

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

TIDEWATER PLANTATION COMMUNITY ASSOCIATION,
INC.,

Plaintiff,

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

SUZANNE N. NORTON, INDIVIDUALLY; KENNETH R.
NORTON, INDIVIDUALLY; SUZANNE N. NORTON, AS
TRUSTEE OF THE SUZANNE N. NORTON LIVING TRUST
DATED MAY 8, 2012; AND KENNETH R. NORTON AS
TRUSTEE OF THE KENNETH R. NORTON LIVING TRUST
DATED MAY 8, 2014,

Defendants.

DEPOSITION OF: FELIX AYRES

DATE: June 9, 2025

TIME: 10:39 a.m.

LOCATION: Bellamy Law Firm

1000 29th Avenue North

Myrtle Beach, South Carolina

TAKEN BY: Counsel for the Counterclaim
Defendant

REPORTED BY: KAREN M. BECKMAN, CSR
Court Reporter

1 APPEARANCES OF COUNSEL:

2 ATTORNEY FOR COUNTERCLAIM DEFENDANT
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11 ATTORNEYS FOR COUNTERCLAIM PLAINTIFFS
12 SUZANNE N. NORTON, INDIVIDUALLY;
13 KENNETH R. NORTON, INDIVIDUALLY;
14 SUZANNE N. NORTON, AS TRUSTEE OF THE
15 SUZANNE N. NORTON LIVING TRUST
16 DATED MAY 8, 2012; AND KENNETH R.
17 NORTON AS TRUSTEE OF THE KENNETH R.
18 NORTON LIVING TRUST DATED MAY 8, 2014:

19 BELLAMY LAW FIRM
20 BY: HOWELL BELLAMY, III
21 1000 29th Avenue North
22 Myrtle Beach, South Carolina 29577
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25 ALSO PRESENT:
JON LANDAU
Videographer

CATHERINE WEIS

(INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: The following will
2 be the videotaped deposition of Felix Ayres in the
3 matter of Tidewater Plantation Community
4 Association, Incorporated vs. Norton, et al., File
5 No. 2021-CP-26-04599.

6 Today's date is June 9th, 2025, and the
7 time is 10:39 a.m.

8 We are here today at Bellamy Law Firm
9 located at 1000 29th Avenue North, Myrtle Beach,
10 South Carolina.

11 The court reporter is Karen Beckman,
12 and the videographer is Jon Landau.

13 At this time, I'll ask all attorneys
14 present to please state their names and whom they
15 represent for the record.

16 MS. CARY: Taylor Cary, Tidewater
17 Plantation.

18 MR. BELLAMY: Howell Bellamy with
19 Bellamy Law Firm representing Suzanne and Ken
20 Norton.

21 THE VIDEOGRAPHER: Okay. You may swear
22 the witness, please.

23 FELIX AYRES
24 being first duly sworn, testified as follows:

25 EXAMINATION

1 BY MS. CARY:

2 Q. Good morning, Mr. Ayres. Is that the
3 correct pronunciation?

4 A. Yes. Thank you.

5 Q. My name is Taylor Cary and I represent
6 Tidewater Plantation.

7 Have you ever been deposed before?

8 A. Yes.

9 Q. In what capacity?

10 A. When you say what capacity, I was
11 actually involved in a court case, I guess.

12 Q. Was it one time before you've been
13 deposed?

14 A. Yes, uh-huh.

15 Q. Was it as an expert witness, fact
16 witness or individually?

17 A. Actually, I was involved in a lawsuit.

18 Q. Okay. Were you a party to the lawsuit?

19 A. Yes, uh-huh.

20 Q. Okay. And did it have anything to do
21 with you in your professional capacity?

22 A. Yes.

23 Q. And what was that case?

24 A. What was the case?

25 Q. Uh-huh.

1 A. It was actually involving another
2 homeowner association.

3 Q. Okay.

4 A. Where I was the architect on that
5 project.

6 Q. Okay.

7 A. Do you need more information?

8 Q. What was the association?

9 A. Prince George.

10 Q. And is that located here in Horry
11 County?

12 A. Georgetown County, yeah.

13 Q. Okay. Well, regardless, I'm just going
14 to go over some ground rules for today's
15 deposition. Since we have a court reporter here
16 and we also have a videotape, but verbal responses
17 are required. No shakes of the head and nods. Yes
18 or noes are preferred.

19 A. Okay.

20 Q. And we'll do our best not to talk over
21 each other. Please let me finish my question
22 before you respond.

23 A. Okay.

24 Q. If you have any questions, please
25 direct them to me. I'm happy to rephrase or repeat

1 my question. And if you do not, I will assume you
2 understood my question; is that fair?

3 A. Yes.

4 Q. And if you want to take any breaks,
5 that's totally fine. I'm happy to do so. I just
6 ask that you do it after you've answered my pending
7 question.

8 A. Okay.

9 Q. Is that fair?

10 Another thing is you might hear some
11 objections to the form during the deposition. You
12 can still answer unless directed not to.

13 A. Okay.

14 Q. Are you being represented by an
15 attorney for the purpose of today's deposition?

16 A. No.

17 Q. And I ask this to everyone. Are you
18 under the influence of any medication which would
19 prohibit you from answering my questions
20 truthfully?

21 A. No.

22 Q. And is there any reason you feel unable
23 to give your testimony today?

24 A. What was that question?

25 Q. Is there any reason you feel unable to

1 give your testimony today?

2 A. Oh. No. No.

3 Q. Okay.

4 MS. CARY: I'm going to mark Exhibit 1.

5 MR. BELLAMY: Thank you.

6 (EXHIBIT 1, Subpoena for Felix Ayres,
7 was marked for identification.)

8 BY MS. CARY:

9 Q. Do you recognize this document? I
10 represent to you it's the document and deposition
11 subpoena we served upon you --

12 A. Yes.

13 Q. -- through Mr. Bellamy's office?

14 A. Yes. Yes, uh-huh.

15 Q. And did you search for any emails or
16 text messages with the Nortons related to the
17 Nortons' proposed home plan in response to this
18 deposition subpoena?

19 A. Did I what now?

20 Q. Search for emails and text message
21 communications with Mr. and Mrs. Norton concerning
22 their proposed home plan?

23 A. Yes.

24 Q. And what did you do to do that search?

25 A. Essentially any information that was

1 requested was provided to you.

2 Q. Okay. And did you do a search for any
3 emails or text messages with the City of
4 North Myrtle Beach related to the Nortons'
5 proposed home plan?

6 A. If it was relative to the Norton file,
7 yes, they were provided as actual information, you
8 know, for this to you, yeah, so...

9 Q. So you searched your email account for
10 any --

11 A. Oh, yeah.

12 Q. Okay.

13 A. Yeah.

14 Q. And did you prepare invoices to the
15 Nortons for the work you performed and the plans
16 you prepared for them?

17 A. Yes.

18 Q. And did you search for those?

19 A. If they were part of that, yes, they
20 would have been provided.

21 Q. Okay. They were not so I'll just
22 request that you produce them. I'll get in contact
23 with Howell for copies of those invoices.

24 A. Okay. All right.

25 Q. And what did you do to prep for today's

1 deposition?

2 A. Actually, the information that was
3 submitted to you, I reviewed that.

4 Q. Okay.

5 A. And essentially that was it, so...

6 Q. Did you speak with anyone?

7 A. Just briefly with Howell regarding, you
8 know, how to prep for a deposition. It's only my
9 second one, so I'm not, you know...

10 Q. Okay. So what was discussed with
11 Howell?

12 A. Speak the truth.

13 Q. Yeah.

14 A. And that was it, so...

15 Q. And how did you have this conversation?
16 Was it call, text, in person?

17 A. Well, when I arrived here this morning,
18 that was it.

19 Q. Okay. Did you graduate undergrad?

20 A. Yes.

21 Q. Where from?

22 A. Clemson.

23 Q. When was that?

24 A. '78.

25 Q. Okay.

1 A. 1978.

2 Q. What kind of degree did you graduate
3 with?

4 A. In architecture.

5 Q. Did you go to graduate school?

6 A. I did not.

7 Q. Do you have any other degrees,
8 certifications, or formal training?

9 A. No. That was it.

10 Q. And what professional licenses have you
11 held?

12 A. South Carolina, North Carolina, and
13 I've been licensed in other states, but currently
14 those are my active license, and in Florida.

15 Q. And in Florida currently?

16 A. In Florida, yeah.

17 Q. And what kind of professional license
18 is that? Is that for just architecture? What kind
19 of license is that that you hold?

20 A. I did not understand your question.

21 Q. What kind of license is that that you
22 hold in South Carolina, North Carolina, and
23 Florida?

24 A. It's a license to practice
25 architecture.

1 Q. Okay. And is it specific to
2 commercial, residential, both?

3 A. No. It's both.

4 Q. And when did you receive your
5 South Carolina license?

6 A. In 1983.

7 Q. And what about North Carolina?

8 A. This is -- I don't have the exact date.
9 It's through reciprocity. I would say 1995. I'd
10 have to -- that may or may not be accurate. I'd
11 have to look at the file and see.

12 Q. And what about Florida?

13 A. That was actually a year and a half
14 ago.

15 Q. Why Florida?

16 A. I designed a project down there for the
17 Duplin Winery, and I did the one in North Myrtle
18 Beach, so they asked me to follow them down there.

19 Q. Okay. And were any of your licenses
20 ever suspended?

21 A. No.

22 Q. And all of your licenses are current?

23 A. Yes.

24 Q. Have you ever received any complaints
25 against your license?

1 A. No.

2 Q. What was your first job after
3 graduating from undergrad?

4 A. Actually, working with an architectural
5 firm in Myrtle Beach.

6 Q. Do you recall what architectural firm?

7 A. It was Timbes Wilund Usry Carter. And
8 Stephen Usry was, I think, the first architect I
9 worked with there. And he actually joined Timbes
10 Wilund, and it became Timbes Wilund Usry and
11 Carter. That was the firm.

12 Q. And what was your title while you were
13 there?

14 A. It was architectural intern.

15 Q. And how long did you work there?

16 A. 12 years.

17 Q. And why did you leave there?

18 A. I formed my own practice.

19 Q. So that's where you went next?

20 A. Yes.

21 Q. Was on your own?

22 And what is your practice called, or
23 what was it called then?

24 A. Ayres & Associates.

25 Q. And it's still called that currently?

1 A. Yes.

2 Q. And when did you first start working
3 with community associations?

4 A. In 1993. Let me back that up. 19- --
5 yeah, 1993, yeah.

6 Q. And what was the first community
7 association that you worked with?

8 A. Wachesaw Plantation.

9 Q. And what did you do for them?

10 A. Architectural consulting.

11 Q. And what does that mean exactly? Did
12 you consult with the association as a whole?

13 A. Basically reviewing the plans that were
14 submitted to the Board for architectural review.

15 Q. Okay. And how long did you do that
16 for?

17 A. I'm still on the Board with them, yeah.

18 Q. And when did you first start working
19 with Tidewater Plantation?

20 A. Oh, I want to say 2019 approximately.
21 Maybe 20- -- yeah, 2019 I'd have to say.

22 Q. And what was the first type of work
23 that you did for Tidewater Plantation?

24 A. It was architectural consulting work to
25 review plans that were being submitted to the

1 Architectural Review Board.

2 Q. And how long did you do that for?

3 A. Approximately two years, I would say.

4 Q. And why did you stop doing
5 architectural consulting at Tidewater?

6 A. It was -- essentially, I resigned. I
7 was asked to leave. I felt the direction that they
8 were taking was inappropriate on the Norton house,
9 and I left because of that.

10 Q. So you left because of the Norton
11 house, the home design?

12 A. Yes.

13 Q. And were there any other homeowner
14 plans that you designed while you consulted with
15 the Tidewater Board?

16 A. No. No. Actually, they were aware of
17 my involvement with the Norton residence before I
18 was even hired.

19 Q. Okay.

20 A. And that was full disclosure to them.

21 Q. When you say to them, who do you mean?

22 A. Can you repeat that?

23 Q. When you say to them, who do you mean?

24 A. The Design Review Board.

25 Q. What experience do you have

1 interpreting community association documents?

2 A. Repeat that.

3 Q. What experience do you have
4 interpreting community association documents?

5 A. I'm very familiar with most
6 associations I'm involved with. I review those a
7 lot.

8 Q. Uh-huh.

9 A. Yeah.

10 Q. And when you review them -- what are
11 you looking for when you review them?

12 A. What their requirements are, you know,
13 for plan submittals and what's been published, if
14 you will, through their guidelines.

15 Q. Okay. And what experience do you have
16 interpreting city zoning ordinances?

17 A. Quite a bit. You know, we review those
18 quite often on every project we're involved with.

19 Q. Uh-huh.

20 A. The ordinances are part of the
21 governing city documents, and we're required to
22 actually prepare drawings that we do in accordance
23 with their ordinances.

24 Q. And have you ever worked with the City
25 of North Myrtle Beach before?

1 A. Oh, yes.

2 Q. How many times?

3 A. I was involved with Barefoot Landing.
4 I'm very familiar with the City and, you know,
5 their requirements, so... I mentioned Dupin
6 Winery. I was involved with that project as well.
7 Just over 25 years.

8 Q. And what experience do you have
9 interpreting PDD or PUD agreements?

10 A. Again, they run tandem with the
11 ordinances. PDD documents actually are recorded or
12 supposed to be recorded and the guidelines,
13 architectural guidelines, follow in tandem with
14 them. And guidelines are pretty much, you know,
15 kind of a layman's term of what's in the covenants,
16 the PDD documents.

17 Q. And what experience do you have
18 interpreting FEMA federal regulations?

19 A. Through every design we've done in the
20 coastal area, we've actually been familiar with
21 those ordinances. Almost every municipality
22 requires the ordinance to be followed. Primarily
23 due to FEMA, you know, Georgetown County was
24 involved with Hurricane Hugo in 1989, and the
25 ordinances were strengthened, particularly in

1 Georgetown County where a lot of my practice has
2 occurred.

3 They were basically rewriting a point
4 of history when the ordinances were written
5 regarding flood plains. It became a benchmark for
6 this area. So every coastal design is actually
7 designed around the ordinances regarding the flood.

8 Q. And do you have any experience
9 interpreting how city zoning ordinance, PDD
10 agreements, and those FEMA federal regulations
11 interact?

12 A. Again, they're all cohesive. You know,
13 they all follow each other or are to be aligned, if
14 you will, with each other. And certainly the City
15 of North Myrtle Beach is required to actually
16 implement ordinances that, you know, are recorded
17 and agreed to.

18 I know Tidewater was one that they
19 actually -- again, they go through and prepare a
20 development and it gets supposedly recorded --

21 Q. Uh-huh.

22 A. -- and becomes part of -- it's an
23 extension of their zoning ordinance, if you will.
24 It becomes part of the zoning ordinance.

25 Q. Uh-huh. You said before that you were

1 sued in your professional capacity. What was the
2 outcome of that case?

3 A. Can you repeat that?

4 Q. Before you referenced the deposition
5 that you previously done was a case in which you
6 were sued. What was the outcome of that case?

7 A. Basically we won, if you will.

8 Q. Okay.

9 A. An individual was suing the association
10 and my firm.

11 Q. Okay.

12 A. And so...

13 Q. Did you go to trial in that case?

14 A. No.

15 Q. No?

16 Do you understand that you've been
17 identified as an expert in this case to testify
18 regarding your opinions on the Nortons' design
19 plans?

20 A. Yes, I do.

21 Q. How many times have you served as an
22 expert witness previously?

23 A. This is actually the first time.

24 Q. First time?

25 So you've not been qualified by a Court

1 as an expert witness, correct?

2 A. Have I been qualified?

3 Q. Yeah. By the Court?

4 A. I would presume so. Again, being that
5 this is the first time, so...

6 Q. What areas do you consider yourself an
7 expert in?

8 A. Well, in the field of architecture.

9 Q. Uh-huh.

10 A. And designing within this area of the
11 coastal area, if you will. And certainly my
12 involvement with homeowners associations as
13 architectural consultant.

14 Q. Uh-huh. And how many HOAs have you
15 consulted with in the past?

16 A. I've sent in my --

17 Q. Do you want to pull it out? Yeah. We
18 can mark it as an exhibit.

19 A. Yeah, I sent that to you.

20 Q. Okay.

21 A. I've been involved probably on over 40
22 review boards since Wachesaw, and it's been quite
23 rewarding, if you will.

24 (EXHIBIT 2, Felix Ayres' CV, Bates
25 labeled Felix Ayres 000454-000455, was marked for

1 identification.)

2 BY MS. CARY:

3 Q. And I've marked your CV as Exhibit 2.
4 This is your CV, correct?

5 A. Uh-huh.

6 Q. And are all these communities that are
7 listed on your CV the ones that you've worked with
8 in the past?

9 A. Yes.

10 Q. Are there any others that are not on
11 this list?

12 A. There could be. I would have to go
13 through all these, but that's a fairly accurate
14 representation.

15 Q. And how many of those communities are
16 located wholly or partially in a flood zone?

17 A. Wachesaw is. When you say in a flood
18 zone, they're considered a 500-year event, but
19 they're not in the actual floodplain relative to
20 the river.

21 Q. Uh-huh.

22 A. There's the coastal that's saltwater,
23 and then you've got the river side, which could be
24 attributed to that. But typically Wachesaw is not
25 in that river floodplain.

1 But the majority of these are. The Dye
2 Estates at Barefoot Resort, they're in a floodplain
3 but it's not -- they're on a pretty high bluff
4 there, so...

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

8 A. Actually, none.

9 Q. None? This is the first one?

10 A. Uh-huh.

11 THE REPORTER: Was that a "yes"?

12 THE WITNESS: Yes. I'm sorry.

13 THE REPORTER: That's okay.

14 THE WITNESS: I did not.

15 BY MS. CARY:

16 Q. How much has Mr. Bellamy and/or the
17 Nortons paid you to give your opinion on your
18 observations in this case?

19 A. Repeat that, please.

20 Q. How much has Mr. Bellamy and/or the
21 Nortons paid you to give an opinion in this case?

22 A. I have not been paid by the Bellamy
23 firm.

24 Q. Okay.

25 A. Ken has paid a small amount towards my

1 involvement, but that's all.

2 Q. Okay. And what facts or data has
3 Mr. Bellamy and/or the Nortons provided to you that
4 you considered in forming your opinions in this
5 case?

6 A. The information that has been provided
7 has been essentially uncovering a lot of
8 information that was not -- you know, when I
9 designed the house, essentially we were under a
10 certain criteria that was, you know, to be held
11 regarding the floodplain.

12 Q. Uh-huh.

13 A. What has since been uncovered is quite
14 a litany of information that, quite honestly, is
15 one that Tidewater has not recognized the flood
16 ordinance at all. This is one of the first times
17 that we've actually brought forward relevance to a
18 design flood elevation to the Association.

19 That was my whole presentation to the
20 Design Review Board was the fact that, you know, we
21 were being mandated to design a home within the
22 floodplain. Information regarding the recording
23 process, everything that was just uncovered,
24 there's just been quite a few missteps along the
25 way.

1 The design guidelines reference
2 41 feet.

3 Q. Uh-huh.

4 A. That was being misrepresented to the
5 homeowners since the inception of Tidewater when
6 it, in fact, was recorded at 42 feet. Basically
7 the City requires, you know, every home in the
8 flood area to be designed to a design flood
9 elevation.

10 Q. Uh-huh.

11 A. And the City recognizes the height
12 above that design flood elevation, and certainly
13 that was never even brought forward in the
14 community information that was presented to a lot
15 of the homeowners, you know, out at South Island,
16 if you will, which is a predominant flood area in
17 Tidewater.

18 Q. How many homes did you review while you
19 were consulting for Tidewater?

20 A. I can't give you a number. There were
21 quite a few. I was very busy at the time.

22 Q. And of those, were there more than one
23 that were located in a floodplain?

24 A. That, I do not recall. Most of them
25 were slab on grade.

1 Q. Uh-huh.

2 A. Yeah, they were up in the upland part.

3 Yeah. Again, I don't recall.

4 Q. Uh-huh.

5 So did you work with the Tidewater
6 Board and/or the DRB on any home design or
7 architectural plan for a home that was being
8 designed in a floodplain?

9 A. When you say -- can you repeat that?

10 Q. Other than the Nortons' home, when you
11 consulted with the Tidewater DRB, was there any
12 architectural plan that you reviewed that was
13 located in a floodplain?

14 A. There could have been.

15 Q. Okay.

16 A. Again, I don't have all the information
17 on those files.

18 Q. Okay. And do you recall what Tidewater
19 DRB did with those home design plans to recognize
20 that that home was in a floodplain?

21 A. Again, each home had its own criteria.
22 We typically would review it for the information
23 that, you know, was required, whichever community
24 it was in --

25 Q. Uh-huh.

1 A. -- out there. And typically we would
2 review it based on the criteria within that one
3 community of Tidewater.

4 Q. All right. So before you testified
5 that the Tidewater Board or DRB was not recognizing
6 the flood ordinances; is that correct?

7 A. There was really no information
8 presented, you know, regarding -- you know, that's,
9 you know, typically a requirement by the City --

10 Q. Okay.

11 A. -- if you will, by the surveyor.

12 Q. Yeah.

13 A. The surveyor would designate if that
14 property's within a floodplain or not.

15 And, again, the ARB is not required to
16 go and, you know, look at the, if you will, the
17 ordinances and things like that. They're an
18 aesthetic board.

19 Q. Uh-huh.

20 A. And essentially, you know, it's up to
21 that designer, that architect, that draftsman,
22 whoever presented that, to make sure it's compliant
23 with the ordinances.

24 And, again, most of the guideline
25 criteria is relevant to an aesthetic decision, if

1 you will, and what's, you know, in the guidelines.

2 Q. Yeah. Do you consider height an
3 aesthetic consideration?

4 A. It could be.

5 Q. Before you referenced a presentation
6 that you made to the DRB. When was that
7 presentation made?

8 A. I want to say 2020, if I recall. It
9 may have been in July. It was the first
10 presentation of the Norton residents to the DRB.

11 Q. Okay. So that wasn't in your capacity
12 as consulting for the Tidewater DRB. It was in
13 your capacity as the Nortons' architect?

14 A. Yes. They were fully aware of that.
15 It was fully disclosed.

16 Q. Okay. How many hours did it take you
17 to review this case and form an opinion
18 approximately?

19 A. Can you repeat that?

20 Q. How many hours did it take you to
21 review this case and form an opinion approximately?

22 A. How many hours.

23 Q. Would that be on your invoices?

24 A. No. No. I don't have a specific
25 number of hours.

1 Q. Okay.

2 A. It's been several.

3 Q. What is your understanding of this
4 case?

5 A. Well, essentially the house was
6 designed within the ordinances of the City of
7 North Myrtle Beach that recognize a design flood
8 elevation and where the height is calculated from.

9 Q. Uh-huh.

10 A. And, you know, in essence, the flood
11 ordinance was not being recognized in Tidewater,
12 and essentially, you know, it's mandated that homes
13 that are designed in a floodplain actually be
14 adherent to the actual flood ordinances. The City
15 of North Myrtle Beach is required to do that. You
16 know, every municipality is to maintain their
17 federal flood insurance ability, if you will.

18 Q. Uh-huh.

19 A. And certainly we designed it in
20 accordance with the flood ordinance per the City of
21 North Myrtle Beach, received a building permit for
22 that. And certainly the issue is simply where you
23 calculate the height from. We were not being
24 excessive. We were essentially asking for 6 feet.

25 Q. Uh-huh.

1 A. And it's very disheartening to know
2 that, you know, it's not being respected, you know,
3 in a community that's in a floodplain.

4 Q. So is it your understanding that the
5 Tidewater is not saying you can't build your first
6 finished floor above the base flood elevation, that
7 you can't build your height to a certain degree?

8 A. I think it basically -- again, every
9 coastal community I've been involved with, they
10 recognize the height allowed within a floodplain.
11 You take and compress a design --

12 Q. Uh-huh.

13 A. -- if you're held to a certain high
14 point. Every municipality allows you to raise that
15 up to provide a design that's in conformity within
16 a floodplain.

17 And certainly, you know, that wasn't
18 the case here, you know. And that's essentially
19 where the, I think, the direction of, you know, the
20 case has gone.

21 Q. And in those other communities that you
22 speak of in municipalities, do they have PUD
23 agreements or PD --

24 A. Oh, yes.

25 Q. -- or any district agreements?

1 A. Yes.

2 Q. And what height requirements, or is the
3 flood zoning ordinance in the PUD Agreement?

4 A. Pardon?

5 Q. Is the exception to the height, like,
6 you know, where you calculate from in the
7 floodplain, within their PUD Agreement?

8 A. I think all communities, Pawleys
9 Island, for instance, they require to be plus
10 3 feet above a floodplain that's a V zone, which is
11 a wave action zone.

12 Q. Uh-huh.

13 A. Plus 3 is built in so it reduces the
14 federal flood insurance, and it safeguards the
15 residents to that design to allow you to be
16 elevated above that point.

17 Q. Right.

18 A. DeBordieu, Georgetown County was the
19 first to raise their height above 35 feet. They
20 had a lid throughout the whole county of 35 feet.
21 DeBordieu saw the need for designs to be not
22 compressed.

23 Q. Okay.

24 A. And they actually raised their height
25 to 45 feet --

1 Q. Uh-huh.

2 A. -- to allow you to design a house in
3 the floodplain, whether it's in a A zone like the
4 Nortons or in a B zone, which is the ocean zone.
5 That's the rock-and-roll zone. That's the wave
6 action. And they also contributed a firehouse and
7 a fire station to allow the County to accept the
8 45 feet.

9 So, yes, there are communities that
10 recognize the floodplain and the heights.

11 Q. And did they amend -- in that example
12 you gave me in DeBordieu, did they amend their PUD
13 Agreement to raise their height?

14 A. I believe they did, yes.

15 Q. So 35 feet was for every --

16 A. It was for every structure of height in
17 the County of Georgetown. And since then
18 Litchfield Company raised theirs to higher than
19 35 feet. Others have followed. Prince George has
20 allowed it to be higher.

21 Q. Uh-huh.

22 A. Again, it allows properties and homes
23 to be designed on a view, if you will, of water
24 above a floodplain. It's all about providing more
25 glass, if you will, more views to the water and

1 keeping the design within, you know, a certain
2 criteria regarding the flood.

3 I mean, you have to recognize the
4 stormwater. And it's not anything that's
5 lessening. It's actually raised over the years,
6 the flood height.

7 Q. And in those PUD Agreement examples
8 that you gave, were the measurement criteria
9 contained within those PUD agreements?

10 A. I don't know.

11 Q. Okay.

12 A. Yeah. I mean, again, as an architect,
13 you take and review the criteria that's put before
14 you.

15 Q. Right.

16 A. The guidelines, the information
17 regarding the overall criteria that each community
18 has, and you assume it's been recorded and handled
19 properly. And everything now under state
20 transparency laws has to be done that way. Every
21 decision is recorded and basically available to
22 anybody to review. And we certainly look to have
23 that understood when you get involved with a design
24 for a home within a community.

25 Q. You keep saying, like, assume it's

1 recorded. Do you believe that Tidewater
2 Plantation's PUD Agreement was not recorded?

3 A. You know, since I've been involved in
4 this --

5 Q. Uh-huh.

6 A. -- there's, to me, a lot of areas that
7 have not been, you know, handled correctly, if you
8 will. You know, a developer starts a project. He
9 has a vision --

10 Q. Uh-huh.

11 A. -- and it's recorded. Anything that's
12 beyond that, any amendments should all be recorded.

13 Q. What are you referring to specific to
14 Tidewater?

15 A. There's -- excuse me, one moment.

16 Q. Uh-huh.

17 A. For instance --

18 Q. Uh-huh.

19 A. -- 41 feet it's in the guidelines. But
20 at Tidewater it's recorded at 42 feet in the PUD.

21 Q. Okay.

22 A. The 41-foot is actual part of the
23 design guideline criteria, which should have
24 been -- you know, the guidelines should have had
25 42 feet in there, not 41.

1 Q. And PUD says uppermost plan structure
2 of 42 feet, correct?

3 A. It did.

4 Q. So isn't 41 feet in compliance with an
5 uppermost point of structure at 42 feet?

6 MR. BELLAMY: Object to form.

7 You can answer.

8 THE WITNESS: Can you repeat that?

9 BY MS. CARY:

10 Q. Isn't having a criteria that, you know,
11 requires homes to be at 41 feet still in compliance
12 with a PUD Agreement saying that the uppermost
13 point of structures must be at 42 feet?

14 MR. BELLAMY: Object to form.

15 You can answer.

16 THE WITNESS: Again, in this case, the
17 floodplain governs. The design flood elevation is
18 by which the City of North Myrtle Beach allows the
19 point of beginning, if you will, not the grade to
20 design a house. They recognize that, where it's
21 not recognized in the ordinance of -- in the
22 guidelines.

23 (EXHIBIT 3, Norton Home Design Plans,
24 Bates labeled Felix Ayres 000487-000495, was marked
25 for identification.)

1 BY MS. CARY:

2 Q. I marked Exhibit 3 -- right there, you
3 can grab that -- which is from your production.
4 And I Bates-stamped it just so we have a reference
5 number, Felix Ayres 478 [sic] to 495 just for
6 reference. You can take a minute to look through.

7 A. Okay.

8 Q. And are these the Nortons' home design
9 plans that you prepared?

10 A. Yes.

11 Q. And when did you prepare these?

12 A. 2020.

13 Q. Okay. And are these the only design
14 plans that you prepared for the Nortons?

15 A. No.

16 Q. What else have you prepared for them?
17 What other --

18 A. Oh. I'm sorry. This is a culmination
19 of many plans that were developed for that.

20 Q. Okay.

21 A. That's the way I took it.

22 No, this is the only project that I
23 worked with them on.

24 Q. Okay. So post these plans, have you
25 developed any other iteration of these plans for

1 the Nortons?

2 A. No.

3 MR. BELLAMY: Can we take a five-minute
4 break?

5 MS. CARY: Yes.

6 THE VIDEOGRAPHER: Okay. We're going
7 off record. The time is 11:26 a.m.

8 (A recess transpired.)

9 THE VIDEOGRAPHER: Okay. We are going
10 back on record. The time is 11:35 a.m.

11 (EXHIBIT 4, Letter from Ben Caldwell to
12 Mr. Jeffers dated September 5, 2021, was marked for
13 identification.)

14 BY MS. CARY:

15 Q. Okay. I've marked Exhibit 4. Do you
16 recognize this document?

17 A. Yes.

18 Q. And what is this document?

19 A. Essentially the City voted to approve
20 the appeal and reverse the decision from Ben
21 Caldwell that the cupola is not a necessary
22 mechanical feature.

23 Q. And have you reviewed this document
24 before?

25 A. Yes.

1 Q. When did you first review it?

2 A. After it had been submitted to Ken.

3 Q. So was it at or around the date of the
4 decision?

5 A. Yes.

6 Q. And after reviewing this decision, did
7 you and/or the Nortons suggest revising the plans
8 to conform to this decision?

9 A. There was a discussion about it, but I
10 have not revised the plans to take the cupola off.

11 Q. Okay. And is it your understanding
12 that with the cupola now having to be calculated
13 within the height that it does not conform to
14 either the City of North Myrtle Beach flood
15 ordinance and/or the PUD Agreement?

16 MR. BELLAMY: We'll stipulate that the
17 cupola is a nonissue. If the house is ever built,
18 which we hope one day we can build this house,
19 obviously he didn't appeal the issue of the cupola
20 being a necessary mechanical feature. So he'll
21 have to conform within the 42 feet.

22 MS. CARY: Okay.

23 MR. BELLAMY: Yeah.

24 BY MS. CARY:

25 Q. Before you testified that your --

1 actually, strike that.

2 Have you ever discussed modifying the
3 plans with the Nortons?

4 A. Many times.

5 Q. Okay. And what type of modifications
6 were discussed?

7 A. Regarding what exactly?

8 Q. Well, since the plans don't satisfy
9 either measurement currently, either height
10 measurement, did you ever discuss modifying the
11 plans so that they would conform to height, one of
12 the height measurements or taking out the cupola?

13 A. Never did discuss taking the cupola
14 off. But there were discussions regarding the roof
15 profile, if you will.

16 Q. Okay.

17 A. But that's the extent of it.

18 Q. And what do you mean by discussed the
19 roof profile? How would that change?

20 A. The --

21 Q. You can -- yeah.

22 A. Go back to that exhibit.

23 Q. Exhibit 3, yeah.

24 A. It had to do a lot with that upper
25 level.

1 Q. Okay.

2 A. And that's the extent of it.

3 Q. So what was discussed that you would do
4 to that upper level?

5 A. The possibility of increasing the roof
6 pitch up there.

7 Q. Okay.

8 A. That was it.

9 Q. Okay. So no discussion about bringing
10 down the height?

11 A. No, because it conformed with the city
12 ordinance, you know, as far as above the
13 floodplain. It, you know, shown at 42 feet to the
14 peak, if you will, above the design flood
15 elevation.

16 Q. Okay.

17 A. And, again, that's 5 feet above grade
18 to the beginning point of the design flood
19 elevation.

20 Q. Okay. So since this decision came out
21 that the cupola has to be included in the height
22 because it's not a necessary mechanical feature,
23 you have to measure -- is it your understanding
24 that you have to go to the peak of the cupola?

25 A. That would be my understanding, yeah.

1 Q. And is it correct that then the height
2 of the structure would have been, from the City of
3 North Myrtle Beach zoning ordinance, 45 feet?

4 A. 45 feet?

5 Q. Yes. My math could be wrong, so you
6 could correct me.

7 But what would be the height
8 measurement from that certified flood elevation to
9 the peak of the cupola?

10 A. I don't have that measurement here.
11 You know, because that really wasn't shown as a
12 measurement because it was never a point of
13 reference. It was allowed within the ordinance to
14 be above since it's a necessary mechanical feature
15 to get to the roof. I don't have it shown. And
16 these are not to scale, so...

17 Q. Okay.

18 A. It's pretty close, I would say, to your
19 measurement.

20 Q. Okay. So since that decision and
21 since these plans don't conform to the City of
22 North Myrtle Beach zoning ordinance height
23 measurement, 23-106 --

24 MR. BELLAMY: Object to -- go ahead and
25 finish.

1 MS. CARY: Sorry. Hold on. Give me a
2 minute.

3 MR. BELLAMY: Just for the record, I'm
4 just letting you know my objection is noted, okay?
5 Objection to form.

6 MS. CARY: Okay.

7 BY MS. CARY:

8 Q. So since these plans currently in
9 Exhibit 3 do not conform to the City of
10 North Myrtle Beach ordinance 23-106, have you
11 and/or the Nortons ever -- have you discussed with
12 the Nortons conforming the structure to that
13 ordinance or modifying the height at all?

14 A. I have not discussed that with them,
15 no.

16 Q. Okay.

17 A. Since this thing had taken a course of
18 its own.

19 Q. Uh-huh.

20 A. -- you know, our involvement with
21 plans, if you will, involvement had stopped.

22 Q. Okay.

23 A. You know, because we certainly -- these
24 were designed entirely around the ordinance. In
25 fact, the ordinance, 23-106, refers to a midpoint

1 throughout North Myrtle Beach.

2 Q. Uh-huh.

3 A. This recognizes 42 feet above the
4 floodplain, design flood elevation plus 1 feet, you
5 know, floodplain is 8012.

6 Q. Uh-huh.

7 A. We're at elevation 13.

8 Q. Uh-huh.

9 A. It's called freeboard, additional
10 safety measure, if you will. And the height was
11 calculated above that design flood elevation at 42,
12 not to the midpoint.

13 As with the City of North Myrtle Beach,
14 it allows you to go to the midpoint, which is the
15 height from the overhang to the peak of the roof.
16 It's that midpoint between.

17 Q. Yeah.

18 A. So architecturally it would give you a
19 better look.

20 Q. Uh-huh.

21 A. Rather than have it compressed. But,
22 yeah.

23 Q. So you never discussed modifying the
24 height after this decision, the September 5th,
25 2021 --

1 A. No.

2 Q. -- decision from the City?

3 A. No.

4 Q. So you would agree that these plans do
5 not meet the measurement standards of the PUD
6 and/or the City of North Myrtle Beach zoning
7 ordinance 23-106?

8 MR. BELLAMY: Object to form.

9 THE WITNESS: I feel they were
10 compliant with the ordinances at the time. The
11 City of North Myrtle Beach reversed an appeal or
12 allowed that appeal to be approved. And certainly
13 I think if this plan was built today, the cupola
14 would probably not be there.

15 BY MS. CARY:

16 Q. Okay.

17 A. You know.

18 Q. Okay.

19 A. But...

20 Q. So you would agree that per this
21 decision the Board and/or the DRB could not have
22 approved these plans?

23 MR. BELLAMY: Object to form.

24 THE WITNESS: I don't agree with that.

25 BY MS. CARY:

1 Q. Why don't you agree with that?

2 A. I feel like this plan conforms with the
3 ordinance of the floodplain.

4 Q. What about the height? It goes above
5 the height?

6 A. Well, again, if this house is built,
7 the cupola would not be there.

8 Q. But these plans as is?

9 A. Yeah. Okay.

10 Q. They could not have approved those
11 plans as they are not in conformance with --

12 A. Who's they?

13 Q. The DRB and the Board at Tidewater.

14 MR. BELLAMY: Object to form.

15 THE WITNESS: These plans conform to
16 the city ordinance of North Myrtle Beach with the
17 exception of the cupola --

18 BY MS. CARY:

19 Q. Uh-huh.

20 A. -- that has been noted here. I have
21 not modified these plans.

22 Q. Right.

23 A. Yeah.

24 Q. So you would agree that the DRB -- the
25 Tidewater DRB and/or the Board cannot have approved

1 these plans with the cupola?

2 A. Based on this decision, yes.

3 Q. Correct.

4 A. Yes.

5 Q. When did the Nortons retain you for
6 your architectural services?

7 A. 2018, 2019.

8 Q. Okay.

9 (EXHIBIT 5, Letter from Felix Ayres to
10 Ken Norton dated August 31, 2018, was marked for
11 identification.)

12 BY MS. CARY:

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. And would this be -- August 31st, 2018,
16 is that approximately when the Nortons first
17 retained you? Would you agree with that?

18 A. Yes.

19 Q. And this is your agreement with the
20 Nortons for the Tidewater plans?

21 A. Yes.

22 Q. For this home?

23 A. Yeah.

24 Q. Okay. And is this your contract for
25 that, for your services?

1 A. Yes.

2 Q. Is there any other document or letter
3 that explains the services or this is it?

4 A. That was it.

5 Q. Okay. When you first met with the
6 Nortons, what was discussed? What were some of the
7 important things that they wanted for their home?
8 Like, what was priority for them in their design
9 plans?

10 A. Obviously in a respect of the view --

11 Q. Okay.

12 A. -- if you will.

13 The gym was an important aspect of
14 Ken's life.

15 Q. Okay.

16 A. The daughter's involvement in the
17 design.

18 Q. Okay.

19 A. And trying to maximize the views on the
20 water.

21 Q. Okay.

22 A. The bulkhead was a concern. It never
23 really was a bulkhead. It was sort of a defining
24 area. And when I say defining area, it was, I
25 think, put out by maybe the original developer, but

1 it wasn't properly built and he was going to have
2 to have that rebuilt.

3 Q. Uh-huh.

4 A. The dock, I was scared for him to walk
5 out on.

6 Q. Okay.

7 A. You know. He's a big guy. And
8 certainly he was going to have plans to modify it.

9 Q. Okay.

10 A. But for the most part, you know, the
11 aspect of trying to represent something of the
12 Charleston, the Lowcountry architecture was
13 important to them as well.

14 And I believe I shared with you some of
15 the images that they brought forward, you know,
16 through some of their ideas, if you will.

17 Q. Okay. So the photos in your
18 production --

19 A. Yeah.

20 Q. -- came from them --

21 A. Yeah.

22 Q. -- as to what they preferred?

23 A. Yeah.

24 You say production. That's an
25 interesting word.

1 Q. Yeah, document production. That's what
2 we call it.

3 A. That's okay.

4 Q. And how long did it take for you to, I
5 guess, draft and prepare those plans from start to
6 finish?

7 A. I think the design was prepared within
8 four months, if you will.

9 Q. Okay.

10 A. We go through several iterations, if
11 you will, and this is a CAD drawing, which is
12 the -- when we get beyond a creative point, that's
13 when the CAD drawings are brought forward.

14 Q. Come out?

15 How many revisions would you say you
16 went through with the Nortons for the design?

17 A. Several. You know, I listen. I don't
18 do anything but that, you know, and they
19 certainly -- I think, these plans represented, you
20 know -- reviewed by Sue and Ken Norton throughout
21 the whole process.

22 Q. Uh-huh.

23 And are you aware that the Nortons'
24 home plans were denied for reasons other than just
25 the height?

1 A. By the Design Review Board?

2 Q. By the Design Review Board.

3 A. Yes.

4 Q. First denied it, yeah.

5 A. Yeah. We had to address a few

6 comments.

7 Q. And did you ever revise those plans --

8 A. Yeah.

9 Q. -- and resubmit them?

10 A. Yes.

11 Q. When was that?

12 A. Those plans, there was a number of the
13 elements that were included, I think, in those
14 comments integrated into these plans. The
15 handrails were consistent. The trim around.

16 Q. Are in these plans?

17 A. Uh, yeah. I may have their comments in
18 here.

19 Q. Yeah.

20 A. If you've got them, that's fine.

21 (EXHIBIT 6, Email to Ken Norton, Felix
22 Ayres, and Grand Strand Contracting from Bob Moss
23 dated July 6, 2020, Bates labeled
24 Tidewater_0024-_0025, was marked for
25 identification.)

1 BY MS. CARY:

2 Q. I marked this as Exhibit 6, which is
3 the July 6, 2020, email from the Design Review
4 Board to Ken Norton, and yourself is on this email,
5 denying the construction plans. Is this what
6 you're referring to?

7 A. Yes.

8 Q. And this is dated July 6, 2020. I
9 believe these plans were dated April 24th, 2020.
10 Were there ever any subsequent plans that were
11 created and submitted? I believe you testified
12 before these were the only plans that were created.

13 A. We had developed plans that showed the
14 staircase. Those plans were not submitted back to
15 the Design Review Board --

16 Q. Okay.

17 A. -- to my knowledge.

18 Q. Okay. Do you know why not?

19 A. Well, they had a portico, if you will,
20 a portico shade --

21 Q. Uh-huh.

22 A. -- that allowed -- it was a drop-off.
23 It took a more elaborate turn for the drop-off in
24 the front --

25 Q. Okay.

1 A. -- in lieu of the staircase. But this
2 is the portico shade here --

3 Q. Okay.

4 A. -- which allows you to come and go in
5 lieu of the staircase.

6 We did review actually having a
7 floating stair coming down and cascading on either
8 side --

9 Q. Okay.

10 A. -- which the Nortons were intrigued
11 with, but they certainly felt the portico shade was
12 equally as attractive, if you will. I think
13 certainly the Items 1 and 2 were not agreeable to
14 them.

15 Q. Okay.

16 A. Obviously for the reasons we
17 discussed --

18 Q. Uh-huh.

19 A. -- regarding the floodplain --

20 Q. Uh-huh.

21 A. -- and the cupola.

22 Again, the roof pitch was again
23 reviewed, but we never really re-presented that to
24 the Board. We do have a substantial pitch on the
25 front of this porch here at 9/12, which offers a

1 good bit of pitch to the front of the design.

2 Item 6 was addressed regarding the
3 railing. So these plans have consistent railings.
4 The exposed rafters were revised on a majority of
5 the plan, but yet this still has the rafters on the
6 back.

7 No. 8 was regarding the fire pit, which
8 is shown here.

9 Q. Uh-huh.

10 A. We quite honestly did not understand
11 that because it was compliant being further away
12 from the house at 20 feet and any vegetation back
13 there. So it wasn't revised on this plan.

14 And No. 9, the garage door, that was an
15 8-foot-wide door.

16 Q. Uh-huh.

17 A. They assumed golf cart --

18 Q. Uh-huh.

19 A. -- but yet that can be used for smaller
20 cars. Typically we allow 9 feet for bigger cars
21 with bigger mirrors, but, you know, we had generous
22 widths on these other doors. That was just a
23 smaller width door. But that garage door width
24 stayed the same.

25 Q. Okay.

1 A. And then the 6-inch trim was revised.

2 Q. But the revised plans were never
3 submitted to the DRB; is that correct?

4 A. To my knowledge, no.

5 Q. Okay. I'm sorry to jump around, but if
6 you go back to Exhibit 5, which is your contract
7 with the Nortons --

8 A. Okay.

9 Q. -- was that your standard agreement for
10 designing and preparing home plans?

11 A. Yes.

12 Q. And is that your standard price, the
13 \$1 per square foot of total heated square footage?

14 A. Yes.

15 Q. Yes?

16 A. Actually, it's \$2 a foot. It's
17 designed at a dollar and then a dollar for the CAD
18 work.

19 Q. Okay. Got it.

20 I have a question on Exhibit 3, which
21 is the home design plan. And is my understanding
22 correct that the gym is on the ground floor of the
23 home?

24 A. It's on the -- yeah, the lower level,
25 yeah. The garage being the lower level. This is

1 the elevated floor --

2 Q. Okay.

3 A. -- at the design flood elevation.

4 Q. Okay.

5 Did you obtain an elevation certificate
6 for the property?

7 A. Yes. There would have been one.

8 Q. Do you have a copy of that?

9 A. I do not. I think the surveyor, he
10 provides that information to us.

11 Q. Uh-huh.

12 A. I believe there's a copy of the survey
13 in the final I sent to you. There should be a
14 copy. This right here.

15 Q. Okay. And who was the -- okay.

16 A. Harry Bruton.

17 Q. And you found that what was the --

18 A. Pardon me?

19 Q. What was the base flood elevation?

20 A. The 8012. It says that right here.

21 Q. And do you determine that or --

22 A. No. No. It's all part of what the
23 surveyor does, and it's available through us early
24 on in the design process. We can go online now and
25 find out where the flood lines are so we get an

1 early read on how much water is going to be
2 covering the property.

3 Q. Okay.

4 A. And, you know, the first thing we do is
5 get this information and get the floodplain. And
6 the next call I made was to Ben Caldwell of which
7 he reiterated to me that the ordinances are
8 relative to the design flood elevation plus 1 and
9 the height according to that.

10 In our first conversation, he indicated
11 it was to the midpoint, which is it is in the
12 ordinance.

13 Q. Uh-huh.

14 A. But, to me, that's our point of
15 beginning, if you will.

16 Q. But they don't measure to the midpoint?
17 What did Ben Caldwell say?

18 A. To the midpoint. He told me in the
19 first conversation I had with them was to the
20 midpoint, which is the ordinance --

21 Q. Okay.

22 A. -- throughout North Myrtle Beach.

23 They have recognized the height of
24 42 feet in Tidewater, again, which we complied
25 with. And it's unique to the city to allow that,

1 but I think they were being respectful of
2 Tidewater.

3 Q. Okay. So when you went and determined
4 the base flood elevation, where did you go look at
5 the flood map?

6 A. We always look at the flood maps, but
7 the surveyor, you know, that's their duty to
8 establish the floodplain. And they go based on
9 flood maps and they reference those, and he
10 indicated here it was 8012.

11 Q. Okay.

12 A. And we also look at the height of the
13 land, of the property, if you will. This is above
14 sea level, and the Nortons average anywhere from 7
15 to 8 point something.

16 Q. Uh-huh.

17 A. So our garage floor was set at 9, and
18 the base flood being at 8012, the gym floor was set
19 at 13.

20 (EXHIBIT 7, Defendant's Supplemental
21 Answers to Plaintiff's Interrogatories, was marked
22 for identification.)

23 BY MS. CARY:

24 Q. Do you recognize this document?

25 A. I'm reading it now to see if I

1 recognize it.

2 Q. Okay.

3 (Pause in the proceedings.)

4 A. Okay.

5 Q. Do you recognize this document?

6 A. Yeah.

7 Q. And if you go to page 7 where it
8 discusses your opinions --

9 A. Uh-huh.

10 Q. -- did you approve this before it went
11 out?

12 A. This?

13 Q. Yeah.

14 A. Oh, yeah.

15 Q. A summary of your opinions?

16 A. Yes.

17 Q. Okay. So here on A where it says that
18 this mandate is significant due to increase in the
19 revised flood elevation maps indicating increased
20 water heights.

21 In your opinion, wouldn't the height of
22 the first finished floor from the ground be more
23 important than the uppermost point of the structure
24 for flood purposes?

25 A. Not necessarily the height, but yet the

1 flood ordinance recognizes raising the floor level
2 so that you don't have -- you limit your damage to
3 the structure. And the point of height is actually
4 determined where that -- what we call design flood
5 elevation is.

6 Q. Uh-huh.

7 A. It's the point of beginning in a
8 floodplain.

9 Q. Right.

10 A. And so above that design flood
11 elevation is your height of 42 feet.

12 Q. Right.

13 But wouldn't the mandate of having your
14 first finished floor from the base flood elevation
15 or 1 foot above the base floor elevation be more
16 important than the uppermost point of the structure
17 for flood purposes?

18 MR. BELLAMY: Object to form.

19 You can answer, Felix.

20 THE WITNESS: Again, in terms of flood
21 prevention, if you will --

22 BY MS. CARY:

23 Q. Uh-huh.

24 A. -- that finished floor is -- I think
25 where you place it is paramount.

1 Q. Right.

2 A. Regarding the overall height, that's
3 what the ordinance allows in the City of
4 North Myrtle Beach. They allow you to calculate
5 your height above that design flood elevation.

6 Q. But if someone was to design their
7 first finished floor from 1 foot above the base
8 flood elevation but still measure the height of the
9 overall structure from the finished grade to the
10 peak, wouldn't that still be -- you know, wouldn't
11 that still be adequately dealing with the, you
12 know, concern about the flood elevation maps
13 indicating increasing water heights?

14 A. As I stated before, you compress a
15 design when you hold it to grade.

16 Q. Uh-huh.

17 A. And all municipalities are requiring
18 you to design in a floodplain, you know, a design
19 flood elevation, and then they allow your height of
20 your structure to be above your designed flood
21 elevation point.

22 Q. Uh-huh.

23 A. So it allows the design to keep it from
24 being compressed --

25 Q. Uh-huh.

1 A. -- if you will.

2 Q. So in B, it says, The Nortons' plans
3 complied with federal, state, and local laws, and
4 rejection of those plans on the basis of height was
5 inappropriate. The correct standard of height
6 would have allowed the Nortons to be sufficiently
7 protected in a flood zone.

8 Wouldn't you agree that it was -- the
9 plans are not appropriate once the cupola was
10 determined not to be a necessary mechanical
11 feature?

12 MR. BELLAMY: Object to the form.

13 THE WITNESS: Again, the decision made,
14 you know, regarding the City on the appeal.

15 BY MS. CARY:

16 Q. Uh-huh.

17 A. You know, these plans were prepared and
18 complied.

19 Q. Uh-huh.

20 A. Okay? Now, the fact that it was a
21 mechanical feature, if you will, accessing the roof
22 was a basis by which these plans were prepared.
23 They came in and had an appeal on that.

24 Q. Uh-huh.

25 A. And certainly again moving forward, the

1 cupola would be removed --

2 Q. Okay.

3 A. -- if you will, to comply with the
4 City.

5 Q. Uh-huh.

6 A. And we're all about complying with the
7 City. But this is referencing FEMA and the flood
8 requirements.

9 Q. But it doesn't meet the FEMA -- the
10 plans as they are currently are not --

11 A. No, they do.

12 Q. -- compliant?

13 A. No, they are compliant.

14 Q. But with the cupola they're not,
15 correct?

16 A. Yeah. But, again, these plans would
17 not be in line with the City regarding, you know,
18 the cupola being up there.

19 Q. Right.

20 A. Okay.

21 Q. And C, it says, Deviation from those
22 standards could result in significant damage to the
23 Nortons, including, but not limited to, inadequate
24 flood zone protection features, reduced property
25 values, risk of preventable storm/flood damage, and

1 potential issues with insurability.

2 How did you come to this conclusion?

3 A. Again, the experience I've had in
4 designing homes within the coastal area within the
5 floodplain --

6 Q. Uh-huh.

7 A. -- that's how I came to that
8 conclusion. You know, for a community not to
9 recognize the floodplain and -- you know, again, to
10 me, this is the first time it's really been brought
11 forward in this community.

12 Q. Uh-huh.

13 A. To allow architectural expression, if
14 you will, to be compliant with their guidelines,
15 but on also, you know, you have to be compliant
16 with the community of which you live in. And
17 North Myrtle Beach has a mandate to adhere to the
18 floodplain, you know. And it's a balancing act
19 between what the community wants --

20 Q. Uh-huh.

21 A. -- design-wise and also what the
22 ordinances are.

23 Q. Uh-huh.

24 A. So you really have to respect both.
25 And, again, all municipalities recognize allowing

1 height above your design floodplain.

2 Q. All municipalities do?

3 A. Yes. You know, they basically --
4 Georgetown was put --

5 Q. Uh-huh.

6 A. -- on probation --

7 Q. Uh-huh.

8 A. -- after Hugo.

9 Q. Uh-huh.

10 A. They had so many properties that were
11 noncompliant --

12 Q. Uh-huh.

13 A. -- with the floodplain. Robert Cox was
14 brought in as a Chief Flood Enforcement Officer in
15 Georgetown County. His task was to assure that the
16 county would be lifted off that probation in which
17 he succeeded. He established recognizable flood
18 ordinances that are being met today to avoid, you
19 know, the disaster we had after Hugo.

20 And certainly, you know, the City of
21 Myrtle Beach recognizes plus 3 feet above. You
22 know, it actually helps reduce their flood
23 insurance premiums by building higher.

24 Q. Uh-huh.

25 A. And North Myrtle Beach did the same.

1 They have an ordinance that recognizes the design
2 flood elevation.

3 MS. CARY: I'll mark this.

4 (EXHIBIT 8, Planned Unit Development
5 (PUD) Agreement between The City of North Myrtle
6 Beach, South Carolina and Southern Land and Golf
7 Company, Ltd. for the Tidewater Golf Club &
8 Plantation, Bates labeled Tidewater_0717-_0801, was
9 marked for identification.)

10 BY MS. CARY:

11 Q. Do you recognize this document?

12 A. Yes, I do.

13 Q. And this is the Planned Unit
14 Development agreement between the City of
15 North Myrtle Beach and Tidewater Plantation; is
16 that correct?

17 A. It appears to be so.

18 Q. And if you flip to page 5.

19 A. Okay.

20 Q. First, what is your understanding of a
21 PUD Agreement?

22 A. It's a planned unit development. It
23 essentially allows for a -- it is an agreement.
24 It's an agreement of decisions made by the
25 developer and the City of which the City adopts and

1 then essentially becomes an extension of their
2 zoning ordinance, if you will.

3 Q. So this is Tidewater Plantation's
4 zoning ordinance, correct, essentially?

5 A. It's the PUD Agreement that the City of
6 North Myrtle Beach hopefully had adopted. Yes, it
7 becomes an extension, if you will, of their
8 ordinances, if you will. And there's 42 feet here.

9 Q. Right.

10 And it also has the -- in the first
11 paragraph under Development Standards, it has how
12 the building height should be measured. All
13 building heights are measured from the uppermost
14 point of the structure to the average finished
15 grade (Chimneys are not included in measuring
16 building height in single family structures),
17 correct?

18 A. That's what it says.

19 Q. So the PUD Agreement does contemplate
20 how to measure the height of a building in
21 Tidewater Plantation?

22 MR. BELLAMY: Object to form.

23 BY MS. CARY:

24 Q. Correct?

25 A. That's what it says here.

1 Q. Going back to your statement about
2 potential issues with insurability, did you discuss
3 with any insurance company about the Nortons' home
4 design plans and their potential insurability?

5 A. Just a moment here.

6 Q. It should be this one right here. It's
7 at page 7.

8 A. Any discussion we had relative to
9 insurability, again that's really between the
10 Nortons and their insurance company.

11 Q. Uh-huh.

12 A. Also whether or not they receive any
13 flood insurance coverage, if you will.

14 Q. Uh-huh.

15 A. You have to be compliant to qualify
16 for, you know, flood insurance. And certainly
17 they've kind of run together in a path, if you
18 will, when you're building a house in a floodplain.

19 Q. So for this, you do not discuss any
20 potential issues with insurability regarding
21 Nortons' home design plans?

22 A. Which section are you referring to?

23 Q. On page 7, it's Section C.

24 A. Of this?

25 Q. Yes. Is that also about your -- I

1 think your -- yeah, right here, potential issues
2 with insurability.

3 A. Yeah. In other words, if you're
4 noncompliant --

5 Q. Uh-huh.

6 A. -- you know, essentially you may or may
7 not receive insurance based on the fact, you
8 know -- the City doesn't really want to permit
9 anything unless it's being compliant with the flood
10 ordinance.

11 Q. Uh-huh. Are you aware that other homes
12 in Tidewater have been permitted and are in
13 compliance with the first finished floor being
14 above the base flood elevation?

15 A. Yeah. But those homes are not in
16 compliance with the city ordinances of design flood
17 elevation. Those homes were actually not given the
18 opportunity to allow more glass to the view. Their
19 design flood elevation was chosen because they park
20 underneath.

21 Q. Uh-huh.

22 A. They are elevated but their design
23 flood elevation would have been a springboard for
24 allowing the houses to be a little bit higher out
25 there.

1 Q. Uh-huh.

2 A. And they were not allowed that
3 opportunity.

4 Q. So it's really about allowing more
5 height to a structure rather than flood prevention?

6 A. No. It's about being compliant with
7 the flood requirements that are in this area. And
8 you have to recognize the fact that you're living
9 in the Lowcountry, which is against the Tidewater.

10 Q. Uh-huh.

11 A. And you are going to get flooded.

12 Q. Uh-huh.

13 A. And how can you prevent and minimize
14 damage not only to your property --

15 Q. Uh-huh.

16 A. -- but to the adjacent properties.

17 Q. Uh-huh.

18 A. You don't want debris and stuff
19 floating around after a storm. So you minimize the
20 impact that the structure has to the adjacent
21 properties.

22 In this zone, we have an AE zone, which
23 is a slow-rising water zone during a hurricane.
24 The storm surge will come up the waterway and flood
25 the properties. That's an area that doesn't

1 necessarily provide a lot of damage that it would
2 require on the oceanfront --

3 Q. Uh-huh.

4 A. -- where you have to allow complete
5 breakaway walls. We have walls that allow it to
6 release the hydrostatic pressure. And it keeps
7 that buildup of water from collapsing that wall.

8 Q. Uh-huh.

9 A. So we have louvers, we have vents,
10 things like that to allow water to pass through.

11 Q. Uh-huh.

12 A. If you don't recognize that, then I
13 think you're doing the community a disservice.

14 And certainly those homes that were
15 elevated much higher could have had a much higher
16 point because their floodplain would have been
17 calculated -- the design flood elevation would have
18 been calculated much higher because they chose to
19 define where that floor level is.

20 Q. And the City permitted those houses --
21 those homes were permitted by the City of
22 North Myrtle Beach?

23 A. Yes. Yeah. Because the City basically
24 looks at, you know, their floor level is
25 elevated --

1 Q. Uh-huh.

2 A. -- above --

3 Q. Right.

4 A. -- the floodwater, if you will.

5 Q. Because that is the most important to
6 be in compliance with the City of North Myrtle
7 Beach flood prevention ordinance, correct?

8 MR. BELLAMY: Object to form.

9 THE WITNESS: It's -- again, the fact
10 that they chose to be much higher --

11 BY MS. CARY:

12 Q. Uh-huh.

13 A. -- they really -- you know, certainly
14 that was their decision.

15 Q. Right, yeah. I'm not talking about the
16 City of North Myrtle Beach zoning ordinance, the
17 height measurement 23-106; I'm talking about the
18 City of North Myrtle Beach zoning, the flood damage
19 prevention ordinance. That just requires the base
20 flood elevation to be 1 foot above.

21 A. But the 23-106 goes hand in hand with
22 the whole review process. I mean, that has to be
23 recognized by Tidewater as a part of the overall
24 ordinance that you're building in. And that's,
25 again, part of the frustration on this part was

1 that it's not being recognized.

2 And they should have been approved, and
3 they should have moved forward because it complies
4 with North Myrtle Beach and the flood ordinances.

5 Q. But those -- I mean, those plans as
6 they are currently do not comply, correct?

7 A. The plans that you presented here --

8 Q. Yes.

9 A. -- with the exception of the cupola,
10 you know, certainly comply. I mean, they were
11 given a building permit right here.

12 Q. That was before the cupola was
13 determined to be a necessary mechanical feature?

14 A. At the time they determined it was
15 necessary.

16 Q. Right.

17 A. You know, and it was compliant with
18 what you're referring to as the ordinance of the
19 flood.

20 Q. Did you ever go to the City and request
21 an amendment to the Tidewater flood agreement?

22 A. I have not. That's not my job. It
23 should have been done years ago.

24 Q. Uh-huh.

25 A. But, I mean, at the time I was hoping

1 to actually have the Design Review Board realize,
2 you know, there's parameters we need to have put in
3 place to allow architectural expression, if you
4 will, above the floodplain that is conforming not
5 only to their guidelines but to the community as a
6 whole. And it certainly, you know, was not
7 received.

8 Q. But are they complying with their PUD
9 Agreement, which is all building heights are
10 measured from the uppermost point of the structure
11 to the average finished grade?

12 MR. BELLAMY: Object to form.

13 THE WITNESS: Again, with 23-106 in
14 play with the city ordinance, Tidewater has to
15 recognize that and they're not --

16 BY MS. CARY:

17 Q. Is 23-106 --

18 A. -- because --

19 Q. Sorry. I didn't mean to cut you off.

20 A. But, again, that's a combined --
21 combined documents that have to be part of
22 Tidewater and also, you know, the City. It's --
23 again, their ordinances -- I mean, their PUD
24 Agreement is an extension of the City, if you will.

25 So by Tidewater being accepted into the

1 city as part of their zoning ordinance, they agreed
2 to uphold to all of the ordinances of the city.
3 And 23-106 is part of that. That becomes -- the
4 City has to have a recognition that they're doing
5 everything they can to minimize flood damage.

6 Q. What are you basing that opinion or
7 your statement on that they go hand and hand and
8 that this is an extension of the city ordinance?
9 What authority are you relying on to make that
10 statement?

11 A. Again, anytime, you know, my first call
12 was to the City.

13 Q. Okay.

14 A. I had the survey, I called the City,
15 then Caldwell says, You're in a floodplain. We
16 measure height from the design flood elevation
17 above. And he told me to the midpoint of the
18 roof --

19 Q. Okay.

20 A. -- which is from the overhang to the
21 peak, that midpoint.

22 Q. Uh-huh.

23 A. He came back and addressed the fact
24 that Tidewater recognizes 42 feet so design flood
25 elevation up to 42 feet. And that's where our

1 plans were designed to, 42 feet.

2 Q. Did you ever hear anything from Ben
3 Caldwell that the height measurement is to the peak
4 of the structure and not the midpoint?

5 A. In several communiques --

6 Q. Uh-huh.

7 A. -- on which I think you have been privy
8 to --

9 Q. Uh-huh.

10 A. -- he refers to this as, The rest of
11 23-106 still applies to where the 42 feet is
12 measured from. When a property is located in a
13 flood hazard zone in Tidewater, the height is
14 measured from the finished floor above. Flood
15 hazards are the elevation to the peak of the roof.

16 Q. Uh-huh. The peak of the roof, not the
17 midpoint.

18 A. Right. But their ordinance reflects
19 the midpoint.

20 Q. Right.

21 A. Again, this is recognizing the fact
22 that 42 feet had existed in the Tidewater PUD.

23 Q. Uh-huh.

24 A. And it's the City working with
25 Tidewater, if you will.

1 Q. Is there any other authority you have
2 for making the determination that 23-106 applies
3 other than Ben Caldwell?

4 A. It's part of their ordinance. I think
5 as an architect, I'm bound to what the ordinances
6 are, you know.

7 Q. Uh-huh.

8 A. So I'm not sure I understand the
9 question as being the authority on it.

10 Q. Going back to looking at the PUD on
11 page 5. Right here.

12 A. Thank you.

13 Q. Uh-huh.

14 A. Okay.

15 Q. Do you see Development Standards? This
16 section references Section 23-109(1) of the
17 North Myrtle Beach Zoning Ordinance, correct?

18 A. Yes, it does reference that.

19 Q. But it does not reference
20 Section 23-106 of the City of North Myrtle Beach
21 city Ordinance, right?

22 A. That is correct. And this was
23 apparently recorded in '92.

24 Q. Right.

25 And are you aware of when 23-106 was

1 enacted?

2 A. No, I'm not.

3 MR. BELLAMY: We stipulate it was in, I
4 think, 1983.

5 MS. CARY: It's '88.

6 MR. BELLAMY: '88, yeah.

7 MS. CARY: Uh-huh.

8 BY MS. CARY:

9 Q. Do you believe if 23-106 of the
10 North Myrtle Beach Zoning Ordinance was to be
11 contemplated with this PUD ordinance that it would
12 be included in this first paragraph on page 5?

13 MR. BELLAMY: Object to form.

14 THE WITNESS: Typically it could have
15 been provided, but it wasn't. I don't know who the
16 author of this was, but, again, when you're working
17 with the City and the ordinances, there's
18 references that are attached and applied on both
19 sides, if you will.

20 And when you're presenting documents to
21 go to the City for building permit, you have to
22 basically comply with those ordinances.

23 BY MS. CARY:

24 Q. Uh-huh.

25 (EXHIBIT 9, Affidavit of Ward O.L.

1 "Felix" Ayres, III, Bates labeled Felix Ayres
2 000464-000465, was marked for identification.)

3 BY MS. CARY:

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. Your affidavit executed December 20th,
7 2022?

8 A. Yes.

9 Q. And that is your signature on page 2 of
10 the document?

11 A. Yes.

12 Q. It's paragraph 11, and it states, In my
13 professional opinion, the Norton plans complied
14 with federal, state, and local laws, and rejection
15 of those plans on the basis of height was
16 inappropriate and that the use of correct standards
17 for height measurement would have allowed the
18 Nortons to be protected in a flood zone as
19 indicated [sic] by FEMA in the City of
20 North Myrtle Beach Ordinance.

21 What FEMA regulation are you referring
22 to in this paragraph?

23 A. FEMA basically establishes flood zone
24 criteria.

25 Q. Uh-huh.

1 A. That's what I'm referring to.

2 Q. Okay. FEMA regulation doesn't
3 contemplate height, correct?

4 A. It does in that the height is
5 determinate on where you begin your design from --

6 Q. Okay.

7 A. -- if you will. The height is elevated
8 to that design flood elevation, and then from there
9 your height is established. And the City of North
10 Myrtle Beach recognizes that as your point of
11 beginning in a floodplain. So at grade, you're
12 here. In a floodplain, you're here.

13 Q. Uh-huh.

14 A. It allows the architectural expression
15 and not to be compressed.

16 Q. Uh-huh.

17 A. And it's just being compliant with the
18 FEMA requirements that way.

19 Q. So FEMA only requires that the first
20 finished floor be built above base flood elevation?
21 It doesn't require a maximum height or how that
22 height of -- calculation of the structure?

23 A. No. But it goes hand in hand with the
24 point of which, in your floodplain, you're
25 elevated, of which -- where you begin your point.

1 Q. Uh-huh.

2 A. And essentially at grade you're here
3 [demonstrating].

4 Q. Right.

5 A. In a floodplain, you're here
6 [demonstrating]. And that's all it's referencing
7 here.

8 Q. But can't you still have your first
9 finished floor be above the base flood elevation
10 and still measure from grade to the upper point?

11 MR. BELLAMY: Object to form.

12 THE WITNESS: Not in a floodplain. You
13 have to reference the design flood elevation.

14 BY MS. CARY:

15 Q. But you would still be complying with
16 the first finished floor being built above base
17 flood elevation?

18 MR. BELLAMY: Object to form.

19 THE WITNESS: Again, it goes hand in
20 hand with the architecture as what -- you know, you
21 are compliant by establishing where your finished
22 floor is.

23 BY MS. CARY:

24 Q. Right.

25 A. In this case, our finished floor was

1 only 4 or 5 feet above grade.

2 Q. Uh-huh.

3 A. Not 10 or 11 feet like the rest of the
4 homes on South Island.

5 And by nature, they could have been a
6 much more valuable design for the homeowners out
7 there. They would have had more glass, more
8 appreciation of windows with a view --

9 Q. Uh-huh.

10 A. -- but, you know, they were being held,
11 not allowed to be designed according to, you know,
12 the design flood elevation, which the ordinance
13 recognizes, the City of North Myrtle Beach. You
14 know, they recognize the design flood elevation,
15 and above that is where you calculate your height.

16 Q. So the calculation from the base flood
17 elevation to the height is really an architectural
18 consideration?

19 A. No. No. Well, it is architectural but
20 not just architectural. I think it complies with
21 the desire of a community to have attractive homes.

22 Q. Uh-huh.

23 A. But it also allows where you begin your
24 calculation from for your height. I mean, that's
25 just logic on the side of the City to allow that.

1 And all the municipalities that allow that as a
2 point of beginning, I call it, where you begin your
3 design from is -- I think it just goes hand in
4 hand.

5 Q. Uh-huh.

6 And wouldn't you agree that in the DRB
7 reading the PUD Agreement -- that's what they're
8 going off of -- that that's what they were
9 following? That's their zoning ordinance and that
10 is what they properly complied with when they
11 denied the Nortons' home design plan?

12 A. When you say they, you're talking
13 about --

14 Q. The DRB and the Board.

15 A. And the Board?

16 Q. Uh-huh.

17 MR. BELLAMY: Object to form.

18 You can answer.

19 THE WITNESS: That apparently is the
20 case. But as we found out, it's not being
21 respectful to individuals' right to build within a
22 floodplain.

23 Architecturally, as I mentioned
24 earlier, I don't think any of those homes were
25 given the fair due that they deserved property

1 value-wise but also, you know, they -- I tried to
2 bring it forward to the DRB --

3 BY MS. CARY:

4 Q. Uh-huh.

5 A. -- with the Nortons, and it was not
6 understood --

7 Q. Uh-huh.

8 A. -- as to designing in a floodplain. It
9 has different measures and ordinances you have to
10 abide by.

11 Q. You believe they're complying with
12 their PUD Agreement?

13 A. At this point I do not. You know, they
14 were saying 41.

15 Q. Uh-huh.

16 A. It was 42. They were not in line. You
17 know, you have to -- I mean, a 1 foot increase in
18 anybody's design parameter as an architect, you
19 give an extra foot, I give an extra foot in the
20 ceiling. I mean, that's huge and that wasn't being
21 adhered to.

22 Q. But that's still in compliance -- oh,
23 sorry.

24 A. The other point is the floodplain. You
25 know, after what I witnessed after Hurricane Hugo,

1 I walked the beach of Garden City, DeBordieu, you
2 have to be respectful of what the strength of the
3 water can do.

4 And that's all this ordinance is doing
5 is recognizing, minimizing damage to adjacent
6 properties and designing something that gives you
7 half a chance to have something left after a storm.
8 And also hopefully design something that's
9 attractive for the community. And that's all.

10 Q. Wouldn't you agree that the DRB
11 standards at 41 feet are still in compliance
12 because the uppermost point of the structure is
13 maxed at 42 feet?

14 MR. BELLAMY: Object to form.

15 THE WITNESS: They're not running
16 together, you know. I mean, when they publish
17 design guidelines, they should come exactly out of
18 the planned unit development standards. It's
19 covenants and restrictions that go hand in hand.

20 Guidelines are a designer's cookbook,
21 if you will. They're an extraction from the legal
22 language that's in the covenants and restrictions.
23 It becomes in layman's terms how you approach a
24 design.

25 And, to me, we were just trying to

1 align with the city ordinance, the city
2 requirements of the flood criteria. And the City
3 recognizes that. I don't know why Tidewater
4 didn't.

5 MR. BELLAMY: Taylor, how much longer
6 have you got? You've got plenty of time. I was
7 just trying to...

8 MS. CARY: Yeah, not much. Probably,
9 like, another 20 minutes or so.

10 MR. BELLAMY: Okay. I may have some
11 follow-up questions. Do you mind if we take a
12 break for lunch?

13 MS. CARY: Yeah.

14 MR. BELLAMY: Okay. Good.

15 THE VIDEOGRAPHER: Okay. We're going
16 off record. The time is 12:42 p.m.

17 (A lunch recess transpired.)

18 THE VIDEOGRAPHER: We're going back on
19 record. The time is 1:49 p.m.

20 (Off-the-record conference.)

21 MS. CARY: I do want to mark another
22 exhibit.

23 MR. BELLAMY: Oh, I've seen this.

24 MS. CARY: Yeah.

25 (EXHIBIT 10, Nonconversion Agreement,

1 Bates labeled Felix Ayres 000374-000375, was marked
2 for identification.)

3 BY MS. CARY:

4 Q. So I represent to you this was in the
5 documents you provided to me in response to the
6 subpoena.

7 A. Uh-huh.

8 Q. Do you recognize this document?

9 A. I do.

10 Q. Okay. What is this document?

11 A. Essentially, the City's requirement to
12 an owner is to recognize the fact that they're
13 building in a floodplain.

14 Q. Okay.

15 A. And, you know, like Item 3 says,
16 Mechanical, electrical, plumbing devices shall not
17 be installed below the base flood elevation.

18 And the requirements that the code
19 requires in dealing with the floodplain and the
20 owner, I guess in this case Steve Martin, was just
21 acknowledging the fact that they're in a floodplain
22 and they have to agree to all this.

23 Q. All right. Did you design Steve
24 Martin's home?

25 A. No.

1 Q. Okay. Why was this in your file for
2 the Nortons?

3 A. It came to me through Ken Norton.

4 Q. Oh, okay.

5 A. And I am aware that this residence, I
6 believe, is out in South Island -- on South Island,
7 excuse me. Yeah.

8 Q. Yeah, South Island.

9 A. Lot 382, yeah.

10 Q. Okay. When was this provided to you?
11 Do you recall?

12 A. No, I don't recall.

13 Q. Okay. Did you utilize this document in
14 preparing your design plans or was this provided?

15 A. No. It was provided after the lawsuit
16 started.

17 Q. Okay. Got it. All right.

18 MR. BELLAMY: I was looking for a date
19 on it, but there isn't one.

20 MS. CARY: Yeah. It says it's
21 September 16, 2024, is when it was notarized, so...

22 MR. BELLAMY: All this really kind of
23 started back in 2020.

24 MS. CARY: Yeah. I was curious about
25 when it was.

1 MR. BELLAMY: Okay.

2 BY MS. CARY:

3 Q. And for my understanding, when I went
4 on the FEMA flood map, it came up -- you know, I
5 put in the Nortons' home address, and it came up as
6 Zone AE11 feet.

7 A. Uh-huh.

8 Q. Is there a reason that it would be AE11
9 on the FEMA flood map but a different, you know,
10 AE12 --

11 A. Can I see that?

12 Q. Yeah.

13 A. This is the current map?

14 Q. Yeah. I printed it this weekend so --

15 A. Yeah.

16 Q. -- pretty current.

17 A. Again, we relied on what the surveyor
18 provided to us.

19 Q. Okay.

20 A. And it could have been that -- well,
21 this is effective 2021 it says here.

22 Q. Yeah. That was the last date from when
23 I searched.

24 A. Does this need to be added as an
25 exhibit?

1 Q. We can add it as an exhibit.

2 MR. BELLAMY: Yeah.

3 THE WITNESS: But I don't know why.

4 They historically have gone out and have become
5 more accurate with their ability to determine how
6 high the water will be at a certain property.

7 BY MS. CARY:

8 Q. Okay.

9 A. You know, it amazes me that when you
10 see it on the weather channel that, you know,
11 they're talking about a certain area getting 5 feet
12 of water, you know, it's basically, because of this
13 new mapping, they're able to determine the depth of
14 the ocean and the rise of the water and the grade
15 here or the elevation of the land and how much
16 storm surge you would receive.

17 Q. Okay.

18 A. And they may have, you know, reduced
19 the height of the elevation out along, which, you
20 know, is surprising because everything has been
21 going higher.

22 Q. Right. Right.

23 A. You know, but, again, history has kind
24 of proven itself in that storm surge gives us a
25 benchmark in history that we have to recognize.

1 Just even when Hurricane Hazel came in,
2 and I think it hit in Cherry Grove, which is North
3 Myrtle Beach now, but it created even a benchmark
4 back then.

5 Q. Okay.

6 A. And this dates my grandmother, but she
7 and my grandfather were running a hotel in
8 Garden City, South Carolina. 17 was a dirt road.
9 But they remember Hurricane Hazel coming up to 17.
10 17 has always been built above the flood. That's
11 kind of a highway thing. And she remembers the
12 water coming up the 17.

13 Saint Michael's church, when they were
14 being built, which is down Cypress, I believe, and
15 I told the congregation -- I didn't design it, but
16 I was just in earshot -- I said, You've got to
17 remember Hazel, where the water was.

18 Q. Uh-huh.

19 A. And so benchmarks in history are
20 important. Why this was lowered, I don't know. I
21 don't know.

22 Q. Okay.

23 A. But, again, it's all based on flood
24 area. And you see the Zone X --

25 Q. Yeah.

1 A. -- that's the area that's -- it even
2 says minimal flood hazard. But still in a Zone X,
3 you can get a 500-year event --

4 Q. Okay.

5 A. -- which can cause all this to, you
6 know, come up.

7 Q. So when you searched the Nortons'
8 residence back when you were first building the
9 plan, was it AE12?

10 A. It was AE12, yeah.

11 And also, again, they're able to adjust
12 some of the maps, you know, based on relevant
13 storms and also, you know, topography.

14 Q. Okay.

15 A. But anyway, interesting.

16 Q. Yeah. And I also searched the Horry
17 County. They had the same thing, but it's a
18 similar map.

19 A. In color it's even more impressive.

20 (EXHIBIT 11, National Flood Hazard
21 Layer, was marked for identification.)

22 MS. CARY: Those are all the questions
23 I have.

24 EXAMINATION

25 BY MR. BELLAMY:

1 Q. You indicated -- what was the -- the
2 PUD Agreement, the recorded one on April 30, '92,
3 that was the --

4 MS. CARY: Exhibit 8.

5 BY MR. BELLAMY:

6 Q. -- Exhibit 8?

7 A. Yes. Exhibit 8 you said?

8 Q. Yeah. Yeah.

9 A. Yeah, 8.

10 Q. Felix, I'd like to direct your
11 attention to -- this is under Section 1. It's
12 entitled Master Site Plan.

13 A. On what page?

14 Q. I think it's on page 1 of 13.

15 A. Okay.

16 Q. Okay. And then what I'd like to do is
17 under -- go to Section -- I guess it would be
18 Section A21 and go to paragraph 2. And I'd like
19 you to publish that for the record where it starts
20 off, All future development for the project shall.
21 Yeah. Right here.

22 Do you see where I'm pointing right
23 there? This is on page 1 of 13.

24 A. Yes. Okay.

25 Q. Can you just publish -- you know, I

1 think it's paragraph 1A2 -- 2A1, yeah, for the
2 record. It starts with, All future development in
3 the project shall perform to the standards
4 described therein.

5 I'll just go ahead and read it. Each
6 phase shall require prior approval by the City.
7 Approval of the Planning Commission, City Council,
8 or other regulatory agencies may also be necessary.
9 Review shall be as started [sic] in Section 9 and
10 10 of this agreement. Anything not covered in this
11 document shall be governed by the City Zoning
12 Ordinance in Section 8 of this Agreement.

13 Now, that last sentence, what does that
14 mean to you as far as when the language says,
15 Anything not covered in this document shall be
16 governed by the City's Zoning Ordinance and
17 Section 8 of this agreement?

18 A. It goes back to my comments regarding
19 coherence, if you will, between the PUD Agreement
20 and the city ordinances.

21 The zoning ordinances, though,
22 certainly, as I mentioned, this becomes an
23 extension of the city documents, the city
24 ordinances; therefore, they run hand in hand. I
25 certainly feel there's a cohesion that has to occur

1 with those ordinances. I believe that's what
2 that's referring to.

3 Q. Okay. And as far as Exhibit 8, which
4 is the PUD Agreement we've been referring to, and
5 we're talking about the one specifically that was
6 filed on April 30th, 1992, in the RMC Office of
7 Horry County. I'm sure I would agree it consists
8 of pages 1 through 13.

9 Is there anywhere in the PUD Agreement
10 you've seen anything addressing residential
11 development in a floodplain or even talking about
12 it?

13 A. No. No, I didn't see that.

14 Q. Okay. So basically your interpretation
15 of, as far as reading Exhibit 8, pages 1 through
16 13, would it be fair to say the PUD Agreement is
17 silent regarding constructing residential homes in
18 a floodplain?

19 A. Yeah, in fairness, you know, this was,
20 what, '92 this was prepared after?

21 Q. Yeah.

22 A. And it's surprising because Hugo hit
23 '89, and everybody was still getting up to speed, I
24 guess, with the reaction of dealing with the
25 aftermath of the storm. But, nonetheless, that was

1 that benchmark in history. But they should have
2 had something in there because I think we were all
3 affected by Hugo.

4 Q. Now, let me direct your attention to
5 page 11 of 13. And I want to refer you to
6 Section 8, City Regulatory Power. Let me know when
7 you get there.

8 A. Yes, I'm here.

9 Q. Okay. And I'll publish it for the
10 record. It says, The City maintains all regulatory
11 powers as provided by law. This agreement does not
12 preempt any land use regulations not specifically
13 and intentionally changed by this agreement.

14 Did I read that correctly?

15 A. Yes.

16 Q. Okay. Is there anything in the PUD
17 Agreement that speaks to Section 23-106 whereas it
18 indicates that this agreement supercedes or is
19 controlling over Section 23-106?

20 MS. CARY: Objection.

21 MR. BELLAMY: You can answer.

22 THE WITNESS: No. There's nothing that
23 refers to that 23-106 is in regard to the design
24 flood elevation and the height of where the city
25 ordinance is measured from.

1 BY MR. BELLAMY:

2 Q. And let me kind of restate my question
3 a little bit differently.

4 Is there anything in the PUD Agreement
5 that -- as far as any language that specifically
6 preempts 23-106?

7 MS. CARY: Objection to the form.

8 BY MR. BELLAMY:

9 Q. You can answer it.

10 A. Again, I think regarding -- you know,
11 they should have recognized it in recent amendments
12 to the guidelines, if you will. The PUD Agreement
13 here is stating that nothing that's placed in these
14 documents -- if the city ordinance is not
15 recognized in here, it should have been in here,
16 yeah.

17 Q. What I'm saying is is that, for
18 example, if you go to Section D, Development
19 Standards, okay, and it references open spaces as
20 defined in Section 23-109(1). And remember that
21 23-106 is under that -- it's Chapter 23 of
22 Article 7 in the North Myrtle Beach Code of
23 Ordinances.

24 My point being is is that unless and
25 until the PUD Agreement specifically preempts and

1 nullifies 23-106, 23-106 would still control --

2 A. Correct.

3 Q. -- is that your opinion?

4 A. Yes.

5 MS. CARY: Objection to the form.

6 THE WITNESS: Yes.

7 BY MR. BELLAMY:

8 Q. All right. And, Felix, let me refer
9 you to Section 11. It's entitled Recording of this
10 Agreement. It's on page 12 of 13.

11 A. I'm there, yeah.

12 Q. Okay. And under Section 11 -- I'll
13 quote it -- The developer shall record this
14 agreement in the office of Register of MESNE
15 Conveyance, Horry County, South Carolina.

16 And you would also expect or it would
17 be your opinion that any amendments to this
18 agreement are required to be recorded in the RMC
19 Office of Horry County, correct?

20 A. Yes. Yeah. Especially today we didn't
21 have transparency laws as we have today, you know,
22 but, to me, it should all be conveyed into this one
23 document.

24 Q. Okay. And I think Taylor asked you
25 about as far as Defendant's Supplemental Answers to

1 Plaintiff's Interrogatories -- and we specifically
2 list you as an expert in our interrogatories. And
3 we broke down your opinions 1 through -- excuse me,
4 they're broken down to 1 through D, subparagraphs
5 A, B, C, and D.

6 A. Yes.

7 Q. Okay. And as we sit here today, Felix,
8 are those still your opinions?

9 A. Yes.

10 Q. Okay. Do you have the email from
11 Cathy -- from Mrs. Weis to, I think, the town
12 manager at the time?

13 A. Yeah.

14 Q. I think I've got it right here. Yeah,
15 we'll go ahead and mark that.

16 A. There's that.

17 (EXHIBIT 12, Fw: Meeting Tomorrow
18 WEIS/NORTON 6, was marked for identification.)

19 BY MR. BELLAMY:

20 Q. Felix, I'm going to hand you it's an
21 email between Cathy Weis and Mike Mahaney --

22 A. Okay.

23 Q. -- if I pronounced that correctly --
24 and it's dated February 26, 2022. And would you
25 publish it for the record, and then I'll have some

1 follow-up questions.

2 A. Yes. Okay. I see it.

3 Q. What I mean by publish it, read it into
4 the record so we can -- yeah.

5 A. This is from Mike Mahaney, North Myrtle
6 Beach Administrator.

7 Cathy, we have the plans and staff will
8 go over your questions in detail. To help, below
9 are general procedures and staff's analysis of the
10 situation. I can see you tomorrow.

11 We normally measure height to the
12 midpoint of the roof, but in Tidewater PDD it is to
13 the peak, and it is measured in flood zones from
14 the first finished floor.

15 Further architectural projections can
16 exceed that height if they are less than 15 percent
17 of the roof area. The cupola on the plans exceeds
18 the 42-foot height, but it constitutes less than
19 15 percent of the roof area. The plan conforms
20 with our ordinances.

21 That's the gist of the email.

22 Q. Okay. Are you aware as far as -- I
23 know Mike Mahaney is no longer the city manager.
24 But Ben Caldwell, have they changed their opinions
25 as far as the documents, you know, the emails

1 you've reviewed and -- you know, prior to your
2 deposition and during your deposition?

3 MS. CARY: Objection.

4 THE WITNESS: No. Other than the
5 appeal that was, you know, that came back that is
6 one of the exhibits here talking about the cupola.
7 But typically, you know, I concur with their
8 assessment. They've been spot on.

9 With the initial conversations I had
10 from Ben Caldwell to seeing this, it further brings
11 back the, you know, the ordinances that they -- is
12 part of City of North Myrtle Beach's ordinances.

13 BY MR. BELLAMY:

14 Q. I think it's your opinion as we've
15 indicated through your testimony that the City's
16 position is that 23-106 is controlling with respect
17 to development in a floodplain in Tidewater
18 Plantation?

19 A. Yes.

20 MS. CARY: Objection.

21 BY MR. BELLAMY:

22 Q. Okay.

23 A. I mean, it clearly says that even in
24 the PUD agreement here that they need to relate to
25 all ordinances. And, again, it should go hand in

1 hand in this community, so...

2 Q. In preparation for your deposition
3 today, Felix, did you get a chance to read the
4 appeal that I think Jeffries who was, I think, the
5 former Board president of Tidewater Plantation?

6 A. Yes, I did.

7 Q. Okay.

8 MS. WEIS: Jeffers.

9 MR. BELLAMY: Yeah, Jeffers.

10 BY MR. BELLAMY:

11 Q. And I think that back when they filed
12 the appeal, it says --

13 MR. BELLAMY: We can probably go ahead
14 and mark it as an exhibit. I'll go ahead and do
15 that. Let me get it out.

16 (EXHIBIT 13, Application for
17 Administrative Appeal, Board of Zoning Appeals, was
18 marked for identification.)

19 BY MR. BELLAMY:

20 Q. And you're aware that Jeffers filed an
21 appeal to the Board of Zoning Appeals regarding the
22 cupola being a necessary and mechanical feature,
23 right?

24 A. Yes.

25 Q. Okay.

1 A. Yes.

2 Q. Now, did the Tidewater Board file an
3 appeal regarding the maximum building height?

4 A. Not according to this. It was all
5 relative to the cupola.

6 Q. Right.

7 Did they file an appeal regarding --
8 they indicated your plans were compliant, correct?

9 And you didn't measure from the grade
10 pursuant to your plans?

11 A. Correct.

12 Q. You measured from the, I think it was,
13 first certified flood level, 1 foot above that.

14 A. Design flood elevation, yeah.

15 Q. Yeah.

16 And did the Tidewater Board appeal
17 that?

18 A. No.

19 Q. Okay. And I think on the back of the
20 appeal they attached the grounds, correct?

21 A. They attached the what?

22 Q. The grounds for the appeal.

23 A. It's right here, yes.

24 Q. Do the grounds for the appeal, do they
25 mention anything about taking issue with the

1 maximum flood height of 42 feet? Is that one of
2 the grounds for the appeal, that it's 41 instead of
3 42?

4 A. It's 42, yeah.

5 Q. Okay. So they don't take exception
6 saying it should be 41 instead of 42?

7 A. That's right.

8 Q. And pursuant to the grounds, they don't
9 take exception that you indicated that you measured
10 from the base certified flood level 1 foot above
11 that in order to determine the maximum roof height?

12 MS. CARY: Objection.

13 THE WITNESS: Yeah.

14 BY MR. BELLAMY:

15 Q. Go ahead.

16 A. Yeah.

17 Q. My question is did they take exception
18 to that?

19 A. No.

20 MS. CARY: Objection.

21 BY MR. BELLAMY:

22 Q. Is that yes or no?

23 A. Yeah. That's no. Yeah.

24 Q. Okay. They did appeal the issue
25 regarding the cupola, correct?

1 A. Yes, they did.

2 Q. Okay. Which was not appealed, correct?
3 It's circuit court, to your knowledge?

4 A. That's right.

5 Q. Okay. All right.

6 MR. BELLAMY: I have no further
7 questions.

8 MS. CARY: No further questions.

9 THE VIDEOGRAPHER: Okay. Then we're
10 going off record. The time is 2:13 p.m.

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

14 (The deposition was concluded at
15 2:13 p.m.)

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CERTIFICATE OF REPORTER

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

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

Witness my hand, I have hereunto
affixed my official seal this 24th day of June,
2025, at Myrtle Beach, Horry County,
South Carolina.



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

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1 Felix Ayres

2 felix@ayresarchitects.com

3 June 24, 2025

4 Tidewater Plantation Community Association, Inc. v.

Norton, Suzanne N., Et Al

5 Felix Ayres (#7351957)

6 The above-referenced transcript is available for
7 review.

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

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

16 Return completed errata within 30 days from
17 receipt of testimony.

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

20
21
22 Yours,

23 Veritext Legal Solutions
24
25

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Norton, Suzanne N., Et Al
Felix Ayres (#7351957)

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Felix Ayres

Date

1 Tidewater Plantation Community Association, Inc. v.
2 Norton, Suzanne N., Et Al
3 Felix Ayres (#7351957)

ACKNOWLEDGEMENT OF DEPONENT

4 I, Felix Ayres, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Felix Ayres

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

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18 _____
19 NOTARY PUBLIC
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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

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

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

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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

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