in Tidewater Plantation is 41 feet.

(Pause in the proceedings.)

A. Nope. No.

Q. Okay. Do you want to look at any other provisions or any other sections?

A. Of Article 9 or the whole --

Q. Or of the Third Amended -- Defendant's 3, Third Amended Restated Declaration of Covenants, Conditions, and Restrictions because they go all the way up to --

A. No. I don't find it necessary really.

Q. They go up to Article 19.

A. Yeah, I know.

Q. All right. Well, let me refer you to -- all right. What I want to do is I want to direct your attention to Exhibit B, okay? And that's located -- the Bates stamp page is 1815. If you want me to, I can find it for you real quick.

A. In here?

Q. Yeah. It's Defendant's Exhibit No. 3. We're still referring to the Third Amended Restated Declaration.

A. Give me the page number again.

Q. It's an exhibit so it doesn't necessarily have a page number, but it has the -- deed book page is 1815. I can find it quicker for you real quick. Let me look at it.

All right. Okay. Here you go. Here you go. It shows on the top where it was recorded. It's in Deed Book 3831 at page 815. And it indicates this document was recorded on June 26, 2015.

A. Correct.

Q. Okay. Now, if you go -- the first thing it shows, it shows Exhibit B. Then under Exhibit B, there's a heading called Supplemental Use Restrictions.

Did I state that correctly?

A. Yes.

Q. Okay. What I want to do is I want to refer you to paragraph 2 where it says, Building Heighth, okay? What I'd like you to do is read that into the record, and then I'll have some

follow-up questions.

A. Bullet 2, Building Heighth, With respect to the units within the property described in Exhibit A heretofore, no buildings, dwellings, or other structures shall be constructed on a lot which has a heighth exceeding 42 feet above the elevation of the average finished grade of the lot. Declarant reserves the right to modify, amend, or change well within heighth restrictions as it may apply to any unit or dwelling within the additional property subject to this declaration and upon the filling [sic] of a Supplemental Declarations of Record provided. However, that all heights shall be subject to the provisions of the PUD Agreement of April 4th, 1989, as it may be amended.

Q. Okay. So the building height basically says is that when determining building height, they indicate that the PUD Agreement controls, correct?

MS. CARY: Objection to the form.

Q. Because remember where it says, However, that all heights shall be subject to the provisions of the PUD Agreement April 4th, 1989, as may be amended.

Did I read that correctly?

A. You read it correctly, yes.

Q. Okay. So first let's just focus on Defendant's Exhibit 3, the Third Amended Restated Declaration, CCRs, and Bylaws for Tidewater Plantation. It indicates that the maximum building height is 42 feet, correct?

A. Correct.

Q. Okay. It doesn't say 41 feet?

A. Correct.

Q. Okay. And then the last sentence of paragraph 2 again indicates -- and I want to add emphasis too -- it basically says, however, that all heights shall be subject to the provisions of the PUD Agreement of April 4th, 1989, as may be amended.

Did I read that correctly again?

A. You read it correctly.

Q. So in order to change the maximum building height, you have to amend the PUD Agreement.

Do you agree with that?

MS. CARY: Objection to the form.

A. I don't know if I agree with that.

Q. It says right here that in order to

change the maximum building height under subparagraph 2 is 42 feet, correct?

A. Right.

Q. And it indicates that in order to change the maximum building height you have to amend it, correct? It says that in subparagraph 2.

A. Who has to?

Q. It says right here, it says, essentially -- I'll get it. Okay. It says, in subparagraph 2, it says the maximum building height can be amended. I mean, it does say that, correct?

A. It says that, yes.

Q. Okay. Are you aware of any amendment to the Third Amended Restated Declaration where the maximum building height for structures being constructed in a floodplain with a limited maximum building height from 42 to 41, are you aware of any amendment that exists?

A. No.

Q. Okay. Are you aware of any amendment to the PUD Agreement -- and you know what I'm talking about, the PUD Agreement. We've already discussed it.

A. Sure.

Q. Are you aware of any amendment to the PUD Agreement where it reduces the maximum building height from 42 to 41 feet in any of the subassociations that we went through in the PUD Agreement?

A. No. No changes in the PUD Agreement.

Q. Okay. Bob, can you point to any of the governing documents for Tidewater Plantation where -- and I'm just talking about from the PUD Agreement to the Third Amended Declaration, CCRs or any other amendments or other relevant documents -- where it clearly states where they've reduced the maximum building height from 41 to 42? Are you aware of any amendment?

When you were on the Board of Tidewater Plantation or when you were the president of Tidewater Plantation and also when you were the president of the Design Review Board, are you aware of any amendment to the PUD or Third Amended Declaration of CCRs and Bylaws where they changed the maximum building height from 42 to 41 feet and specifically, say, in South Island?

A. No.

Q. Okay. I think I've handed you one of these documents. Do you have a Section 23,

Conformity With All Regulations Required? See if you have a copy of that. This is what it looks like. Over there.

A. No, I don't have a copy of this.

MR. BELLAMY: Let's go off the record for a second.

THE VIDEOGRAPHER: The time is 11:17, and we're off the record.

(Pause in the proceedings.)

THE VIDEOGRAPHER: The time is 11:18 a.m., and we're back on the record.

Q. Okay. Bob, for the record, I've handed you Defendant's Exhibit 4 to your deposition. It is part of the City of North Myrtle Beach Zoning Ordinance, okay?

(Exhibit No. 4 marked for identification.)

Q. And on the first page it references Section 23-100, Conformity With Regulations Required.

Did I read that correctly?

A. Yes.

Q. Okay. And what I'd like you to do is, the next sentence, would you publish that for the record where it says, No building?

A. You want me to read that?
Q. Yeah.
A. No building, structure, or land shall hereafter be used and no building, structure, or part thereof shall be erected, constructed, converted, enlarged, moved, or structurally altered unless in conformity with the regulations set forth in this chapter.
Q. Okay. So this regulation section, this Section 23-100 indicates that this part of the City Zoning Ordinance supplements the -- as far as the PUD Agreement, the Third Restated Declaration of Covenants, Conditions, and Restrictions, the CCRs and Bylaws, the Design Review Board as far as standards and requirements, they're supplemented by this section of the City Zoning Ordinance.
Do you agree or disagree with that?
MS. CARY: Objection to the form.
A. I've never heard of it, so I can't agree or disagree with it.
Q. Okay. Well, this particular section was originally enacted in 1988.
Do you see that?
A. Yeah.

Q. Okay. And you didn't go on the Board until, I think, roughly sometime after 2000 --

A. Right.

Q. -- '20, okay. Or 2000, excuse me.

You were originally first on -- I think you were on the Design Review Board first, correct?

A. A couple months, yes.

Q. Okay. And then subsequently when you went back on the Design Review Board -- and I think back in 2020, you were the president of the Design Review Board, correct?

A. For a couple months.

Q. Okay. Y'all never discussed Section 23-100 while you were on the Design Review Board back in 2020?

A. No.

Q. Okay. Have you ever read this section before?

A. No.

Q. Okay. Are you sure about that?

A. I've never seen it.

Q. Okay. All right. Are you familiar with Section 23-106?

A. No.

Q. Okay. All right. We'll get to that.

What I want to do --

A. Other than it showed up on one of these documents.

Q. We'll talk about that.

What I want to do is go to the next page, okay? And it indicates Section 23-106, Measurements and Exceptions to Height. If you would read that into the record, and then I'll have some follow-up questions. And you want to start where beginning quote, The height of the building shall be, and keep reading?

A. Section 23-106, Measurements and Exceptions to Height. The height of the building shall be measured from the mean elevation of the finished grade at the front of the building or structure to the midpoint between the eaves and the highest point of the roof except the single-family and duplex buildings in design floodplain areas as established by the city's --

Q. You mean design flood hazard areas. Keep going.

A. -- established by the city's flood damage control ordinance shall be measured from the established certified floor elevation to the

midpoint between the eave and the highest point of the roof. Height limitations shall not apply to chimneys, church spires, water tanks, parapet walls not exceeding 6 feet, or necessary mechanical features not occupying more than 15 percent of the roof area. Within the HC district, height limitations shall not apply to nonhabitable architectural features, such as cupolas, turrets, and corner towers, which -- when the aggregate of the feature exceed the maximum building height or occupied no more than 20 percent of the roof area, no more than 40 percent of the perimeter area. The building articulation provided by these features exceeding the height allowed shall respond to corner conditions, public open spaces, visual axes, or building entities [sic].

Q. Okay. Some of -- as far as what you read into the record -- some of it's not totally applicable -- but does that refresh your memory a little bit? Because I think earlier you talked about there was an appeal that the DRB filed with respect to the City Board of Zoning Appeals.

Let me see if I can refresh your memory on this. Back in 2020, the Nortons submitted

their architectural plans and drawings that were prepared by Felix Ayres who is a licensed architect.

A. Right.

Q. Okay.

A. Correct.

Q. Upon receipt of the architectural plans, specifications, and drawings, the Board had a meeting, reviewed them, and rejected the plans, correct?

A. Correct.

Q. Okay. And then subsequently Mr. Norton took those plans that were prepared by Felix Ayres, the architect, and submitted them to the City, and the City issued a building permit and signed off on the plans.

A. Correct.

Q. Do you remember that?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. Okay. So what happened is once the DRB learned that the City had approved of the architectural plans prepared by Felix Ayres regarding new construction on the Nortons' Lots

407 and 408, based upon that, the DRB filed an appeal challenging that the cupola was not a necessary mechanical feature, correct?

A. Correct.

Q. So does that kind of help refresh your memory about 23-106?

A. No.

Q. That's -- okay. Okay. All right. Okay.

So do you understand the significance of 23-106?

A. I understand what it says, yes.

Q. So the way I read it, okay, if you're in South Island -- and South Island is in Tidewater Plantation, it's a subassociation, correct?

A. Correct.

Q. It's in a floodplain?

A. Correct.

Q. Nortons' Lots 407 and 408 are in the floodplain, correct?

A. Correct.

Q. And 23-106, instead of measuring from the actual grade, okay, you first determine what the base certified flood height is, okay?

A. Okay.

Q. So if you're already in a floodplain, okay, you have to determine what the AE is, and the AE was 12 feet on the building permit.

You understand what I mean by that?

A. Yeah.

Q. Okay. So basically if you're -- like I say, if you're in the floodplain, you've got 12 feet to get out of the floodplain, and per 23-106 and other relevant provisions of the Flood Damage Control Ordinance, 1 foot above that is the base certified flood level.

Do you agree with that?

A. Yes.

Q. Okay. Then from that standpoint, you measure the maximum height of the roof, okay? So once you determine the base certified level of -- as far as that's your first building space that you can build in, then you measure that up to the midpoint between the eave and the highest point of the roof, okay?

Do you agree that's what 23-106 says?

MS. CARY: Objection to the form.

Q. You can answer.

A. I agree that's what it says, yeah.

Q. Okay. So you understand is is that when

you're not in a floodplain, okay, and you're in Tidewater Plantation, you measure from the actual grade to the highest point on the roof, correct?

A. Yeah.

Q. Okay. But in this particular situation, when you're in a floodplain, 23-106 would control.

Remember when we went through the PUD Agreement, Bob?

A. Yep.

Q. Okay. And remember when I asked you to look in the PUD Agreement, was there anything in the PUD Agreement that specifically stated that 23-106 did not apply in determining maximum building height in a floodplain?

And remember your answer was there was nothing that specifically addressed 23-106 in the PUD Agreement, correct?

MS. CARY: Objection to the form.

A. There's nothing that says that it did or didn't.

Q. There's nothing that even -- what I'm saying is when you read the PUD Agreement, okay, there's nothing in the PUD Agreement that specifically addresses 23-106. It didn't mention

it either way.

A. No.

Q. And remember what the PUD Agreement says, if it doesn't specifically say that a particular regulation of the City of North Myrtle Beach Zoning Ordinance is inapplicable and there's nothing in the PUD Agreement that addresses -- you had already testified -- there's nothing in the PUD Agreement that specifically addresses building in a floodplain, correct?

MS. CARY: Objection to the form.

A. Restate that question.

Q. Okay. I asked you earlier when you were going through the PUD Agreement -- and I gave you ample and plenty of time to review the PUD Agreement in its entirety. It's 13 pages. I specifically asked you is there anything in the PUD Agreement that dealt with building in a floodplain. I think your response was no.

MS. CARY: Objection to the form.

A. There's nothing that referenced 30- -- is it 32-106?

Q. 23-106.

A. There's no reference to 2306 [sic].

Q. Okay. And there's no reference to

building in a floodplain in the PUD Agreement, correct?

A. If there's no reference to it there, I would say --

Q. No, but what I'm saying is, I understand there's no reference to 23-106, but there's no reference to building in a floodplain in the PUD Agreement, correct?

MS. CARY: Objection to the form.

A. No.

Q. I mean, you understand what I'm saying. I'm not trying to trick you. What I'm saying is there's nothing that states that under design standards that when you're in a floodplain you measure maximum building height by A, B, C, D. There's nothing that states that, correct?

A. No.

MS. CARY: Objection to the form.

Q. Now, I will admit that the PUD Agreement does address building in Tidewater Plantation when you're not in a floodplain, okay?

A. I agree to that, yeah.

Q. Okay. All right.

And, Bob, for the record, I want to make sure. Is it your position that 23-106 does not

apply to Tidewater Plantation or does apply?

A. It's a murky area. There's things that maybe override it.

Q. Let me ask you this: If the building official, the chief zoning officer for the City of North Myrtle Beach, Ben Caldwell, indicates that 23-106 applies, do you have any reason to disagree with him?

MS. CARY: Objection to the form.

A. What did he further state?

Q. We'll get to that. I'll lay the foundation, but the first thing is --

Let me ask this --

A. I don't know what he said. It would be hearsay because I don't know exactly what he said. I wasn't there.

Q. Well, let me put it this way: Earlier in your testimony you had mentioned that the Design Review Board that you were on that you were president of filed an appeal to the City of North Myrtle Beach Zoning Board, correct?

A. Correct.

MS. CARY: Objection to the form.

Q. And pursuant to that appeal -- and I've got a copy of it -- y'all were appealing the City

approved the building plans for the Nortons to build in a floodplain on Lots 407 and 408, which have been combined, correct?

A. Correct.

Q. Okay. And the City took the position that the Nortons could build a cupola, okay, which exceeded 42 feet, based upon the fact that it was a necessary mechanical feature, correct?

A. The City approved it?

Q. The City approved it, yes.

A. They got the permit for it.

Q. The building permit --

A. Yeah.

Q. -- and they approved the plans, correct?

A. Right.

Q. So I want to make sure we're in agreement on this. The City of North Myrtle Beach approved the building plans, the Nortons' building plans that were prepared by Felix Ayres, their architect, to build new construction, their house, residential house on the combined lots of 407 and 408.

Do you agree with that?

A. Yes, I do.

Q. Okay. And once the Design Review Board

found out about that, y'all filed an appeal --

A. Right.

Q. -- to the City of North Myrtle Beach Board of Zoning Appeals, correct?

A. Correct.

Q. And what y'all are challenging it on is you were saying that on the plans, the Nortons' plans prepared by Felix Ayres, it showed a cupola, correct?

A. Correct.

Q. And the City took the position that the cupola was fine because it was a necessary mechanical feature. And when it's a necessary mechanical feature, you don't count it as maximum building height.

Do you agree with that?

MS. CARY: Objection to the form.

A. I agree with part of the City agreed.

Q. Well, we'll get to that. We'll get to that.

A. Okay. All right.

Q. Everything that I've said, do you have any reason to disagree with what I've already said?

A. No.

Q. Because I'm trying to give you the background information, okay?

A. Right.

Q. So what the Board did -- you were on the Board then. I think you were president of the Design Review Board.

A. Uh-huh.

Q. I think Jeffers filed the appeal on behalf of the Design Review Board and took exception that was saying that the cupola was not a necessary mechanical feature, and, therefore, it exceeded the maximum building heighth of 42 feet.

Did I say that correctly?

MS. CARY: Objection to the form.

Q. Do you agree with that?

A. Yes.

Q. All right. Then what happens next is is a hearing before the City of North Myrtle Beach Board of Zoning Appeals. Were you present at the hearing?

A. Yes.

Q. And the Board basically reversed Ben Caldwell in indicating that the cupola was not a necessary mechanical feature, okay?

A. Correct.

Q. Okay. Now, but what the Board didn't do, they did not indicate that Rule 23-106 did not apply in its entirety, correct?

A. Correct.

Q. Okay. Just for the record, let me ask you this, Bob: When I was referring to the City Zoning Ordinance, specifically 23-100, Conformity with Regulations Required, and then it's part of the -- like I mentioned earlier, part of the City of North Myrtle Beach Zoning Ordinance, you're not aware of any document -- not document, you're not aware of any amendment to the Third Amended Restated Declaration of CCR Bylaws that there's an amendment that basically says that Section 23-100 through 23-106 does not apply to Tidewater Plantation as far as design standards dealing with maximum building height either in a floodplain. You're not aware of any amendment, are you?

A. Correct.

MS. CARY: Objection to the form.

A. I'm not aware of any.

Q. Okay. All right.

So as far as you're concerned that the

23-100 would apply as part of the City Zoning Ordinance. There's nothing that you're aware of that says this does not apply to -- as far as the design review standards in Tidewater Plantation?

MS. CARY: Objection to the form.

Q. Do you understand my question?

A. No.

Q. My question is, 23-100 through 23-106, okay?

A. Right.

Q. We'd agree this is part of the City Zoning Ordinance, okay?

A. Correct.

Q. And part of it deals with building in a floodplain, okay?

And there's nothing that you're aware of, there's no document, there's no amendment to the PUD Agreement, there's no amendment to the Third Restated Declaration of CCRs and Bylaws amendment that basically says that 23-106 does not apply?

A. No.

Q. Okay. Bob, I just handed you Defendant's Exhibit 9 for the record.

(Exhibit No. 9 marked for

identification.)

Q. It's an email that you published to the Nortons, correct?

A. Correct.

Q. Okay. Take a minute and read through it real quick, okay? And let me know when you've had a chance to review it.

MR. BELLAMY: Let's go off the record for one second, please.

THE VIDEOGRAPHER: The time is 11:36 a.m., and we're off the record.

(Recess.)

THE VIDEOGRAPHER: The time is 11:40 a.m., and we're back on the record.

Q. Bob, I've recently handed you what's been previously marked as Defendant's Exhibit 9 to your deposition. It is an email from you to Mr. and Mrs. Norton. It's dated July 6, 2020, on a Monday. And essentially what it says is that after a preliminary review for the new construction on their lots, essentially y'all denied their plans, okay?

A. Correct.

Q. Okay. Did I state that correctly?

A. Yes.

Q. And then you've got, essentially you've got nine, ten paragraphs that kind of set forth your reasons why you deny -- you know, why the DRB approving their plans for new construction on Lots 407 and 408 in the Tidewater part -- subassociation of the Tidewater Plantation, correct?

A. Correct.

Q. Okay. Now, let's look at No. 1, okay? No. 1 starts out -- and I'll quote -- The height restriction on houses in all Tidewater neighborhoods is 41 feet.

Okay. Now, that's your statement, okay?

A. Correct.

MS. CARY: Objection to the form.

Q. That's what -- when you emailed the Nortons, this is what you prepared, this email that you sent to the Nortons, correct?

MS. CARY: Objection to the form.

A. I personally did?

Q. Well, it's your --

A. Well, I signed it. I signed off on it, yeah.

Q. Okay. Let me ask you this: If you didn't prepare this, who prepared the reasons why

the DRB rejected the Nortons' new construction plans?

A. The entire Board reviewed the plans.

Q. Okay. And you've got -- you know, the basis for the rejection sets forth the reasons are 1 through 10, correct?

A. Correct.

Q. Did you prepare all reasons 1 through 10, or was that the consensus of the Board?

A. That's consensus of the Board.

Q. And that's the Design Review Board? Okay.

A. Correct.

Q. How many people were serving on the Design Review Board at that time?

A. We've got -- some of them are dead. One, two -- probably at least six.

Q. Okay.

A. I'd have to sit down and write them down, and I still don't know if I'd get them all.

Q. All right. Let me at least see. Let's just try. To the best of your memory, do you remember who was on the Design Review Board with you at that time back in July of 2020?

A. Yeah. It was Ann Lippincott.

Q. Okay.
A. It was Dave Jeffers.
Q. Okay.
A. It was Ray Oksala. It was Larry Praetorius. It was a period of time where Ed Boyer was on it, but he might have been on a leave of absence because his wife was down at MUSC having a bone marrow transplant for multiple myeloma, and he spent some time down there. So I don't know if he was physically at that meeting or not.
Q. Okay. Okay.
Now, looking at Defendant's Exhibit No. 9, if you flip to the second page.
A. The second page.
Q. Yeah.
A. I don't have a second page.
Q. Flip over.
A. Oh, okay.
Q. And it says, If you have any questions regarding the above DRB decisions, please do not hesitate to contact Bob Moss, DRB Chairman.
A. Correct.
Q. That's your electronic signature, correct?

A. Yes. Yeah.
Q. Did any of the Board members sign it?
A. Not that I know of, no.
Q. Okay. So you're the only -- so you signed it on behalf of the --
A. Sure. Of the Board, yeah.
Q. -- as the DRB Board Chairman, okay?
So the point I want to make clear, this is an email that you're sending to Mr. and Mrs. Norton informing them that their new construction plans prepared by Felix Ayres have been rejected by the Design Review Board. And you set forth the reasons why you rejected their new building plans based upon subparagraphs 1 through 10; is that a fair statement?
A. Correct.
Q. Okay. Let's go back to paragraph 1 where you state that the height restriction on houses in all Tidewater neighborhoods is 41 feet. Okay.
A. Correct.
Q. What documentation, what governing documents do you have to support that statement that the maximum building height in the Tidewater community is -- for everything, residential,

commercial is 41 feet? What documentation do you have to support that statement?

A. Our standards.

Q. Okay. All right. Now --

A. For each specific neighborhood.

Q. All right. Let's talk about this. Let's go back. Remember we talked about the PUD Agreement, okay?

A. Yeah.

Q. You indicated that you never reviewed the PUD Agreement prior to today.

A. Me personally?

Q. Yeah.

A. No.

Q. But you acknowledged that the PUD Agreement, when you went through the relevant -- the design standards, that all the design standards for new construction within the PUD Agreement in the different subassociations was either 42 feet or 50 feet. You agree with that.

None of the design standards indicate that any of the residential, commercial buildings had a maximum building height of 41 feet?

MS. CARY: Objection to the form.

A. The 41 feet I agree with. The other

numbers you gave were for different type of neighborhoods.

Q. Right. Right.

But there's nothing in the PUD Agreement that says any residential or commercial construction in the different subassociations, that the maximum building height is 41 feet, correct?

A. Correct.

Q. Okay. And then in the next thing we looked at is the Third Amended Restated Declaration of Covenants, Conditions, Restrictions and Bylaws or CCRs for Tidewater Plantation.

A. Yeah, correct.

Q. And remember I asked you that at the time that the Nortons submitted their plans and design drawings prepared by Felix Ayres, I think you testified that that particular document -- I think it was Defendant's Exhibit No. 2 or the Third Amended Restated Declaration of CCRs -- was the applicable document that applied to as far as any construction standards regarding the Norton property.

Do you agree with that statement?

MS. CARY: Objection to the form.

A. You kind of lost me in the bushes there.

Q. Okay. All right.

Let me do it this way: On the Third Amended Restated Declaration, CCRs and Bylaws, is there anything in that document that you can point to that indicates that residential construction in a floodplain the maximum building height is 41 feet?

MS. CARY: Objection to the form.

Q. So what I will tell you to do is go to Defendant's Exhibit No. 2. You've got a copy of it, again, for the record. And what I'm referring to, Bob, is the Third Amended Declaration -- there it is right there.

A. It's No. 3.

Q. No. 3. I apologize. For the record, it's No. 3 instead of No. 2, Defendant's Exhibit 3.

So what I want you to do is look through Defendant's Exhibit 3, again the Third Amended Restated Declaration CCRs and Bylaws for Tidewater Plantation, and I want you to look at Article 9 or any section, Article 19, or any exhibit in that document that indicates that

maximum building height in Tidewater subassociation or in Tidewater Plantation is 41 feet.

A. Article 9 just enables the DRB to make and set standards.

Q. Okay.

A. Which then takes you over to this document.

Q. All right. Remember we talked about Exhibit B in Defendant's Exhibit 3.

Do you remember that? Yeah?

A. I guess we did. I don't know.

Q. All right. Let's go to Exhibit B right here, okay? In Exhibit B --

A. Okay.

Q. So you go to the end of the CCRs, okay?

A. Okay.

Q. All right.

A. Where are you?

Q. Right here.

A. What page?

Q. Here. There. Look at the -- under the -- as far as the deed book and page, go by the deed book page, which is, I think it's, like, 1815, I think. It's on the top. Do you see

where I'm saying?

A. I'll find it.

Q. Okay. So just go on the top right here the deed book page is 1815. Here. I'll help you. Here we go.

MS. CARY: Yeah. That's it.

Q. Here we go. Okay. All right.

Again, Bob, we talked about this earlier in your deposition. So, again, you go to Exhibit 3, and then you go to the second paragraph where it says, Building height, okay?

A. Correct.

Q. All right. And it says -- and I'll read it into the record -- it says, Respect to the units within the property described in Exhibit A -- and I'll reference Exhibit A is Tidewater Plantation, okay?

A. All right.

Q. It's the 506 acres. All right?

Hereto no dwelling or other structure shall be construed on a lot which has a height exceeding 42 feet.

Did I state that correctly?

A. Constructed.

Q. Yeah. So a lot which has a height

exceeding 42 feet, correct?

A. Right.

Q. It doesn't say 41 feet, correct?

A. Right.

MS. CARY: Objection to the form.

Q. The answer is "no"?

A. No. It says 42 feet.

Q. Okay. Then it indicates -- and as far as you're aware, there's no amendment to the PUD. Again, there's no amendment to the Third Amended Restated Declaration, Exhibit No. 3, which reduces the maximum building height of 42 feet to 41 feet, correct?

A. No amendment to it, no.

Q. No. There's no amendment that changes it from 42 to 41, okay? And there's no amendment to the PUD that changes it from 42 to 41 that you know of?

A. No.

Q. Okay. Let me -- let's go back to Exhibit No. 9, Bob.

A. Okay.

Q. Let me ask you this: Did you prepare this email, or did somebody else prepare the email for you?

A. We had a -- what we call a director of communications that did it.

Q. Okay. So they prepared the email, but you sent it and you signed off on it, correct?

A. Right.

Q. So you adopted what was set forth in paragraphs 1 through 10, correct?

A. Correct.

Q. Okay. Going to paragraph 3, what was the design standard that -- allegedly that the Nortons may have violated with respect to paragraph 3? In paragraph 3 -- I'll read it for the record -- it says, The roof pitch on the center section of the house measured at 12 and a half and 12.25 was rejected. Okay?

What did -- on the plans prepared by Felix Ayres -- and, again, Felix was a consultant to the Design Review Board, correct?

A. Right.

Q. And my understanding was he was a consultant back -- sometime back in 2020, correct? He was on the Board at that time?

A. Correct.

Q. Now, what is it about the roof pitch that violates? Which particular design review

standard, architectural standard, is violated by the roof pitch as set forth in paragraph 2?

A. Under our standards, the roof pitches can be 7/12, 9/12, and 8/12.

Q. Okay.

A. And his was flatter than that. What were they? I can't remember exactly what they were, but...

Q. The reason why it was flatter is because the house was built on two different lots, correct?

A. I don't know what the reason was.

Q. Okay. Well, you reviewed the plans and specifications, didn't you?

A. Exactly right. We review the plans.

Q. Okay. Let me ask you this: When you review the plans, do you know how to review architectural plans?

A. Yeah.

Q. You know how to read them?

A. With the numbers that are on the plans.

Q. Okay. Okay.

And on the plans, you would agree, the architectural plans, is Felix Ayres was measuring maximum roof height not from the actual physical

grade, correct?

A. That may have been the way he was doing it, correct.

Q. Well, I'm asking you when you reviewed the plans, what you remember?

A. Right.

Q. Okay. So he determined what the base certified flood level was on the plans because Lots 407 and 408 were in a floodplain, correct?

A. Correct.

MS. CARY: Objection to the form.

Q. Let me ask this: We referred to -- give me one second. Let me ask, No. 4 talks about a tabby driveway. Y'all rejected the tabby driveway.

(Telephonic interruption.)

Q. What was the design review standard that the Nortons allegedly violated by -- you know, by wanting to put a tabby driveway?

A. The driveway had to be -- historically had been poured concrete, no stamping, no designs on them.

Q. Okay. Is there anything in the architectural review standards of Tidewater Plantation or, stated differently, the DRB

standards that basically states that a tabby driveway is not allowed?

A. It doesn't fit into the harmonious design of the neighborhoods and that is standard.

Q. Let me just restate my question this way: Is there anything that specifically eliminates or, based on your own design review standards, that prohibits the Nortons from building a tabby driveway?

Like, for example, under the design review standards and requirements, is there anything that specifically says that no homeowner in Tidewater Plantation may construct or build a tabby driveway? Does it state that?

A. No, not the word "tabby."

Q. Okay. It's just your interpretation that the tabby driveway is not harmonious with, currently with --

A. All the other driveways.

Q. Okay. All right.

Let me ask you this: Let's take a minute and talk about -- part of the Design Review Board, y'all are supposed to review the topographical survey, okay? Y'all are supposed to -- the Board is supposed to look at also

plants and trees, you know, that are going to be planted, you know, in close proximity to the residence, correct?

A. Landscaping, yes.

Q. Landscaping. Okay.

MS. CARY: Objection.

Q. You know, landscaping plans, y'all did not approve Sabal palmettos. Why is that?

Do you know what a Sabal palmetto is?

A. Yeah.

Q. Okay.

A. A Sago?

Q. Sable, S-a-b-l-e [sic], palmetto.

Does Tidewater designs --

A. Evidently it was not in the approved plant standards.

Q. Let me ask you this: My understanding is that Tidewater Plantation does not allow -- specifically and expressly does not allow as far as the planting of Sabal palmettos; is that correct?

A. Right.

Q. Do you agree with me?

A. I don't know. I don't know that for a fact. We have a set of approved plants, pictures

of them, go to them. And that's what we go by. Usually there's one guy on the Design Review Board who specialized in the landscaping section of the plan review.

Q. Okay. Let me ask you --

A. I can't remember who that was.

Q. You can't remember whether or not they either permit or do not allow Sabal palmettos?

A. Not without checking.

Q. Okay.

A. There's a lot of other plants.

Q. Let me ask you this: My understanding is there's -- in the design review standards and requirements that it specifically provides that Sabal palmettos are not allowed. And the reason why I ask that is, you know, are you familiar with the South Carolina state flag?

A. Yeah.

Q. Do you agree it's got a palmetto tree on our state flag?

A. I understand that.

Q. And you agree that Sabal palmettos are indigenous to South Carolina?

A. I understand that.

Q. Per design review standards, you want

the plants, trees, and all that to be harmonious currently with nature, you know, surrounding, you know, the PUD development?

A. Harmonious with Tidewater.

Q. With Tidewater. But you want Tidewater to be harmonious with the trees, plants that are indigenous --

A. It's a --

Q. -- to this area, correct?

A. -- coastal forest area.

THE REPORTER: Wait. Wait.

MS. CARY: Objection to form.

Q. What's that?

A. It's a coastal forest area, not a -- it's different. That's the reason people go there.

Q. Okay. But Tidewater Plantation is on the intracoastal waterway, correct?

A. Yeah.

Q. It's in close proximity to the ocean?

A. Close.

Q. And you're basically saying that the Sabal palmetto, which is on our state flag, is indigenous to this area. If you walk out our law firm, you can see, you know, Sabal palmettos.

You're saying that that is not harmonious with the plants and trees in Tidewater Plantation? Is that your --

A. With the Tidewater development.

Q. Okay.

A. It's not approved.

Q. Okay. Bob, you would agree that when you were the Board president of the Master Board or the Tidewater Board and also when you were president of the Design Review Board you had a duty to act in good faith and to comply with the governing documents of Tidewater Plantation.

Do you agree with that?

A. Right.

Q. So whatever the governing documents of Tidewater Plantation stated, you had a duty of good faith and affirmative obligation to comply with the governing documents, correct?

Do you agree with that?

A. I agree with that.

Q. Okay. Let me ask, if you were -- when did you go off the Design Review Board?

A. Probably three or four months after this, after the appeal, I think.

Q. Okay. And you haven't served on the --

as a board of director or on the Design Review Board since you went off the Board back in -- sometime in 2020, after I think July of 2020.

Is that your testimony?

A. I can't --

Q. What I'm asking is did you go back on the Board after --

A. No. No.

Q. Okay. All right.

MS. CARY: Can we go off for a second?

MR. BELLAMY: Yes. Let's take a ten-minute break.

THE VIDEOGRAPHER: The time is 12:01 p.m. We are off the record.

(A recess transpired.)

THE VIDEOGRAPHER: The time is 12:19 p.m., and we're back on the record.

Q. Bob?

A. Yes, sir.

Q. Okay. What I want to do is I kind of want to talk a little bit about -- obviously when you serve on a board, whether you serve on the Design Review Board or you serve on the Master Board, you have certain duties and obligations

with respect to the membership, correct?

A. True.

Q. And one of those duties and obligations is to be familiar with the governing documents, correct?

A. Yeah. Yes.

Q. So if you're going to -- and I understand that the -- as far as the playbook, the manual, so to speak, regarding the design review standards, regarding use restrictions, all that language as far as the maximum height, it's all set out in the governing documents, correct?

A. Yes.

Q. For example, the PUD Agreement. Obviously that is the first agreement that was entered into by the original developer in the City of North Myrtle Beach, and they agreed to enter into a PUD Agreement, the 506 acres, and they agreed to -- what was happening is that particular property was located in the unincorporated part of Horry County. And per the PUD Agreement, they agreed to annex that property where it became part of the City of North Myrtle Beach.

Do you agree with that? Do you

understand that?

A. Yeah.

Q. And the PUD Agreement authorized the creation of a Third Amended Restated Covenants, Conditions, and Restrictions?

Do you have any reason to disagree with that?

A. I don't.

MS. CARY: Objection to the form.

Q. Is that "yes," you agree with me on that?

A. Yes.

Q. Okay. Sometimes she objects to the form, and it kind of -- when you respond, it kind of --

A. I know.

Q. Okay. Now, when you're -- and I understand that by trade you're a veterinarian, okay?

A. Right.

Q. And I understand that you're not a lawyer, okay? And you would agree because you're not a lawyer doesn't mean that you can't interpret documents and understand what they mean.

A. True.

Q. Okay. And when you were serving on -- the president of the DRB and you were also serving as president of the Master Board -- and the DRB is the Design Review Board -- that per the governing documents, you know, as far as what you were going to do, your duties and responsibilities you would -- as far as the scope of what you could, what you couldn't do, what you were allowed to do, you would have to look to the governing documents of Tidewater Plantation, correct?

A. To a degree, yes.

Q. You have to be familiar with them, correct?

A. To a degree, yes.

Q. Well, for example, let's take the design -- you're president of the Design Review Board, okay? And there's a particular document -- remember when we were talking about the complaint that Tidewater filed against the Nortons, okay? Remember it talked about the governing documents and went through the subparagraphs A, B, C, D, E, and F?

A. Yeah, uh-huh.

Q. And one of the documents that had been filed in the Horry County courthouse was the Design Review Board Covenants, Conditions, and Rest- -- or Design Review Board standards and requirements, correct?

A. Right.

Q. Okay. And when you go to the design review standards and requirements, it goes to each subassociation within the Tidewater PUD, correct?

A. Correct.

Q. And it indicates what the maximum building height is, correct?

A. Right.

Q. Okay. And it indicates, you know, what type of trim you can use. It indicates what type of building materials and so on and so forth.

A. Uh-huh.

Q. That's your source document. So when somebody submits a set of plans, and obviously you're trying to ensure whether or not they comply with the governing documents, you look to the Design Review Board standards, correct?

A. Correct.

Q. And in particular on that -- I think

Defendant's Exhibit 9 was the email that you sent to the Nortons.

A. Uh-huh.

Q. One of the things that you had indicated is that the firepit was in violation of the city ordinance, correct?

A. Right.

Q. Okay. Now, let me ask you this: After the Design Review Board rejected the Nortons' architectural plans and drawings prepared by Felix Ayres, subsequently, as you testified earlier, the Nortons took their plans and took them to the City, and the City issued a building permit.

A. Right.

Q. Okay? And they issued a building permit based upon the firepit too, correct?

A. I don't know.

MS. CARY: Objection to the form.

Q. They did. The same plans.

MS. CARY: Objection to the form.

Q. Let me say this: Assuming that they -- the same plans that y'all rejected, okay, the Nortons took to the City, took to Ben Caldwell and submitted it to Ben Caldwell, and he approved

the plans. And you have to approve the plans in order to issue the building permit.

Do you agree with that?

A. You have to ask him why he did it in violation of their own standards.

Q. Well, the point of what I'm saying is is that specifically there's nothing in --

Let me ask you this: Is there anything in the City of North Myrtle Beach Zoning Ordinance that specifically prohibits firepits in the Tidewater Plantation? Can you point to any document?

A. I think it's citywide.

Q. Well, do you have a document? Let me ask you this: Can you --

A. No.

Q. -- cite me a --

A. No. I can't cite it, no.

Q. Okay.

A. But I do know that when we were having issues with it, particularly when there was fires all around, that that came out as something that I assumed or I thought was a city ordinance.

Q. But as we sit here today, you can't reference any specific --

A. No. No.

Q. -- section within the city ordinance that says that the Nortons are not allowed to have a firepit on their property?

A. Not -- not specifically the Nortons or anybody else.

Q. Would it surprise you that some other homeowners in Tidewater Plantation have firepits on their property?

A. If they are, they're in violation of our rules.

Q. Let me ask you this: The design review -- DRB design review standards and requirements, can you point to any provision where it says firepits are not allowed on properties located in South Island?

A. No. No. Maybe communitywide. And it may be under another section that governs owners under rules and regulations.

Q. Bob, we can agree that the governing documents speak for themselves, okay?

A. There's more than one governing document.

Q. The applicable governing documents, okay, speak for themselves. And that would

control when the Nortons bought their property, when the Nortons submitted their plans to be approved by the DRB, the governing documents that were applicable at that time would control.

You would agree with that, correct?

MS. CARY: Objection to the form.

Q. You can answer.

A. Yeah, if they read them.

Q. Okay. Now, you would agree that as a Board member of the DRB you have a duty to be familiar with the PUD Agreement, correct? You have the duty to be familiar with the Amended Declaration, CCRs and Bylaws for Tidewater Plantation?

A. I would agree as we knew it, yes.

Q. Well, the PUD Agreement or any amendments to it.

A. As we knew them.

Q. You had the duty to be familiar with the PUD and any amendments to the PUD at Tidewater Plantation.

Do you disagree with that?

MS. CARY: Objection to the form. Asked and answered.

A. I don't disagree with that if we knew

about it.

Q. Okay. So you're saying you didn't know about the PUD?

A. I knew about the PUD. I didn't know about all the -- if there had been any changes in it or we were ever notified of it.

Q. Let me ask you this: When you were president of the Design Review Board back in 2020 of -- in July of 2020, did y'all have legal counsel?

A. No.

Q. Okay. Was the Tidewater Board representing the Master Board, were they represented by legal counsel?

A. I don't know. I think they were.

Q. Elizabeth Saraniti?

A. Is that who it was? There was some changes made over the years.

Q. Okay. What I'm saying is, as the Board, you had the right to hire legal counsel. You had the right to ask Felix Ayres, who was the Board's consultant, whether or not amendments had been made to the PUD, correct? He's an architect.

A. Yeah.

Q. And you would agree as an architect that

he has to rely on the governing documents as far as preparing his plans and specifications in order to meet the Design Review Board standards and requirements.

You don't disagree with that, do you?

A. No. But he didn't.

Q. Well, he's already given a deposition, so his deposition speaks for itself.

But clearly if -- you're governed by your own Design Review Board standards and requirements for Tidewater Plantation, correct?

A. Yes.

Q. You're governed by the Third Amended Restated Declaration of CCRs and Bylaws for Tidewater Plantation and all amendments to that. You're governed by that, correct?

A. Ditto, yes.

Q. Okay. Okay. And, Bob, wouldn't you agree it would be hard to, you know, make decisions regarding whether plans comply with the documents, you know, the Design Review Board standards and requirements, if you're not familiar with the Design Review Board's standards and requirements?

Wouldn't that be hard to say these plans

either comply or don't comply if you don't know what the standards are?

MS. CARY: Objection to the form.

A. We knew what the standards are, and that's what we complied by.

Q. Well, as you testified earlier, based upon all the governing documents that applied as set forth by Amanda Bailey in the Complaint -- remember she listed the governing documents that applied to the Nortons' lawsuit, and it's set forth through, I think, A through D or E. And it set forth when each of the documents were filed and recorded with the RMC office.

A. Uh-huh.

Q. So those were the controlling documents that we went over today earlier in your deposition.

You don't disagree with that?

A. Right.

Q. Okay. And those were the controlling documents, and we went through those documents, and before your deposition I gave you an ample opportunity to review each of those documents and take as much time as you needed to look at them to become familiar with them.

I understand, based from your testimony, that you haven't been on the Design Review Board since July of 2020 or sometime after that, but the point I'm trying to make is you went through each of those documents -- and I gave you an opportunity to look at them, familiarize with them -- and not one of the documents that we discussed indicated that the maximum building height of a residence in a floodplain is 41 feet, agreed?

MS. CARY: Objection to the form.

A. Agreed.

Q. Okay.

Let's mark this.

(Exhibit No. 10 marked for identification.)

Q. Okay. Bob, I think this is the document that was produced by Tidewater Plantation, and it's Bates-stamped 0020, and it's an email from Cathy Weis to Mike Mahaney. He's the former city manager for the City of North Myrtle Beach, okay?

Let me ask you this: When you were on the DRB back in July of 2020, did you ever go and meet with the City of Myrtle Beach regarding Section 23-106 of the City of North Myrtle Beach

Zoning Ordinance?

A. I told you I'm not familiar with 23-106. The answer is no.

Q. Did you ever meet with any city officials regarding the Design Review Board's appeal, where the City approved the architectural plans and y'all filed an appeal to the City of North Myrtle Beach Zoning Appeal, did you ever meet with Ben Caldwell or Mike Mahaney to discuss --

A. No.

Q. -- the issues of the appeal?

A. No.

Q. Now, what I want you to do is I want you to publish where it says, Cathy, we have the plans and staff will go over your questions.

Would you read that into the record, please, and then I'll have some follow-up questions.

A. Cathy, we will have the plans and staff will go over your questions in detail. To help below we are [sic] -- our general procedures and staff analysis of this situation. See you tomorrow.

We normally measure height to the

midpoint of the roof, but in Tidewater, it is to the peak. And it is measured in a floodplain [sic] from the first finished floor. Further, architectural projections can exceed that height if they are less than 13 [sic] percent of the roof area.

I think I read this before.

The cupola on the plans exceed 42 feet height, but it constitutes less than 15 percent of the roof area. The plans conform with our ordinances.

Q. Okay. The plans he's referring to are the Nortons' plans, correct?

MS. CARY: Objection to the form.

A. I imagine they are. Let me see here. I don't see where it that says that, but...

Q. I'll represent to you that's what he's talking about.

A. Okay. Yes. Up at the top, Meeting tomorrow, Weis, Norton.

Q. Yeah. Okay. Bob, I'm not trying to trick you.

A. Yeah, I'm trying to --

Q. But as far as the City is concerned that the Nortons' plans conformed with the zoning

ordinance. That's exactly what it states.

MS. CARY: Objection to the form.

Q. Correct?

A. Well, that was his interpretation, but that was prior to the meeting.

Q. Well, he's the city manager.

A. The City has made mistakes before. That's the reason we're here probably.

Q. Okay. And look at the date on the email. It's Tuesday, June 22nd, 2021, okay?

A. Yeah.

Q. Okay. Now, remember the Nortons' plans were submitted in 2020, okay?

A. Right.

Q. Sometime in 2020. And the Board ruled on the plans, I think, around July 6th of 2020, correct?

A. If that was the first Monday, that's probably what it was.

Q. And right here you've got the -- Cathy Weis is the president of the Master Board for Tidewater Plantation, correct?

A. Yeah.

Q. You've got an email from Cathy Weis to the city manager, Mike Mahaney from the City of

North Myrtle Beach, and she's disagreeing with the city manager -- or she's consulting with the city manager, who's indicating that the cupola is a necessary mechanical feature, you know, if it's less than 15 percent.

A. Yeah.

Q. So if it doesn't exceed -- you know, the point I'm trying to argue is is that here it is -- that y'all rejected the plans back in July of 2020, and here it is June 2021 and the Board president for Tidewater Plantation is still consulting with the City or disagreeing with the City regarding their interpretation of 23-106.

MS. CARY: Objection to the form.

A. I can't answer that. I don't know why that was done.

Q. Okay.

A. I don't know why he took that position.

Q. Okay.

MR. BELLAMY: Let me mark this real quick. Let's use this one right here.

(Exhibit No. 11 marked for identification.)

Q. Bob, what I've got is -- I've just handed you Defendant's Exhibit No. 11 to your

deposition. What I handed you is a Notice of Lien For Delinquent Assessments By Tidewater Plantation Community Association, Inc., and it deals with the Nortons' property.

And it indicates that the delinquent fines and related charges are in the amount of $29,519. It indicates that attorneys' fees and costs to date are $28,375.72. The total amount outstanding is $57,894.72, in addition to all assessments and reference fees, interest charges, attorneys' fees, costs accruing from the date of this lien until payment is made in full. And the date of the lien that was filed on the Nortons' property is February 22nd, 2022.

Did I state that correctly?

A. Yes.

Q. Okay. Now, as far as, you know, the design review standards and requirements, they set out a fine schedule, correct?

A. Correct.

Q. Did the Design Review Board prepare the fine schedule?

A. Did we prepare the fine schedule?

Q. Yes. Yes.

A. You mean the one that -- in general?

The one that's listed?

Q. The one that's in the governing documents.

A. Yes. Yes.

Q. Okay. Y'all prepared the fine schedule, okay?

A. Yeah.

Q. And then y'all submitted the prepared fine schedule for the Master Board to ratify, correct?

A. Right.

Q. Okay. And did the Tidewater Board consult with the Design Review Board as far as what fines would be applicable to the Nortons?

MS. CARY: Objection to the form.

Q. Regarding the alleged violations of starting construction without DRB approval and removing trees from the property without DRB approval?

A. I feel we probably did, yes.

Q. Okay. What recommendations did y'all make to the Master Board that Cathy Weis was president of as far as what the applicable fine should be?

MS. CARY: Objection.

Q. Did the Design Review Board make recommendations?

A. Yeah. We just went down the list, and things that they violated, we tell them what's been violated. And then the Board, through their attorney it looks like, sets out the letter and the fines.

Q. Just give me a minute. Okay.

Let's do this: What I want to do is refer you back to the Complaint, the Amended Complaint. Okay. And it's Exhibit A. Look at Exhibit A. It says, under Contractor Rules -- it's Exhibit A.

A. Let me find it.

Q. And the page I want to direct your attention to is Contractor Work Rules.

A. All right. Got you.

Q. Okay.

A. I got two copies of that.

Q. Now, what I would want you to do is, for the record, under the Contractor Work Rules, I want you to identify what violations would apply regarding the Nortons allegedly beginning construction without DRB approval and removing trees from the property.

MS. CARY: Objection to the form.

Q. Like, for example, the first one under Contractor Work Rules, it indicates unauthorized exterior change to house or lot. That wouldn't apply.

A. Well, lot clearing.

Q. Okay. Let's go chronologically.

A. Removal of trees.

Q. The next one is commencing construction without DRB approval, including progression to the next construction phase without required inspection.

Would that one apply?

MS. CARY: Objection to the form.

A. I can't remember. One time there was a bunch of fill that was brought in. That might have come under that particular area.

Q. Are you familiar with what violations allegedly applied, you know, regarding the alleged beginning construction without DRB approval?

A. I just said that they brought -- a bunch of fill dirt was put in -- put on the lots.

Q. Okay.

A. Lot clearing or not clear.

Q. So the one I see -- and correct me if I'm wrong -- commencing construction without DRB approval, including progression to the next construction phase without required protections or certifications. That's $500.

Does that particular fine apply in this case?

MS. CARY: Objection to the form.

A. Which one was that again?

Q. No. 2. Commencing construction without DRB approval, including progression to the next construction phase without required inspections and/or certifications.

To your knowledge, does that one apply, Bob?

A. To my knowledge, I can't remember now.

Q. If you don't know, I'll move on.

A. I don't know.

Q. Okay. But let me ask you about the -- when you go back and look at the amount of the fines, do you think that the amount of the fines assessed by the Master Board for Tidewater Plantation -- here. Let me find it. Give me one second.

So what I want to again bring your

attention to, Defendant's Exhibit No. 11, and this is the Notice of Lien For Delinquent Assessments. And they indicate that delinquent fines and related charges are in the amount of $29,519.

In your opinion, is that a reasonable fine amount --

MS. CARY: Objection.

Q. -- to the extent you can speak intelligently about it?

MS. CARY: Objection to the form.

A. I have no idea what they had accumulated at that point in time.

Q. Okay.

A. Once I left, the DRB, I had no idea what is on this page.

Q. Okay. The DRB never consulted with the Design Review Board what would be applicable fines that would apply?

A. Who did?

Q. The Master Board never consulted with the DRB regarding fine recommendations?

MS. CARY: Objection to the form.

A. We may have said that they're in violation of this section -- that section.

Q. Let me put it this way: We sent interrogatories and requests to produce documents to your legal counsel. Are you aware of any requests to produce or emails or notes that deal with communications between the Master Board for Tidewater Plantation Design Review Board regarding applicable fines regarding the Nortons' alleged violations of the DRB construction standards and requirements? Are you familiar?

A. No.

Q. What I'm saying is we haven't gotten any communication. I haven't -- received pursuant to our discovery request, I haven't received any communications between the Master Board and the Design Review Board regarding fines, applicable fines or anything like that.

A. And I don't think we had any.

Q. Okay.

A. Like I said, once I left their hands, it was turned over to them. It's in their purview after that.

Q. This is Exhibit 12.

(Exhibit No. 12 marked for identification.)

Q. Bob, I've just handed you what's been

previously marked as Defendant's Exhibit No. 12 to your deposition. This is titled the Tidewater Plantation Community Association. It's a newsletter.

And then in the upper left-hand corner, it says, President's Message, Bob Moss, President.

And that is you, correct?

A. Right.

Q. My understanding that this was published -- in the upper right-hand corner it indicates August of 2016.

A. Correct.

Q. Okay. What I'd like you to do is is publish where it says, I will attempt to devote this month's message, and then start there. And then stop when you get to, The PUD further states that the maximum. When you get to that point, stop there. Just read it into the record, please.

A. Where do you want me to start again?

Q. I will attempt to devote this month's message.

A. I will attempt to devote this month's message to some facts and figures you just [sic]

might find interesting.

Did you know that Tidewater Plantation was created in 1989 as a Planned Unit [sic] PUD Development on agreement with the City of North Myrtle Beach. At that time, its mission as stated said, Tidewater Plantation exists for the betterment of its residents. Guidelines, rules, regulations are designed to enhance the community and protect property values, maintaining the beauty of its natural environment, providing safety and security and upholding these conditions, which enable residents to enjoy a sense of well being.

The Master Plan states that the PUD consists of 557 acres. At the same time of its initial adoption the PUD allowed for a maximum of 28 -- 2775 units, an 18-hole golf course, a commercial marina, and convenience store. The latter two entities were deleted from the plan by the Developer as was the higher density.

The PUD further states the maximum height of every single family unit is not to exceed 41 feet. Villas, townhouses, and multi [sic] units are not to exceed 50 feet at the uppermost point.

Q. Stop right there.
A. I did.
Q. Okay. Let me ask you this: In your earlier testimony you had indicated that you had never read the PUD document.
A. It's true.
Q. Okay. All right.
But then in the newsletter you indicate, you state, quote, The PUD further states the maximum height of every single family unit is not to exceed 41 feet.
A. That's just common knowledge that's passed down from person to person as they served on the DRB.
Q. But is your testimony today when we went over the PUD document, the original PUD document, it was very clear dealing with the different subassociations for large single family lots, it indicated the maximum height was 42 feet, correct?
A. Right.
Q. Okay. When we went through them -- because I'm not going to go back and go through the PUD document again that we marked as Defendant's Exhibit 3 -- but when we went through

each of the provisions, clearly there was not one provision that indicated in all the subassociations dealing with residential and commercial construction within the PUD that the maximum building height was 41 feet for any subassociation residence, condominiums, or anything like that, or any commercial structures.

A. It also -- even in this it says for other multi unit not to exceed 50 feet.

Q. Right.

So, again, I asked you when we went over the PUD Agreement, there's nothing in the PUD Agreement, so we're clear for the record, that indicates that when you have two large family lots in a floodplain that the maximum building height is 41 feet, correct?

MS. CARY: Objection to the form.

A. It's true.

Q. Okay. So when you made this statement back in August of 2016, that was based upon what somebody else told you; is that a fair statement?

A. It was -- again, it was you meet as a group, the people who have been there -- it's history.

Q. I know.

A. It's history.
Q. Bob, what I'm trying to say is --
A. Is it written down in concrete? No. No.
Q. It's not in the PUD, is it?
A. It's not in the PUD.
Q. And you testified earlier there's no amendment to the PUD that changes the maximum building height from 42 to 41, correct?
MS. CARY: Objection.
A. No. The 1 foot, no.
Q. Now, what's important is is that -- and what I've tried to do is I've showed you a copy of the Complaint, okay, that Tidewater filed against the Nortons, okay?
A. Right.
Q. And in the Complaint, your attorney at that time, Amanda --
A. Bailey.
Q. Bailey. I'm sorry. Thank you. See. Good.
Amanda Bailey had set forth what the governing documents were for Tidewater Plantation, and she went through that list, A, B, C, D, right. Okay? And I've gone through each

of those documents for you, at least a majority of them, and not one has there been any indication that the maximum height was 41 feet in a floodplain, correct?

MS. CARY: Objection to the form.

A. It doesn't mention floodplain.

Q. Okay. Okay.

Bob, when you were president of the DRB, okay, and at some point if somebody violated the DRB standards and requirements, my understanding is is that the Board would make -- the DRB board would make recommendation regarding fine amounts to the Master Board.

A. Correct.

Q. Okay. Now, to the extent that the Master Board approved the fine recommendations of the DRB, did the management company have the right to -- if somebody is paying directly, okay, by direct deposit, did they have the right -- did the management company have the right to go online and deduct out the alleged fine amounts?

A. I have no idea.

Q. Okay. Is there any document that you can refer to or speak to that deals with that?

A. No.

Q. Okay. Let me ask, is it your understanding that if -- let's say if you went out and violated the Design Review Board requirements, you did something -- let's say, for example, you indicate that you can't place a firepit in your yard, okay?

So let's say you go out and place a firepit in the yard, and they write you a letter, the Design Review Board, and says, This is a violation, and basically they recommend a fine, they put you on notice they're going to fine you, is it your understanding that the management company has the right to deduct what the fine amount is from your account, online account? Do they have that authority to do that?

A. Reword your question.

Q. My question is is that if you write a letter -- like in this particular case as an example -- and this is just a hypothetical -- that allegedly, say, you go to Home Depot, get a firepit, build it in your yard, and the Design Review Board issues you a letter saying you're in violation --

A. I'll stop you right there.

Q. Yeah.

A. The Design Review Board does not do that. That's management that does that.

Q. Well, management. What I'm saying is -- but the Design Review Board enforces the design standards within the association.

A. No.

Q. The PUD?

A. No.

Q. Have you read the architectural review standards?

A. That's a violation -- no.

Q. Well, the point I'm trying to make is --

A. Once a property is done and we sign off with it, then management does all the inspections of the properties.

Q. All right. Do y'all require any documentation from the homeowner consenting to and allowing -- is there any written provision that allows the management company to directly -- to adjust the account, the online account, and take out monies for alleged fines and violations?

A. Oh, hell, I have no idea.

Q. Okay. All right.

A. It never came up even when I was on the Master Board.

Q. Let me ask this: To the extent that the management company did that, that they directly went online and took money out of a homeowner's account based upon alleged violations of the Design Review Board requirements and standards, if a management company did that, that would be authorized by the Master Board? Is that your understanding to the extent it occurred?

A. If it occurred, but I don't think they have the authority to do that. I don't know that for a fact.

Q. Okay. When you say they don't have the authority to do that, explain what you mean.

A. To go into somebody's account and take money out. I think there would be -- I think there would be an -- if there's an appeal, a proper appeal, then supposedly it's over at that point in time. I don't think a homeowner -- once an appeal has been settled, I'm not sure they can go back and do --

Q. That's not what I asked you. I asked you do they have the authority, okay? Assuming there's a violation, okay?

A. I think they can put a lien on your property. I don't know if they can go into your

account.

Q. Okay. That's all I'm asking.

A. Yeah. Yeah.

Q. So your understanding is is based upon the construction standard, the governing documents, whatever agreements, that the management company does not have the right to go in and directly debit your account based upon alleged violations of --

A. As far as I know.

Q. Okay. Thank you.

A. Like I said, it's never come up that I know of.

Q. Thank you.

MR. BELLAMY: That's all I've got.

THE WITNESS: Oh, come on.

MS. CARY: I just have a few questions for you, Bob.

THE WITNESS: Okay.

EXAMINATION

BY MS. CARY:

Q. As you know, I represent the Association.

Can you clarify how long were you DRB chairman for?

A. I want to say for a period of about three months.

Q. Three months? When did that start?

A. Hell, I don't know. I don't keep track of that kind of stuff.

Q. Were you DRB chairman when the DRB appealed to the City of North Myrtle Beach regarding the Nortons' design plans?

A. I think at that point in time I don't think I was chairman then, no.

Q. Do you know who it was?

A. I think either Dave Jeffers and maybe Ed Boyer might have been vice chair. He might have come back at that time.

Q. All right.

MS. CARY: Those are all the questions I have for you. Thank you.

THE VIDEOGRAPHER: This concludes the video deposition of Robert Moss. The time is 12:54 p.m., and we're off the record.

(The deposition was concluded at 12:56 p.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

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

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

Witness my hand, I have hereunto affixed my official seal on February 24, 2026, at Myrtle Beach, Horry County, South Carolina.

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

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want (*59*)
wanting (*1*)
water (*1*)
waterway (*1*)
way (*9*)
weather (*1*)
WEIS (*7*)
Well (*30*)
went (*17*)
We're (*25*)
We've (*2*)
wife (*1*)
within-entitled (*1*)
witness (*11*)
Woodside (*2*)
word (*1*)
Work (*4*)
write (*3*)
written (*3*)
wrong (*1*)
WWW.CLARKBOLEN.COM (*1*)

< Y >
Y'all (*17*)
yard (*3*)
Yeah (*61*)
year (*5*)
years (*6*)
Yep (*1*)

< Z >
Zero (*1*)
zoned (*1*)
Zoning (*25*)