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: MATT HINES
DATE: June 13, 2025
TIME: 10:27 a.m.
LOCATION: Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, South Carolina
TAKEN BY: Counsel for the Counterclaim Defendants

REPORTED BY: KAREN M. BECKMAN, CSR
Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEY FOR COUNTERCLAIM DEFENDANT TIDEWATER PLANTATION COMMUNITY ASSOCIATION, INC.:

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

BELLAMY LAW FIRM
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ALSO PRESENT:
CATHERINE WEIS

(INDEX AT REAR OF TRANSCRIPT)

MATT HINES

being first duly sworn, testified as follows:

EXAMINATION

BY MS. CARY:

Q. Good morning, Mr. Hines. My name is Taylor Cary and I represent Tidewater Plantation Community Association.

How are you today?

A. I'm doing well. And you?

Q. Good.

A. Good.

Q. Have you ever been deposed before?

A. I have.

Q. And have you ever been deposed in your individual capacity, not as an expert witness?

A. No.

Q. Okay. I'm just going to go over the rules real quick. I prefer verbal responses to shakes of the head or nods.

Due to the court reporter, I'll do my best not to talk over you and I ask the same. Refrain from talking over each other.

If you have any questions, please direct them to me. I'm happy to rephrase or repeat my questions if it doesn't make sense. If you do

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

A. That's fair.

Q. Okay. And we can take a break at any point. I just ask that you answer any pending question I have before we take that break.

A. Sure.

Q. And you may hear objections to the form. Please still answer unless instructed not to do so.

And are you being represented by an attorney for the purposes of today's deposition?

A. No.

Q. Did you receive the document subpoena that we served upon you in this case?

A. Yes.

Q. Okay. And did you search for any emails or text messages related to this case?

A. I did.

Q. And how did you search for documents in response to the subpoena request?

A. Using the search bar in Outlook.

Q. Okay. What about any other documents other than emails?

A. In terms of -- they're all saved in the

file on the server.
Q. Okay. And have you had any correspondence with the City of North Myrtle Beach in your review of this case?
A. No.
Q. And did you take any notes in your review of this case?
A. I don't believe so, but if I did, I would have -- I take pictures of them and save them to the file. That way I don't have to find them later.
Q. And if there were no notes, would that mean that you did not take any notes?
A. That's correct.
Q. And what did you do to prep for today's deposition?
A. Reviewed the files, reviewed my report, met with Mr. Bellamy, and that's pretty much it.
Q. And when did you meet with Mr. Bellamy?
A. We met over, let's see, over the phone yesterday and then over Zoom on Monday, I believe.
Q. And what did you discuss?
A. Or, excuse me, not Monday, it was last Thursday or Friday.
Q. Okay. And what did you discuss

specifically?
A. Just generally just being refreshed on the case.
Q. And did you have any questions for Mr. Bellamy on the facts of the case?
A. I don't believe so.
Q. Okay. And did you graduate undergrad?
A. I did.
Q. Where from?
A. I have two undergraduate degrees. One is from Presbyterian College in Clinton, South Carolina. The other is from the University of South Carolina in Columbia.
Q. Uh-huh. And what are those degrees in?
A. My Presbyterian College degree is in chemistry. My degree from USC is civil and environmental engineering.
Q. And did you go to grad school?
A. I did not.
Q. Do you have any other degrees, certifications, or formal training?
A. I do not have any other degrees, no. I have a handful of certifications as it pertains to inspection work. I have received other training in terms of, you know, continuing education classes

and that type of thing.
Q. And are those all related to engineering?
A. That's correct.
Q. The field of engineering? Okay.
And do you hold any professional licenses?
A. I do.
Q. And what are they in?
A. I am a registered engineer in South Carolina.
Q. Any other states?
A. No.
Q. And when did you receive that license?
A. 2015.
Q. And it's still current?
A. It is.
Q. And was it ever suspended?
A. No.
Q. Have you ever received any complaints against your license?
A. No.
Q. Have you ever been sued in a professional capacity?
A. No.

Q. What was your first job after graduating from undergrad?
A. Which time?
Q. Was it the second time, the civil engineering?
A. That's correct.
Q. Okay. I guess after that time.
A. I went to work for Dennis Corporation, engineering firm based in Columbia, South Carolina. I worked there until we were acquired in 2023 by Bowman Consulting Group, and I continue to work for them to this day.
Q. And what was your title there when you started?
A. At Dennis Corporation?
Q. Yes.
A. I started as -- unofficially as an unpaid intern because this was the height of the Great Recession. I worked as an inspector.
Q. Okay.
A. I worked as a design engineer probably within three or four months of starting, continued on to manage different engineering departments and disciplines. And prior to acquisition, I was president of the company.

Q. Okay. And where did you predominantly work in South Carolina? Was it a specific region of South Carolina, all over South Carolina, or something else?

A. All over South Carolina. We work statewide and now across the border or borders, I should say.

Q. And how would you describe your current line of work?

A. I am the branch manager for the Columbia branch overseeing approximately 35 employees to include engineers, construction inspectors in various lines of inspection, and run the day-to-day business operations for our branch as well as serve as the engineer in responsible charge for our license to practice engineering in Columbia or in South Carolina with our Columbia office and oversee a lot of the quality control aspects of design and construction documents.

Q. Okay. What does that mean when you are the -- what did you say about the main license for Columbia, for your branch? Does that mean that you have interns under you that work under your license?

A. No. So in South Carolina, individuals

have licenses and registration as engineers. Firms are also licensed to function as a firm. That's called a certificate of authorization. And those have to be overseen by a registered engineer, and I am the registered engineer in responsible charge for the firm's license for our office.

Q. Got it.

Do you perform elevation surveys?

A. Out of our office, yes, we do. I am not a registered surveyor, so I do not personally do that. But I do oversee that work to the extent of our business.

Q. And have you ever done that line of work?

A. I have performed work on a survey crew as part of my training as an engineer.

Q. Okay.

A. But I have never been licensed as a surveyor and don't do that very often.

Q. Okay. Have you ever worked for a community association?

A. I've had a few projects where we have worked for community associations before, yes.

Q. And what type of projects were those?

A. I believe they were mostly -- we have

fixes to damage from a storm or from deferred maintenance, investigations of, you know, stormwater problems or construction defects or how do we fix a deck that's not safe to habitat anymore, that type of thing, so...

Q. And when were those projects approximately?

A. Various times throughout my career.

Q. How recent would the last project have been?

A. I would think within the last year or so.

Q. Okay. And have you ever worked with or consulted for an Association Design Review Board or Architectural Review Board?

A. Yes. We currently perform plan reviews for a Design Review Board located in Hardeeville, South Carolina.

Q. And what is --

A. Although we're not directly employed by them, that is our function.

Q. Okay. Who are you employed by?

A. We're employed by the homeowners association.

Q. Okay. And what homeowners association

is that?

A. It's Latitude Margaritaville, Hilton Head.

Q. Any other Design Review Boards or Associations?

A. Not off the top of my head so not recently.

Q. And what do you consult with them for? What purpose are you consulting for?

A. With Latitudes?

Q. Yes.

A. We review all of the site plans for proposed construction of pools that are where the homeowner chooses to not utilize the preapproved contractor.

Q. Okay.

A. And so we review those for compliance with the design standards that are in place at the time.

Q. Okay.

A. As well as after construction certify that they were built in accordance to those approved plans.

Q. Okay. And you're reviewing those site plans to make sure they comply with the

association's documents, governing documents or something else?

A. With the association's documents.

Q. Okay. Have you ever worked for the City of North Myrtle Beach?

A. I don't believe I've ever worked on a project for the City of North Myrtle Beach. It is possible that Dennis Corporation did at some point, but I don't recall that. And it's certainly possible that Bowman has at some point, but I don't --

Q. You have not yourself?

A. I have not myself.

Q. Okay. And do you have any legal training or legal expertise?

A. No.

Q. And do you understand that you've been identified as an expert witness in this case?

A. Yes.

Q. And what has Mr. Bellamy asked you to give your opinion on?

A. Specifically I was asked to give my opinion on how to measure building height in regards to Mr. Norton's proposed home construction in light of potentially conflicting direction from

various sources.

Q. And how many times have you served as an expert witness approximately?

A. I don't know the answer to that, but it would be somewhere between 15, two dozen times. Honestly, I just don't know.

Q. Okay. And have you ever been qualified by a Court as an expert witness?

A. I have.

Q. How many times?

A. I've testified three times.

Q. And you were qualified each of those three times?

A. Yes.

Q. In what area were you qualified in?

A. In civil engineering.

Q. Civil.

And do you recall what county those cases were in?

A. Beaufort County, Richland County, and I believe the third time was in Charleston County.

Q. And when were those cases -- I guess when was that Beaufort case? What year?

A. Around 2020.

Q. And who did you represent?

A. I was working for Traywick Law Firm.
Q. And who were they representing?
A. They were representing multiple property owners in a case with -- I believe it was -- it was a developer and I'm trying to remember what the name of the developer was. And I just frankly can't. It might have been D.R. Horton.
Q. Okay.
A. I believe that's correct.
Q. And what year was the Richland County case?
A. That was in 2023.
Q. Okay. And do you know who the parties of that case were?
A. I was representing a property owner's association in a -- and I do not remember who the other party was. It was the estate of a -- or, excuse me, it was the parents or the guardian of a child who was injured at an apartment complex.
Q. Okay. And what year was the Charleston County case?
A. The Charleston County case would have been around the same time, 2022, 2023, somewhere in that range.

Q. Okay.
A. They still had barriers up, but you didn't have to wear a mask. That's all I remember.
Q. Okay. And do you remember who the parties were in that case?
A. This also involved the Tidewater case, I believe. The matter was in Beaufort, but it was in -- or, excuse me, when I say Tidewater, I'm not referring to this. The neighborhood in Beaufort County was also called Tidewater.
Q. Okay.
A. So it gets confusing. I apologize for that.
Q. I was going to say what?
A. But in that particular trial, there were a couple of trials on that.
Q. Okay.
A. And I believe that one was held in Charleston.
Q. Okay.
A. Related matter.
Q. Okay.
A. Different case, related matter.
Q. Got it.
I'll mark this as Exhibit 1 to your

deposition.

(EXHIBIT 1, Forensic Engineering Dennis Corporation Capabilities, was marked for identification.)

BY MS. CARY:

Q. I don't know if this whole document is your CV. Okay. And do you recognize this document that I've marked as Exhibit 1?

A. I do.

Q. What is this document?

A. This is our packet for Forensic Engineering Services. It's an old version obviously --

Q. Okay.

A. -- because it still refers to Dennis Corporation --

Q. Right.

A. -- which does not exist anymore.

Q. Okay. And if you go to, I think it's, the second to last page.

A. Sure.

Q. This is your CV?

A. It is.

Q. Okay. When was the last time this was updated, your CV?

A. It looks like it's --
Q. It's 2020?
A. As far as this goes?
Q. Yeah.
A. The latest it would have been would be 2020.
Q. Is there an up-to-date version with the cases we just discussed on there?
A. There is not one. It's on my to-do list honestly.
Q. Okay.
A. But I have not updated it.
Q. Okay.
MR. BELLAMY: All your condemnation work, that's on behalf of the DOT?
THE WITNESS: That's correct. We worked on one condemnation case for -- and it's probably on here -- the Elmwood, yes, Elmwood Church of God. But that was a county matter.
BY MS. CARY:
Q. And on page -- I think it's 14 of the document, it does list a bunch of cases. Are these cases that you have worked in or Dennis Corporation -- that you specifically have worked in or just Dennis Corporation has worked in -- on?

A. In general, Dennis Corporation --
Q. Okay.
A. -- but over the 15 years that I've been there, I've worked in nearly every one --
Q. Okay.
A. -- that we have participated in to some degree or the other.
Q. Okay.
A. I may or may not have been the expert. I may have been supporting an expert, especially earlier on in my career.
Q. Okay. And is this case also last updated 2020?
A. This entire packet.
Q. Is last updated --
A. That's correct.
Q. Okay. And what areas do you consider yourself an expert in?
A. In civil engineering.
Q. Civil engineering. Okay.
Anything else?
A. No. That's it.
Q. Okay. And how many times in the past have you worked with the Bellamy Law Firm in a professional manner?

A. I would be guessing, but probably six to eight, something like that, maybe a little more.
Q. And were those all as an expert witness?
A. No, because not every matter became a legal case --
Q. Okay.
A. -- or a legal matter.
Q. And were you given any facts or data provided to you in this case that you considered in forming your opinions?
A. I'm sorry, could you repeat the question?
Q. And were you provided any facts or data, documents to you in this case that you considered in forming your opinions?
A. Yes.
Q. And what documents were those?
A. They would all have been included in the file that I provided.
Q. And were you told to assume any facts are true or take a specific position on any matter?
A. No.
Q. And did you refuse to provide any opinion that you were asked to give by Mr. Bellamy?

A. No.
Q. And how many hours did it take you to review this case and form an opinion?
A. I do not know the total.
Q. Okay.
A. If you look at the invoices, which I provided, those -- and you can total up the number of hours that I've worked on this case.
Q. And did you ask for any additional document or information during your review of this case?
A. I'm sure I did ask for something at some point.
Q. I'm going to mark this as Exhibit 2.
(EXHIBIT 2, Affidavit of Matt Hines, was marked for identification.)
BY MS. CARY:
Q. And do you recognize this document?
A. I do.
Q. And is it your signature on page -- what is it? -- page 5 of this affidavit?
A. Yes.
Q. Okay. And did you prepare this affidavit?
A. I did.

Q. Was any of the information prepared for you?
A. The formatting --
Q. Okay.
A. -- would have likely been prepared for me.
Q. Any other paragraphs?
A. I don't think so.
Q. Okay. And did you have any involvement in the design of the Nortons' proposed design plans back in 2020?
A. I did not.
Q. And if you go to page 2, paragraph 7 of your affidavit, and it refers to your review of the FEMA firm map. When did you review that FEMA map, if you can recall?
A. Sometime within 2022.
Q. Okay.
A. But I don't recall exactly when.
Q. Okay.
MS. CARY: Okay. So this I tried to print, but it did very poorly. Like, it just would not print well, so I have it on my computer as well to review. We can mark it as Exhibit 3.
MR. BELLAMY: I believe we have a color

copy of it.

MS. CARY: This is from Mr. Hines's file.

(Off-the-record conference.)

(EXHIBIT 3, Map, was marked for identification.)

BY MS. CARY:

Q. I have it here for you as well. This is a copy. It's a little bit better, but...

And do you recognize this document?

A. I do.

Q. Is this the FEMA firm map that you reviewed in 2020?

A. If this is the one that came from my file, then yes.

Q. Yes. And how did you determine the base flood elevation of 12?

A. It would have been -- may I --

Q. Yeah.

A. Is this a touch screen?

Q. No. But you can...

A. That's fine. Get me to the menu bar.

Q. There's the menu as well.

A. Got it. Thank you.

Is this the native resolution of the

original file?
Q. I can pull the full thing, but, yeah, that was the --
A. It may be --
Q. Yeah.
A. -- but generally speaking --
Q. Yeah.
A. -- in AE sections, the elevation is typically listed on the map, and I cannot zoom in close enough on this.
Q. Okay. Where --
A. And it may be very possible that I pulled the elevation on the computer screen --
Q. All right.
A. -- and then when I saved it as a PDF, the resolution is not --
Q. Okay. Got you.
A. I just -- I don't remember since it's been a few years.
Q. Is the resolution a separate document or is it listed on --
A. No. I'm referring to the resolution of the document so that when you zoom in it's still legible.
Q. Got it. Okay.

A. And that's to answer your question.
Q. Okay.
A. But generally speaking, the elevation data is provided on the map.
Q. Okay.
A. If you zoom in close enough, you can see it.
Q. Okay. If I show you this, which is what I pulled from, I pulled the same chart recently. Is that a better picture?
A. Let me see that one. Yes.
Q. Okay.
A. So if you look here --
Q. Okay.
A. -- under the zone --
Q. Okay.
A. -- it will have an elevation at EL11. And what that indicates is that in this area it is a Zone AE based on a flood elevation of 11.
Q. Okay. At the time that you pulled the map, was it an AE elevation of 12?
A. That's correct.
Q. Okay. In your experience, do the elevations typically change often?
A. They can.

Q. Okay.
A. And every so often the elevations are changed --
Q. Okay.
A. -- based off of new data and new modeling, at which point those are -- a map revision is issued or an updated map is issued.
Q. Okay.
MS. CARY: I don't have another copy of this, but can we mark this as Exhibit 4?
(EXHIBIT 4, National Flood Hazard Layer, was marked for identification.)
BY MS. CARY:
Q. And I would represent to you that this is a FEMA flood map that I pulled online for the Nortons' address in Tidewater Plantation. And you can see it has the same FEMA map number as the one listed in your affidavit.
And what base flood elevation does it say on this map?
A. 11.
Q. Okay. So would your opinion have changed and it not be a base flood elevation of 12 looking at this map?
A. I would have to look at it again.

Q. Okay.
A. But generally speaking I rely on the firm maps themselves --
Q. Okay.
A. -- not the GIS representation.
Q. Okay.
A. But I would have to look at it to see.
Q. Okay. You can...
A. Thank you.
Q. And if you flip to page 4 of your affidavit -- let's start at page 3. It's paragraph 15 where it says, The proposed building plans for single-family residential structure. It starts off there and it lists -- it says, The proposed height to the midpoint between the eave and the highest point of the roof is approximately 40 to 7 1/4 inches. I'm sorry. I can't say that.
Are you referring to the Nortons' home design plans in this last sentence?
A. Yes.
Q. Okay. And do you know what home design -- were you looking at the same home design plans that the Nortons submitted in July of 2020 to the Association Design and Review Board?
A. I was looking at the plan that would

have been in my file.
Q. Okay.
A. And I do not know whether that was specifically the one that was submitted or not.
Q. Okay. And do you recall what the measurement to the peak of the roof would have been?
A. I don't specifically recall.
Q. Okay.
A. But in the beginning of this sentence it says that the peak roof height would be 42 feet.
Q. Okay. And in paragraph 16, the last sentence says, The peak roofline of this portion of the structure, which is referring to the cupola, is shown to exceed 42 feet.
So would you agree that when you include the cupola into the height measurement of the structure, it exceeds 42 feet?
A. Yes. That's what this says.
Q. And are you measuring from the base flood elevation --
A. I'm measuring from the --
Q. -- in that calculation?
A. No.
Q. Okay.

A. I'm measuring from the elevation of the first occupiable floor.

Q. Okay. If you go to, it's paragraph 18, subparagraph B, and it states that: The cupola serves no practical purpose except as access to the roof. It's the only access to the roof in the event of emergency or loss of power to the elevator, will occupy less than 15 percent of the total roof area and is, therefore, a necessary mechanical feature exempt from the height limitations for single-family roof structures in accordance with Ordinance Section 23-106.

MR. BELLAMY: We're not going forward on that one.

MS. CARY: I know.

MR. BELLAMY: Okay.

THE WITNESS: I'm sorry. Just for clarification -- because I see that there's a typo in here.

BY MS. CARY:

Q. Okay.

A. -- there are two Bs, so you're referring to the second B.

Q. Oh, okay. Yes, the second B.

A. All right.

Q. And you signed this affidavit on January 4th, 2023. Are you aware that as of the date that you signed this affidavit, the City of North Myrtle Beach determined the cupola was not a necessary and mechanical feature?

MR. BELLAMY: You mean the Board of Zoning Appeals?

BY MS. CARY:

Q. Yes. The City of North Myrtle Beach Board of Zoning Appeals.

A. I'm sorry. What was the question again?

Q. Yes. Are you aware that as of the date that you signed this affidavit, the Zoning Board of Appeals for the City of North Myrtle Beach determined the proposed cupola in the Nortons' design plans was not a necessary mechanical feature?

A. I was not aware of that. That being said, it doesn't really change my opinion about it.

Q. If you go to paragraph 18, subparagraph D, it says that the proposed structure complies with the maximum building height requirement of 42 feet.

Would you amend this statement now

knowing that the proposed structure has to take into account the height of the cupola?

MR. BELLAMY: Object to form.

We've already acknowledged that it's a cupola.

MS. CARY: Yeah. I'm asking.

THE WITNESS: If it is a settled matter that the cupola does not -- should be included in the overall height, that portion of the roof does not. The remainder of the roofline does, in my opinion, meet the building height requirements as set forth.

BY MS. CARY:

Q. Okay. But as the Nortons' home design plans are currently drafted, they would exceed 42 feet. The maximum building height requirement would exceed 42 feet, correct?

A. As I stated before, the plans that I reviewed include a cupola, which was above the height of 42 feet.

Q. Okay. And going back to paragraph 18, subparagraph A, what are you relying on when you say, The ordinance takes precedent over the PUD agreement?

A. When you say the ordinance, are you

referring to the ordinance section that I quote here?

Q. Yes.

A. Relying on the fact that the PUD agreement itself is silent on construction within a floodplain.

Q. Okay.

A. And that that particular ordinance, Section 23-106, was added to the city ordinances upon implementation and amended a couple of times, I believe. And that due to the fact that that is a different situation on which the PUD agreement is silent, then the default is to refer to city ordinances in effect when that agreement does not address something specific.

Q. Okay. And how do you make the determination that when the PUD agreement does not -- I'll strike that.

Were you relying on anything else?

A. Just the documents themselves.

Q. Okay.

A. The PUD agreement, the ordinances.

Q. And what makes you qualified to provide this legal interpretation?

A. So as a civil engineer, that is a great

deal of my job is to, you know, design and implement improvement projects that are in compliance with various codes and planning ordinances and zoning ordinances and guidelines from a number of different agencies. And so that is -- an inherent part of my job is reading, understanding, interpreting those codes.

Q. Okay. Have you ever drafted a Planned Unit Development or a PPD -- PDD agreement?

A. I have not.

Q. Have you ever been involved in preparing a PDD or PUD agreement?

A. I have not.

Q. In your line of work, how often do you interpret and review PUD agreements?

A. Whenever it is involved in a particular project I'm working on.

Q. How many projects have you encountered PUD agreements in?

A. I would not venture to guess.

Q. Okay.

A. I mean, it's a couple dozen probably --

Q. Okay.

A. -- maybe a little more.

Q. And how many of those involve property

that was on a coast or within a floodplain?
A. How many PUD agreements?
Q. Uh-huh.
A. Probably most of them.
Q. Do you recall what communities those PUD agreements were for?
A. I do not.
Q. Do you recall what counties?
A. Probably most of the southern coastal counties. I don't really remember exactly.
Q. Have you ever been involved in drafting a zoning ordinance?
MR. BELLAMY: Object to the form.
THE WITNESS: Yes.
BY MS. CARY:
Q. When was that?
A. Roughly late 20-teens. I don't know the exact dates, but we were a consultant for Chester County, and one of the tasks that we were given was in assisting in a technical review of their various design criteria that they were implementing and updating to their zoning ordinances.
Q. What specifically were they updating?
A. 90 percent of it.

Q. Okay.
A. It was a lot. So it was a review of everything from the transportation pieces, stormwater, I believe. Essentially all of the design criteria that they would list as being required.
Q. Any criteria on how do you measure a residential structure in a flood zone?
A. It would have been included.
Q. Okay. And what did that consulting involve? What did you do in consulting with Chester County?
A. The review of draft changes.
Q. Okay.
A. And redlines, implementation, recommendations for this is reasonable or not, that type of thing.
Q. Uh-huh. And in consulting, did you ever -- were you asked to interpret how the zoning ordinance interacted with PUD agreements or PDD agreements, or was that outside the scope?
MR. BELLAMY: Object to form.
THE WITNESS: I don't recall that ever being a conversation.
BY MS. CARY:

Q. Okay. Have you ever seen an iteration of the Nortons' proposed design plans where the cupola was lowered to be within 42 feet from the certified floor elevation?

A. I don't recall if I saw one. If I did, I believe it would have been in my file. But I know there was some discussion of that, but I think it was associated with the mediation.

Q. Okay. Other than the home design plans that you analyze in your affidavit, are you aware of any other home design plans that the Nortons submitted to the Association's Design Review Board?

A. I do not know how many, if any more than one, iterations existed and were formally submitted to the Board.

Q. Okay. So beyond the one that you reviewed, you do not know if any subsequent plans were submitted to the Design Review Board?

A. The only versions of the plan that I looked at would have been in my file.

Q. Okay. When you are analyzing -- strike that.

And have the Nortons ever discussed with you lowering the design of the proposed floor plans, including the cupola, to be within 42 feet

from the certified floor elevation?

A. Not that I recall. And to be honest, outside of the context of the mediation, I've had very little contact with the Nortons directly.

Q. Okay. In reviewing PUD agreements -- strike that.

When you are reviewing a community association's governing documents, like, for example, when you're talking about the consulting for the pools and making sure that the site plans for the pools are in compliance with the association's governing documents, what exactly are you looking for when you're reviewing the documents?

A. The specific requirements --

Q. Uh-huh.

A. -- that are undertaking that work, whatever it is. I know that's kind of a vague answer, but it's a pretty broad question, so I'm not really sure how to answer it.

Q. When reviewing the documents, do you ever have to look to other documents to interpret what is in the association's governing documents regarding the design plans?

A. In regards to the pool plan reviews?

Q. Yeah.
A. In that case, no --
Q. Okay.
A. -- because we are not engaged to review anything in terms of building code requirement or anything like that for that particular matter.
Q. Okay.
A. It is strictly is this in compliance with the Architectural Review Board standards for pool construction --
Q. Okay.
A. -- and does not -- we are not asked or obligated to review anything that has to do -- because they also have to submit the building permits with, in this case, the town of Hardeeville --
Q. Okay.
A. -- and they will perform those reviews. So we have a very limited scope of review for this particular task.
Q. Okay. And does your review happen before or after the homeowner gets their permit from the City?
A. I honestly do not know.
Q. Okay.

MS. CARY: Can we take a five-minute break?

MR. BELLAMY: Sure.

(A recess transpired.)

BY MS. CARY:

Q. Mr. Hines, have you ever drafted an association's governing documents, like their declaration or CCRs, covenants, restrictions?

A. No.

Q. Have you ever drafted an association's Design Review Board or Architectural Review Board standards?

A. I believe -- and I may be mistaken on this -- but I believe when we were first engaged by Latitude Margaritaville, we did assist in reviewing and finalizing that particular section of the ARB guidelines for the pools.

Q. Okay.

A. Because they were using a version from a different development, I believe, in Florida --

Q. Okay.

A. -- as the basis for it. And this was relatively new. But I honestly don't remember -- to the extent that we did, it was a courtesy review and not anything we were contracted to do.

Q. Okay.
A. That's the only thing I can think of. Other than that, I don't believe so.
Q. Okay. And you testified you had reviewed PUD agreements before in the past?
A. Yes.
Q. A dozen or so?
And in your review of those, in the development criteria, how often were they silent on how to measure the height of a residential structure in a floodplain?
MR. BELLAMY: Object to form.
THE WITNESS: I don't have any idea.
BY MS. CARY:
Q. Uh-huh.
A. And the reason I say that is because we probably would not spend too much time looking at it.
Q. Okay.
A. Generally speaking, I don't recall seeing any, if any, PUD agreements that ever addressed flood issues because they change.
Q. Okay.
A. And whereas, the administration of flood issues is typically assigned to the governing

municipality.
Q. Okay.
A. In this case, I believe the City of North Myrtle Beach.
Q. Okay.
A. I mean, I don't know this, but I would think that that would be kind of a cumbersome thing to keep up with.
Q. Okay.
A. So every time that there's a change, you would have to draft an amendment to the PUD agreement and have that approved by the Board and then submit to council if that did approve. Whereas, by being silent on it, you're essentially deferring that authority to the agency that has authority.
Q. Okay. And are you aware that the PUD agreement is with the City, between the developer and the City?
A. Correct. And it's also a part of the ordinances.
Q. Okay. And do you -- in your experience, does the method of how you calculate height within a floodplain, does that often change?
A. Yes.

Q. Okay.
A. It nearly always changes when you're talking about floodplain elevations.
Q. What typically changes about the height elevation?
A. Usually the base where you measure from.
Q. Okay.
A. Because by definition a floodplain is typically lower than the surrounding ground.
Q. Okay.
A. And so, you know, if building height is a factor that is considered to manage the skyline, for lack of a better word, for the roofline of an area or a specific zoning district --
Q. Okay.
A. -- your starting point obviously has an impact on that. And so most agencies -- and I can't think of one that does not -- but they typically will measure from some data point --
Q. Okay.
A. -- in general and then whether it's the curve elevation at the entrance to the property or it's an average elevation of the surrounding ground or whatever it is in any particular agency that

decides to define it that way --

Q. Okay.

A. -- that will be one thing. But once you reach into -- if you're constructing within a flood-prone area, they typically will set it at whatever that base elevation is.

Q. Okay.

A. That is pretty common. And like I said, I don't know off the top of my head any agency that does not do that.

Q. So when you say that it typically changes, are you referring to where you measure in a floodplain typically changes or is it always typically the certified floor elevation?

MR. BELLAMY: Object to the form.

THE WITNESS: It is typically the certified flood elevation or whatever -- or it could be, as in this case, 1 foot above the minimum floor -- or excuse me, they're both kind of the same.

So in this case we've got 12 inches of freeboard that's required, so it's the flood elevation plus 1 foot, which is the certified floor elevation, the minimum floor elevation that is above the floodplain.

BY MS. CARY:

Q. Okay.

A. Or it could be defined as you start at the defined flood elevation, or it could be defined be as the flood elevation plus one, which ends up being the same as the certified floor elevation. So it just depends. But they are typically different.

Q. And have you ever seen that criteria contained within a community's PUD agreement in your experience?

A. I don't think I have, no. It's very possible that it does exist, but I don't recall seeing one in there.

Q. Okay. And you testified earlier that as a civil engineer you're asked to give interpretations of various documents, building ordinance, zoning ordinance, correct? Am I saying that correctly?

A. You are. So in civil engineering there is no unified code that covers everything that we do.

Q. Okay.

A. And therefore we have to go to multiple sources.

Q. Okay.

A. And oftentimes we have to reconcile conflicting information or when does this apply versus this?

Q. Uh-huh.

A. But at the end of the day, as a civil engineer, we, by definition, work for the public good.

Q. Uh-huh.

A. And, therefore, we are bound by those jurisdictional agencies, whether it's the municipality or the county government that has jurisdiction locally, whether it's the Department of Transportation who has jurisdiction over certain transportation aspects, whether it's the Department of Defense and specifically the Corps of Engineers as it has to do with, you know, certain waters of the U.S., whether it's now the DES -- it used to be DHEC -- as it pertains to water quality, water quantity, water, sewer.

You've got utility providers that have their own criteria. You've got development agreements that would have their own criteria. So there are multiple sources that have to be referenced when we're developing a design for a new

project or the repair of an old project or looking to see if there is a problem that should be fixed.

Q. Okay. And how often are your interpretations, you know, concerning what, you know, ordinance or document may take precedence over another? How often -- what are you typically looking for as a source to make that interpretation?

MR. BELLAMY: Object to form.

You can answer.

THE WITNESS: The document itself.

BY MS. CARY:

Q. Okay.

A. And if it is not clear or is not defined, then we go to the agency that has jurisdiction over that particular matter and ask for clarification.

Q. Okay. And in this case, did you go to the authority -- the City of North Myrtle Beach and ask them what their opinion was?

A. No.

Q. Okay.

A. Two things, number one, I believe it's pretty clear. And also from the documents I've seen, City staff agreed with the way that I had

interpreted the starting point for the height measurement.

Q. Okay. You said you took continuing legal education classes for your civil engineering license?

A. If I said that, let me clarify.

Q. Okay.

A. But what I meant was I take continuing education classes in civil engineering --

Q. Uh-huh.

A. -- in all aspects.

Q. Okay.

A. I have taken a couple of classes as it pertains to specific legal matters as it relates to the business of engineering.

Q. Okay.

A. So insurance, contracts, that type of thing. But I would not pretend to say that I'm an attorney.

Q. Okay. So no continuing education classes on how to interpret the zoning ordinances, association governing documents or the like?

A. Yes. That I have done, yes.

Q. Okay.

A. And, again, that is part of our job

every day.

Q. Okay.

A. And so in addition to taking, you know, specific classes on interpreting building code --

Q. Uh-huh.

A. -- or changes to the IBC --

Q. Uh-huh.

A. Or, you know, how to interpret certain federally funded program guidelines and the, quote, unquote, legalese that's associated with that, that's a daily occurrence.

Q. Okay.

A. So that goes back to my academic training.

Q. Uh-huh.

A. You know, one of the first things that you doing is you learn how to read a code.

Q. Okay.

A. Through, you know, the various classes as it pertains to that all the way through the four years you work under another engineer.

And then, again, if you're a practicing engineer performing design, which is what I do and what we do as the bulk of our business, it is a daily occurrence. That is what we literally exist

for is to make sure that the items that we're doing are compliant with the standards that exist for whatever the agency is.

Q. And in your experience interpreting documents and opining on how those documents interact, have you ever later had to go and amend your opinion?

A. Well, I'm certainly not going to say I've never made a mistake.

Q. Okay.

A. But I don't -- as it pertains to this, I cannot recall ever having to change my opinion as far as my interpretation of code or statute requirements as it pertains to flood elevations, no.

Q. What about how it interacts with an association's PUD agreement or governing documents?

A. I do not recall ever having to change a design or change a fix or change an opinion as it relates to the interaction between the flood agencies and PUD agreements because, again, those agreements are part of the ordinance. So they're incorporated in. They're not separate from.

Q. Uh-huh.

A. They are in addition to. And so that's

a -- which is the reason why they work so well together generally speaking, so...

Q. And if a PUD agreement contained height measurement requirements in that PUD agreement, how do you then find that you need to look to the city's ordinance on height measurement if it's already in that PUD agreement?

A. The same way I would if I was looking at the -- if we were not talking about a property that was within a PD district --

Q. Uh-huh.

A. -- you would go to the first place, which is what is the height requirement in general. And then when you find that you're in a floodplain, then you scrap that and go find the floodplain ordinance and go there unless there's something specific in the base ordinance or it defines it or it says don't worry about it or whatever. You know, if it's defined, then that's where you go.

Q. When you say if it's defined, what are you referring to?

A. So when a zoning ordinance has a height definition --

Q. Uh-huh.

A. -- for whatever reason, whatever the

reasoning is, if they say height is measured from A to B --

Q. Uh-huh.

A. -- then that is the ordinance. It is common and I don't know of an instance where it doesn't exist, but I'm not going to say that it doesn't in general, that there are exceptions to those as part of floodplain management --

Q. Uh-huh.

A. -- to where that measurement is typically made differently.

Q. Uh-huh.

A. At least in my experience.

And so if that is the case -- and I know that the property is within a floodplain -- then I look at that definition for the definition of what I'm supposed to do and do not use the one that is not applicable because it will generally say, this is not applicable, you have to use this one. And so that's -- I'm not sure if I'm answering your question.

Q. Uh-huh.

A. But, I mean, that's how it works. And so if the ordinance is silent on something, then you stick with what it does say.

But, again, the design criteria within a PUD agreement is part of the zoning ordinance. It becomes part of that. And so just like I would go back if we were building in a high-intensity zoning district, there's going to be certain criteria. I look at those. If it's not defined there, I look elsewhere in the code to find what the limit is --

Q. Okay.

A. -- right? It's the same with a PD agreement where if it's defined in the PD agreement, then that is what covers. If it's not, I go elsewhere in the governing ordinance to find what the answer is.

Q. All right.

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

THE WITNESS: Okay. Thank you.

MR. BELLAMY: Do you need to take a break or anything?

THE WITNESS: I'm okay.

EXAMINATION

BY MR. BELLAMY:

Q. Matt, are you aware of any law in the State of South Carolina that requires you to be an

attorney to interpret a legal document or governing document, a contract, or an ordinance?

MS. CARY: Objection.

THE WITNESS: I'm not aware of any law, and I know lots of people interpret lots of things.

BY MR. BELLAMY:

Q. I'm not either. But I'm just saying if you are.

All right. Now, you know that Ben Caldwell -- let me show you Defendant's Exhibit No. 15 to Allen Jeffcoat's Deposition (Referenced from Allen Jeffcoat's Deposition). Take a minute to look at that.

It is a response by the -- Ben Caldwell, who's the zoning administrator. And this is where the DRB filed an appeal to Ken and Suzanne's plans that were prepared by Felix Ayres as the architect, and they're taking exception that the cupola is not a necessary mechanical feature, okay?

And this is a reply that was filed by Ben Caldwell, the zoning administrator. Because if you remember, he approved -- the City of North Myrtle Beach approved Ken's building permit, and they approved Felix's plans. And it's

regarding the construction of his residence on Lots 407 and 408 in the Tidewater Plantation subdivision area that's in a floodplain.

I've got a copy of the building permit right here. And you can see that it's marked as Defendant's Exhibit 17 to Allen Jeffcoat's Deposition (Referenced from Allen Jeffcoat's Deposition). You can see the City approved that.

A. Yes.

MS. CARY: Objection to the form.

THE WITNESS: I see this. Did I miss the question? I'm sorry.

BY MR. BELLAMY:

Q. The question is you're aware of the fact that the City approved the building permit to build Ken's residence on Lots 407 and 408?

A. Yes.

MS. CARY: Objection.

BY MR. BELLAMY:

Q. And you're aware of the fact too that the City, in approving the building permit, they also approved Felix's plans?

MS. CARY: Objection to the form.

THE WITNESS: Yes, I believe that's correct.

BY MR. BELLAMY:

Q. Okay. This is -- I think Ms. Cary marked this as an exhibit, I think, 3 to -- I think it was maybe Allen Jeffcoat's deposition or maybe it was --

MS. CARY: Felix.

BY MR. BELLAMY:

Q. -- Felix's deposition (Referenced from Felix Ayres' Deposition). I'll submit to you these are the plans that Felix submitted to the City of North Myrtle Beach Planning and Zoning Department, which they did approve, okay?

A. Okay.

Q. My question is, when you're going through the plans, you'll come across one of the -- I think it's the front elevation, and I think you can see that in his plans, as far as determining maximum building height, my question is is that Felix does rely upon Section 23-106 as far as determining, you know, height. As far as what we're saying is he determined it from the base flood level instead of measuring it from grade. So just take a minute and see if you agree with me on that.

A. Yes, it is measured from the first

occupied floor.

Q. They certified --

A. Which is, in this case, the base flood elevation plus 1 foot.

Q. On Felix's plan -- my eyesight is bad -- but can you -- I think on the front elevation on the right, if you're looking at it on the far left-hand side, he's got the numbers. If you can add those up.

A. To get to the --

Q. First certified floor level, yeah.

A. Oh, yes. And this is really small and my readers don't quite cover.

MS. CARY: I can pull it up on my computer.

THE WITNESS: Can I use the magnifier on my phone real quick?

MR. BELLAMY: Yeah, that's fine.

MS. CARY: I do have it on the computer.

THE WITNESS: Okay. So I believe -- and some of the numbers are a little bit difficult to read, but based off of the numbers that I can read and the dimensions that I can't read, I believe that the garage elevation is at 9 feet, and

they give a reference elevation of negative 4 feet.

And then the ground-level slab elevation is at 13 feet with a reference elevation at zero feet, and the dimension between the two was 4 feet. And if the inches is off a little bit, it's just because I can't quite make it out.

Q. Okay. It's somewhere between 12 feet or 11 feet with 1 foot on top of that or...

A. Yeah. This has got it as 13 feet as far as the --

Q. Base flood level?

A. The elevation of the lowest occupied floor.

Q. Okay. So is that 12 feet plus 1 foot or is it --

A. That's correct, 12 feet plus 1 foot at the freeboard.

Q. All right. Let me refer you back to Ben Caldwell's response to the appeal by the DRB. Do you see the zoning appeal?

And if you go back and read -- just go back and briefly refresh your memory and read the second paragraph, and then just let me know when you're finished, and then I'll ask you some follow-up questions.

A. Just the first paragraph?
Q. No, the second paragraph.
A. I'm sorry, just the second paragraph?
Q. Yeah.
A. Yeah. I'm finished.
Q. And would you agree that basically Ben Caldwell also agrees that you utilize 23-106 to determine what the base flood level is or more specifically what the certified first-floor level is?
MS. CARY: Objection to the form.
MR. BELLAMY: You can answer.
THE WITNESS: Yes. As it pertains to the starting level on this, I think that Mr. Caldwell and I are of the same opinion that because of the fact that this particular property is located within a floodplain, then you would go to the provisions that govern floodplain construction, which define the starting point for the measurement to be at the base flood elevation plus 1 foot of freeboard.
BY MR. BELLAMY:
Q. I notice that he in his response to the design -- I mean, to the City of North Myrtle Beach Board of Zoning Appeals he indicates that you

measure it to the peak.

Do you agree with that?

A. Yes, I agree with that.

Q. Well, let me back up for a second.

Remember with 23-106, once you get to the certified floor level, okay, and then pursuant to 23-106 you measure between the midpoint between the eave and the highest point on the roof.

A. I'm sorry. I thought you were asking what he said in this.

MS. CARY: Object to the form.

MR. BELLAMY: Okay.

THE WITNESS: But, yes.

So as I stated before, the floodplain ordinance is clear that you start at the base flood elevation plus 1 foot, and you measure to the main height of the roofline.

BY MR. BELLAMY:

Q. Right.

A. And that actually was changed, if I recall, in the city ordinances from the peak roof height sometime in the early 2000s to the main roof height at some other point after that. But that is the definition of how you measure the roofline for construction in a floodplain.

Q. Okay. But the City is taking the position they just measure to the highest point on the roof instead of measuring between the midpoint, between the eave and the highest point on the roof. That's where y'all differ, correct?

A. That's correct.

Q. Okay. Is there anything in -- does Ben Caldwell take the position that you have to like the -- if you understand what the issue in this lawsuit is is does the Tidewater Plantation Board and/or the DRB take the position that you have to measure from grade in order to determine the maximum building height in a floodplain? So they basically take the position that 23-106 is not applicable.

You understand that's the issue of the case?

A. That's my understanding, yes.

Q. All right. Now, let me show you Defendant's Exhibit 14 to Allen Jeffcoat's Deposition (Referenced from Allen Jeffcoat's Deposition). I think I forwarded that document to you earlier this week or last week.

Do you remember receiving that document?

A. I do.
Q. And that document indicates that Mike Mahaney was -- at that point in time, he was the city manager for the City of Myrtle Beach, correct?
MS. CARY: Object to the form.
THE WITNESS: That's my understanding.
BY MR. BELLAMY:
Q. Okay. And it's an email exchange between Cathy and Mike Mahaney. Cathy Weis was at that time the president of Tidewater Plantation Board.
A. Yes, that's my understanding.
Q. Okay. And he's explaining to her that 23-106 is applicable as far as measuring, determining, you know, maximum building height in a floodplain.
MS. CARY: Objection to the form.
BY MR. BELLAMY:
Q. With an exception.
A. Correct. And it refers to it as from the first finished floor.
Q. Right.
But then the only thing is Mike Mahaney takes the position that Ben Caldwell does, that you measure it to the highest peak, where you and Allen

Jeffcoat take the position that you measure it from the midpoint between the eave and the highest peak; is that correct?

A. That's correct.

Q. Okay. Now I'm going to hand you what's been previously marked as Defendant's Exhibit 8 to the Deposition of Allen Jeffcoat (Referenced from Allen Jeffcoat's Deposition). What this document is is Defendant's Supplemental Answers to Plaintiff's Interrogatories. And as you know, we're the defendant in this case, our clients are. So what I'm going to do is -- one second.

First let me ask -- I'm going to hand this to you. As far as Defendant's Exhibit 8 to Allen Jeffcoat's deposition, which now is part of your deposition, did you have a chance to see Defendant's Supplemental Responses prior to your deposition today?

A. I did see this document prior.

Q. That's what I'm saying. I'm just saying yes.

A. Yes. Yes.

Q. Okay. Now, if you would go back, we list you as an expert witness, correct?

A. That's correct.

Q. And it lists what you're going to testify to as an expert. I think it's subparagraph A, B, and C. Just take a minute and confirm that. I've got it turned to where you -- I think where it starts where your list is?

A. Oh. Yes. Sorry.

Q. And for the record, just publish what you're going to testify to, what your opinions are.

A. So just go ahead and read this?

Q. Yes. Just the...

A. Just the A, B, and C?

Q. Uh-huh.

A. That Ordinance Section 23-106 regarding the height measurement of structures located within a flood hazard area takes precedent over prior ordinances governing the original flood agreement, which does not specifically address construction within a flood hazard area.

B, that for subject proposed structure, the building height measure should be made from the certified floor elevation to the midpoint between the eave and the highest point of the roof as prescribed in Ordinance Section 23-106.

And that the proposed structure complies with the maximum building height

requirement of 42 feet.

Q. Thank you.

All right. Those are still your opinions today as we discuss this?

A. Yes.

Q. Okay. I just wanted to clarify, you're not going to offer an opinion that the cupola is a necessary mechanical feature because Ken did not file an appeal with the Circuit Court, so that's kind of a nonissue?

A. Yes. That's my understanding, correct. But...

Q. Let me -- hold on one second.

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

MS. CARY: I think the appeal -- is it only the two pages? If not, Ben Caldwell's is fine.

MR. BELLAMY: Both of them include it all. At least what we did, it was all one document together.

MS. CARY: Oh, okay. I had it separate. That was his response to that.

MR. BELLAMY: I know, but I -- yeah. But we'll call it the appeal documents. All right.

Mark that.

(EXHIBIT 5, Application for Administrative Appeal Board of Zoning Appeals, was marked for identification.)

BY MR. BELLAMY:

Q. And that's -- what is that? -- that's Defendant's Exhibit -- which number is that for the record? I guess Defendant's 1 for your deposition, Matt?

A. This is marked as 5.

Q. What I want you to do is, I want you to look -- if you look at -- you can see where Dave Jeffers -- he was the president of the Design Review Board for Tidewater Plantation. They filed an appeal, okay, and it's attached on the second page. And those are the grounds for the appeal.

What I'd like you to do is first read through those, refresh your memory, and then I'll have some follow-up questions. So it would be page 2 of that, I guess, Exhibit 5 of your deposition.

A. Right.

(Pause in the proceedings.)

THE WITNESS: Okay.

BY MR. BELLAMY:

Q. Okay. Now, I think we're clear that they are taking exception Dave Jeffers, on behalf of the DRB -- he was the DRB president at that time at Tidewater Plantation -- he's taking exception that the cupola is not a necessary mechanical feature under 23-106. That's the main appeal.

My question is is the DRB also appealing the issue regarding maximum height? For example, are they saying it's 41 instead of 42? Is that an appealable issue?

A. What I see here, I do not see that stated. In fact, what I see is almost an acknowledgment of the -- in No. 3 was the reclassification made solely to bring the height within the PUD 42-foot height requirement, which it seems almost like acknowledgment of 42 feet is the height requirement, and also that removal of the cupola or not counting it would bring the structure within the 42-foot height requirement.

Q. Right. The DRB -- I think Dave Jeffers being the president of the DRB at that time, an agent of the DRB, he's not taking exception saying you have to measure from grade, and 23-106 is not applicable. He's not taking that position.

MS. CARY: Objection form.

BY MR. BELLAMY:

Q. You can answer.

A. I don't see that anywhere in here.

Q. Thank you.

Matt, I'm going to hand you what's been previously marked as Defendant's Exhibit 4 to the Deposition of Allen Jeffcoat (Referenced from Allen Jeffcoat's Deposition). This is the Planned Unit Development, PUD agreement, between the City of North Myrtle Beach, South Carolina, and Southern Land & Golf Company, Limited, for the Tidewater Golf Club & Plantation is how it's titled. And I'll represent to you that this was filed on, I think, April -- at least my document will show right here the filing date would be April 30th, 1992.

A. Okay.

Q. And prior to your deposition, obviously you had a chance to review the original PUD agreement, correct?

A. I did.

Q. And I think my paralegal, Tracy, forwarded that to you, at least one of my paralegals did. They've changed a little bit. Yeah.

A. I think I've received it a few times, yes.

Q. All right. Okay.

And it consists of 13 pages, and it has attached exhibits to it, correct?

A. That appears to be correct.

Q. Okay. What I want you to do is just go back briefly through the 13 pages and I'll ask you to see if you can find any language that speaks to building in a floodplain. And just let me know when you're finished, but take your time. We're not in a hurry.

(Pause in the proceedings.)

THE WITNESS: I do not see anything that references construction of the cupola.

BY MR. BELLAMY:

Q. Okay. I think you testified earlier you really wouldn't expect to find that in there.

A. No, I would not.

Q. Now, what I want to do is I want to go back to -- Matt, for the record, what is the Exhibit number on the original -- it's on the first page.

A. Exhibit 4 for Jeffcoat.

Q. Yeah, okay. And as far as the original

PUD ordinance, obviously the original PUD that was adopted was -- obviously that was -- my document indicates it was on April 30th, 1992.

And when you go to -- what I want to do is go to page 1 of 13. And then they've got Section 1 is Master Site Plan, and then you've got paragraph upper case A. And where I want you to go is go to 2A1, 2A Section 1, and then look at the last sentence, and I'll publish it for the record.

It says, Anything not covered in this document shall be governed by the City Zoning Ordinance in Section 8 of this agreement, period, end quote.

Did I read that correctly?

A. That is correct.

Q. In the other PUD agreements that you've dealt with, is the language somewhat similar where they indicate that if something is not specifically addressed in the PUD agreement, you would always default to the zoning ordinance because the PUD is part of the zoning ordinance; is that a fair statement?

MS. CARY: Object to the form.

THE WITNESS: Yes. In my experience, that's been the case.

BY MR. BELLAMY:

Q. Okay. Now, you already indicated, as far as that sentence, that anything not covered -- and clearly building in a floodplain is not covered in the Exhibit 4 to Allen -- which is the original PUD, Exhibit 4 to Allen Jeffcoat's deposition. It doesn't cover that, correct?

A. That's correct.

Q. Okay. And what I want to do now is I want to go to Section 8 of this agreement. And that's on page 11 of 13.

A. That's correct.

Q. And it's got Section 8, and it's got the heading City Regulatory Power. And I'll publish it for the record.

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

Did I read that correctly?

A. You did.

Q. Okay. Now, as far as the second sentence talks about that, in order to preempt something, the agreement has to specifically -- my

instruction would be would have to basically say -- would have to expressly state that Section 23-106 is not applicable as far as building in a floodplain.

Would that not be your interpretation? They would have to specifically set out that 23-106 is not applicable?

MS. CARY: Object to the form.

BY MR. BELLAMY:

Q. You can answer.

A. I think it specifically and intentionally has to say it, yes.

Q. Well, I'm saying they've got to expressly say it. It's not by implication?

A. That's correct.

Q. Okay. And when you were reviewing the 13 pages of Defendant's Exhibit 4 to Allen Jeffcoat's deposition, which is the original PUD document, did you see any reference to 23-106?

A. None.

Q. Okay. What I've got here, this is entitled Article VII, General and Supplemental Regulations, and it's marked as Defendant's Exhibit 9 to the Deposition of Allen Jeffcoat (Referenced from Allen Jeffcoat's Deposition). And

just take a minute and look over it, Matt, and let me know when you're finished.

(Pause in the proceedings.)

THE WITNESS: And when you say look over, you mean look over, not necessarily read every bit of it, right?

BY MR. BELLAMY:

Q. Right. Just refresh your memory. I mean, obviously prior to your deposition today, you had a chance to review Article VII, General and Supplemental Regulations?

A. Yes.

Q. Okay.

A. Okay.

Q. Okay. Okay. Article VII, General and Supplemental Regulations, that's under Chapter 23 of the Zoning Ordinance for the City of North Myrtle Beach.

Do you agree with that?

A. Yes, I do.

Q. Okay. And as far as a reference point, the Flood Damage and Prevention Ordinances, Article II, I think, in Chapter 6. And I'll hand you what's been previously marked as Defendant's Exhibit 7 to Allen Jeffcoat's Deposition

(Referenced from Allen Jeffcoat's Deposition), but that's what we've been referring to as the Flood Damage Control Ordinance, correct?

A. That's correct, yes.

Q. Okay. Just hold onto that for a second.

A. Okay.

Q. Now --

MR. BELLAMY: I'll mark this real quick.

(EXHIBIT 6, Article II - Zoning Districts and Development Regulations, was marked for identification.)

BY MR. BELLAMY:

Q. Now, what you're looking at right there, that is, I think it should be titled, Article II, Zoning Districts and Development Regulations?

A. Yes, that's correct.

Q. Okay. And it starts off with Section 23-16, Zoning Districts, correct?

A. That is correct.

Q. And below that there's a table of the various zoning districts within the City of North Myrtle Beach Zoning Ordinance.

A. Yes.
Q. And do they include -- there's a PUD listed as far as being part of one of the zoning districts.
A. A Planned Development District --
Q. Okay.
A. -- is included, yes.
Q. Okay. Now, if you would -- what I'd like you to do is go to Section 23-29, PDD, Planned Development District, and when you get there, just -- I think the requirement for a PUD are, like, three pages, and just briefly look through that, and I'll have some follow-up questions.
(Pause in the proceedings.)
BY MR. BELLAMY:
Q. When you finish the Section 23-29, then stop. That's the only as far as zoning district I want you to look at.
A. Understood.
Q. Okay.
(Pause in the proceedings.)
THE WITNESS: Okay.
BY MR. BELLAMY:
Q. With respect to Section 23-29, PDD, Planning Development District, is there any

language in Section 23-29 that deals with building in a floodplain?

A. No.

Q. Now let me go back to Article VII, General and Supplemental Regulations. Okay. And right under that heading, I'm going to quote this language.

It says, The regulations set forth in this article clarify, supplement, or modify the district regulations in Article II of this chapter, end quote.

Did I read that correctly?

A. You did.

Q. Okay. When they're talking about that they amend, modify, or supplement the regulations in Article II of this chapter, they're talking about Article II, Chapter 23 of the Zoning Ordinance?

A. Correct.

Q. And more specifically we're talking about the document you just read through. For example, you've got Article II outlines various zoning districts, which include a PUD, correct?

A. That is correct.

Q. And then under Article II, it further

references the PUD district and the requirements of the PUD district, correct?

A. That's correct.

Q. Is there anything in Article VII, 23-100 that in any way limits the application of 23-106 regarding its application as far as determining maximum height in a floodplain? Is there any limiting --

A. And, I'm sorry, 23-100 specifically?

Q. Yeah. In that section, yeah.

A. No. I mean, it's very explicit in that no building, structure, or land shall hereafter be used, and no building, structure, or part thereof shall be erected, reconstructed, converted, enlarged, moved or structurally altered unless in conformity with the regulations as set forth in this chapter, which I interpret to mean that everything that follows is required.

Q. Right.

The reason they kind of compare it -- because I want to show you where I'm coming from. I think we're on the same page, but what I'm holding is Defendant's Exhibit No. 7 to the Deposition of Allen Jeffcoat. And this is Article II, Flood Damage Prevention Ordinance. And

this is under -- it's Article II but it's under Chapter 6 starting with Building Permits, so on and so forth. And this is the part that deals with the Flood Damage Prevention Ordinance.

When you flip through it, this is probably a newer version that was not applicable when Ken built his house, but I've read the older version that was applicable, and this is the point I want to make.

It talks about, under paragraph G, Interpretation, and it states that: In the interpretation and application of this article, all provisions shall be considered as minimum requirements liberally construed in favor of the governing body, indeed neither to limit nor repeal any other powers granted under state law.

And here's the relevant language right here. This article is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restriction shall prevail.

So my point being is that limiting language is not included in Article VII,

Section 23-100, more specifically 23-106.

A. No. These are specifically defined as absolutes.

Q. Right.

And you're aware it's always been that the Association's position is that they can reduce maximum building height from 42 to 41, okay?

A. I believe that's correct, yes.

Q. We've got documentation to that.

And what our position is is that in order to do that you have to amend the PUD, correct?

MS. CARY: Object to the form.

THE WITNESS: Yes, that's my understanding.

BY MR. BELLAMY:

Q. The point I'm trying to make, Matt, if the DRB or the Board of Directors for the City -- I mean, for Tidewater Plantation takes the position they want to limit the max building height from 42 to 41, they can't unilaterally do it.

They have to go to the City and get the City to agree to it. They have to have public hearings, have to give people an opportunity -- members of, you know, Tidewater Plantation, they

have a right to say, have a right to speak to it and, you know, at least, you know, put any objections they want on the record as far as members of Tidewater Plantation.

It's just not something that -- the DRB takes the position, they have the right unilaterally just to amend the architectural review standards and change it from 42 to 41 and that's controlling.

And at least what I want to make sure that we're on the same page is if you're going to limit the maximum building height in Tidewater Plantation in South Island to 41 feet, you first have to amend the PUD.

MS. CARY: Objection to form.

THE WITNESS: Yes. My understanding is because the PUD agreement, the original PUD agreement, was adopted by council and became ordinance, and this PUD agreement defines specifically 42 feet for the various different types of structures within here, 50 feet for others, but any change to that would require amendment to the PUD just as it would require amendment to any other ordinance if a similar situation was occurring outside of this particular

development.
BY MR. BELLAMY:
Q. Right.
I'm going to hand you what's been previously marked as Defendant's Exhibit 12 to the Deposition of Allen Jeffcoat (Referenced from Allen Jeffcoat's Deposition). I think I did forward you a copy of this. This is an ordinance or an amendment to the original PUD that was recorded on April 30th, 1992. Just take a minute and look at it.
A. Yes. I remember seeing this.
Q. Okay. And essentially what they're doing is they're allowing, I think, Ken's property -- I think it's either located on T or U, and then they've got Q-1, Q-2. And you can flip back. I think there's a plat or at least a diagram. And this is what I'll represent to you. I think this is Ken's property right here, U, okay?
A. Uh-huh.
Q. So what they're doing as far as this amendment -- and this is what my understanding, and let me know if you agree with me. They're changing the use at least in the Q-1, Q-2, that's a marina, okay? And then as far as U and T, they're changing

the use to -- a new use would be single family common. And see if you agree with that.

A. Yes. It appears that this defines a new use called single family in common and defines the various development criteria for lots within that or uses within this area for that.

Q. Okay. And it indicates, I think, the maximum building height is 42?

A. That is correct.

Q. Okay. So if the original developer before this amendment was filed, because the developer has to sign off on it along with the City, but if he wanted to change it to 41, instead of saying 42, it could have been 41. He had an opportunity to do that?

A. Yes, that's correct.

Q. Now, is there anything in the amendment to the PUD that talks about building in a floodplain?

A. There's nothing in this amendment that addresses that, no.

Q. Okay. Is there anything in the amendment that basically indicates that Section 23-106 is inapplicable and that you have to determine maximum building height from the grade to

the highest point?

A. No, there's nothing in here about that.

Q. Okay. I'm not finished, Matt. I've got a couple other things, but I think we're winding down pretty quick.

I'm going to hand you now what's been previously marked as Defendant's Exhibit 18 to the Deposition of Allen Jeffcoat (Referenced from Allen Jeffcoat's Deposition). And what it's titled as, it's titled the Thirty-Third Supplemental Declaration of Covenants, Conditions, and Restrictions for Tidewater Plantation and specifically applies to South Island.

And this was filed on February 11th, 1998. At least it was approved. And it's got the deed book pages. The deed book is 2012 at page 281.

Now, I'm not going to ask you to read through the whole document. Just give me one second. What I'm going to do is flip to the deed book page 2012 -- it's Deed Book 2012 at page 300. And this is Exhibit C and it says, Supplemental Use Restrictions. And I want you to look at paragraph 2. It talks about building height. Take a minute and look at it.

And you can publish that for the record, and then I'll have some follow-up questions.

A. Okay. No. 2, Building Height, With respect to the 31 lots within the property described in Exhibit A hereto, no dwelling or other structure shall be constructed on a lot which has a height exceeding 42 feet above the elevation of the average finished grade of the lot. Declarant reserves the right to modify, amend, or change the within height restriction as it may apply to any unit or dwelling within the additional property subjected to this declaration upon the filing of a supplemental declaration of record, provided, however, that all heights shall be subject to the revisions of the PUD agreement of April 4th, 1989, and as may be amended.

Q. This supplemental declaration clearly indicates that the original PUD agreement, including amendments, control, correct, regarding building height?

A. That's correct.

Q. Now, it indicates, as far as maximum building height under the supplemental declarations, that it is 42 in South Island,

correct?

A. Yes.

Q. The maximum building height is 42?

A. That is correct.

Q. It doesn't indicate it's 41, correct?

A. That is correct.

Q. But it does talk about measuring from the grade to the highest peak, correct?

A. That is correct.

Q. Okay. Now, is there any indication on that document that the City signed off on that?

A. None that I see.

Q. You would agree that it was submitted by the declarant, the original developer of Tidewater Plantation?

A. That's correct.

Q. Okay. And obviously this document, even it indicates, it basically references and says that the PUD controls regarding building height, and that also would include measuring building height.

Would you agree with that?

A. That's correct.

Q. Okay. The point I'm trying to make is is that the documents where basically the right

hand doesn't necessarily know what the left hand is doing, you've got the ordinances, the original PUD ordinance and amendments, they control.

Supplemental declarations, you know, from Tidewater Plantation that are filed by the declarant that are not approved by the City of North Myrtle Beach obviously are not controlling documents in this case.

Do you agree with that statement?

MS. CARY: Object to the form.

THE WITNESS: I agree with that statement.

BY MR. BELLAMY:

Q. Okay. Now, is there anything -- what exhibit is that? I just want to make sure for the record. Is that the supplemental declaration?

A. Exhibit 18 Jeffcoat.

Q. Okay. On Exhibit 18 to Jeffcoat, is there anything that, as far as regarding Exhibit C, that basically in any way -- I may have already asked you this. If I did, I apologize -- any way limits and says that Section 23-106 does not apply?

A. No, nothing on that.

Q. Okay. And let me ask this, in preparation for your deposition, did you have an

occasion to read the affidavit of Allen Jeffcoat?

A. I did.

Q. Okay. And do you agree with his opinions in his affidavit?

A. Generally, yes. If you're going to ask about one specifically, I'd like to review it.

Q. Sure. There we go. All right. Matt, I'm going to hand you what's been previously marked as Defendant's Exhibit 3 to the Deposition of Jeffcoat. It's Allen's affidavit (Referenced from Allen Jeffcoat's Deposition.)

What I'd like you to do is read through it, and just let me know if there's anything in his -- as far as his affidavit, any factual findings or opinions that he renders in this case that you take exception or disagree with.

(Pause in the proceedings.)

THE WITNESS: I do not see anything I disagree with.

BY MR. BELLAMY:

Q. So would it be fair to say as far as just having an opportunity to reread -- I mean, you've had an occasion to read Allen Jeffcoat's affidavit prior to today, correct?

A. Yes.

Q. And then having an opportunity to refresh your memory and reread it, do you agree with his findings and conclusions as stated in his affidavit marked as an exhibit to your deposition?
A. Yes, I agree.
Q. Okay.
A. Do you mind if we take a --
Q. Yeah.
A. -- quick five minutes?
Q. Sure.
A. Thank you.
(A recess transpired.)
MR. BELLAMY: Let's go back on the record.
BY MR. BELLAMY:
Q. Matt, I want to go back to the original PUD agreement.
A. The original PUD agreement?
Q. Yeah. Right there.
A. Okay.
Q. Then go to page 4 of 13.
A. Okay.
Q. And what I want you to do is for the record identify and -- where it's got Q is -- it's got the asterisk. Well, first what I want you to

do, you see where it's got the asterisk by Q, T, and W, those three tracts?

A. Q, T, and U?

Q. Yeah.

A. Okay.

Q. What is the little star or whatever it's got there? What does that indicate?

A. The note says that those tracts with the asterisk symbol are currently in spoilage, quote. The above listed usages for these tracts would only occur if they are released from spoilage. The only permitted use until then is open space.

Q. Are you aware of any document that they have been released from spoilage by the Army Corps of Engineers?

A. I'm not aware of any document, no.

Q. I mean, when you went to the PUD agreement, the original PUD agreement, there's nothing in there containing release language regarding where the Army Corps of Engineers is releasing -- because, you know, we've had -- I'll give you an example. We've had clients who bought, you know, right on the Intracoastal Waterway, and it was in a spoilage zone, and they basically filed

against their title insurance.

So what I'm saying is in order to build out there and do it the right way, correct way, you're going to have to have some document where Army Corps of Engineer is releasing for those lots to be built on as far as whether they're single family, zero lot, townhouses, multifamily low density. What I'm saying is there's got to be some written document from the Army Corps of Engineers saying they're releasing their spoilage easement on those particular tracts, Q, T, and U, in order for them to build on.

A. Generally, yes. I don't know specifically about the spoilage designation for these tracts as far as what the criteria are and the conditions and everything else that were originally done. But in general, yes.

Q. Because remember the language basically says only if they are released from the spoilage, okay? And so when you were looking at the original PUD agreement, did you find anything in there that released Tracts Q, T, and U from the spoilage easement?

A. I don't recall seeing anything that addressed that whatsoever.

Q. And I'm not saying -- there may be a document out there. I just haven't seen it.
A. Sure.
Q. Okay. Now, the amendment that's marked as Exhibit 12 to Allen Jeffcoat's deposition -- let me hand that back to you real quick. Look on the section where you've got the permitted uses. Indicate for the record what are the permitted uses for Lots T and U under the amendment?
A. Parcels T and U permitted uses are single family, single family in common.
Q. I see single family in common. Do you see single-family large?
A. I see zero large. I see dup lot, which may be duplex.
Q. Uh-huh.
A. Town lot, multifamily low house, multifamily medium density -- or, excuse me, medium density is not allowed, limited commercial is not allowed, and then recreation and open space is allowed.
Q. Let me show you this. What I'm trying to show is the original PUD indicated that it had single-family large. That was the permitted use on the original PUD for Tracts T and U.

But on the amendment to Tracts T and U, as far as permitted uses, it takes single-family large.

Do you agree with that statement?

MS. CARY: Objection; form.

THE WITNESS: No. I think that -- and I don't know this for sure -- but I think that the row under single family has been shifted.

BY MR. BELLAMY:

Q. Does it mention anywhere -- I'm saying the amendment does it mention anywhere single-family large is a permitted use?

A. In the amendment? There's single family.

Q. Common?

A. No. There is SF. And what I'm saying is it appears that by inserting this column, which was the amendment, all of these got shifted.

Q. Let me see right there. All right. Hand that other one back to me.

A. Sure.

Q. Okay. But it doesn't say single-family large?

MS. CARY: Object to the form.

THE WITNESS: It does not say

single-family large.
BY MR. BELLAMY:
Q. Is there anything that -- let me look at -- all right.
Let me go to -- I want you to go to page 5 of 13.
A. Of what?
Q. It would be Section 3. You've got 3, Description of Development, 3A. 3B, Narrative. Then you've got 3C, and then you've got D, Developmental Standards.
A. And this is of the original PUD?
Q. Yeah.
A. Yeah, sorry, what page again was that?
Q. Page 5 of 13.
A. Thank you.
Q. And what I want you to do, under Developmental Standards, the heading, just publish that paragraph for the record. Where it says, All yards, setbacks.
A. Yes. All front yard setbacks shall be measured from the edge of the 50-foot street right-of-way. All building heights are measured from the uppermost point of the structure to the average finished grade. (Chimneys are not included

in measuring building height in single-family structures). Open spaces as defined in Section 23-109, subparagraph 1 of the North Myrtle Beach Zoning Ordinances.

Q. Okay. Now, in relevant sentences, the second sentence where it says, quote, All building heights are measured from the uppermost point of the structure to the average finished grade, stop right there. Okay.

You understand that is the position of Tidewater Plantation DRB and their Board of Directors that regardless of whether you're in a floodplain or you're not in a floodplain, you've got to measure from the average finished grade.

A. Yes, that's my understanding. I don't believe that it's applicable within a floodplain because that section was not specifically defined in the PUD that I have been able to find that overrules that.

Q. Okay. And let's take a minute. Let's talk about -- let's go to one of the exhibits. Hold on one second.

What we were talking about earlier is this portion -- I may have handed you a copy of this. This is Article VII of the General

Supplemental Regulations, and it talks about Section 23-100 through 23-106, okay?

A. Yes.

Q. So what I want to do is I want to go to -- flip over to the next page, and I want to direct your attention to Section 23-106 where it's titled Measurement and Exceptions to Height, okay.

And I want to publish this for the record. This is basically the pertinent language of 23-106. Quote, The height of a building shall be measured from the mean elevation of the finished grade at the front of a building or structure to the midpoint between the eave and the highest point of the roof. Okay.

And that's sort of what basically Developmental Standards, the second sentence says. But the second sentence says you measure it all the way to the highest peak. See what I'm saying?

But under that first sentence, the difference is is they're talking about if you're not in a floodplain you start out -- essentially you start out at the -- you measure from the mean elevation of the finished grade to the midpoint between the eave and the highest point of the roof.

Did I read that correctly?

A. Yes, that's correct.
Q. Okay. Then when you go to the original ordinance, it indicates that all building heights are measured from the uppermost point of the structure to the average finished grade. So they're differing in that under Developmental Standards of the PUD and under subsection D3, you go to the highest peak. But under 23-106, when you're measuring -- when you're not in a floodplain, you measure from, I think, the mean elevation to the average finished grade to the midpoint between the -- right here is the midpoint between the eave and the highest point of the roof.
A. That's correct.
Q. Okay. And this is the important part of it, is that: Except that single family and duplex buildings in designated flood hazard areas as established by the City's Flood Damage Control which shall be measured from the established flood certified floor elevation, end quote, to the midpoint between the eave and the highest point of the roof. And I'm going to stop right there.
So the ordinance makes a distinction that you kind of measure from the mean average grade starting point if you're not in a floodplain.

But if you're in a floodplain, you've got to establish what the base flood level is and 1 foot above that. That's the first floor certified level. And then you go from that point to the midpoint between the eave and the highest point of the roof, and that's how you determine, you know, your maximum roof height.

A. That's correct.

Q. Okay. So when you look at the specific language of 23-106 as far as measurement, and this obviously -- any measurement as far as that's not in the floodplain, you would measure it from the -- if you're in a residential subdivision, you would measure it from the mean elevation of finished grade to essentially the midpoint between the eave and the highest point of the roof, correct?

A. That's correct.

MS. CARY: Objection.

BY MR. BELLAMY:

Q. Okay. So there's nothing in the -- I'm getting back to this -- I'm sorry. I've got cotton mouth.

So there's nothing in the original PUD agreement that talks about the exceptions of dealing with building, you know, single-family home

or single-family structure within a floodplain?
A. That's correct.
Q. Let me ask you this, obviously the City's 23-106 in dealing with the -- under Article II, I think Chapter 22 that deals with the Flood Damage Control Ordinance, I mean, 23-106 and the Flood Damage Control are based upon essentially FEMA resource of FEMA guidelines, correct? Would that be a fair statement?
A. That's correct, yes.
Q. Okay. And obviously the City of North Myrtle Beach, they're part of the -- give me one second -- did I hand you the Flood Damage Control Ordinance? I think it's over there. One of those that's marked.
A. Yeah.
Q. I think it's right in front of you. Here, I've got it right here.
A. Okay.
Q. I mean, prior to your deposition today, you've had occasion to read the City of North Myrtle Beach Article II, Chapter 26 that deals with the Flood Damage Control Ordinance, correct?
A. That's correct.

Q. And you're familiar that they had what they call National Flood Insurance Program?
A. Yes.
Q. And the part about being in the National Flood Insurance Program is you have to essentially comply with FEMA guidelines so to speak?
A. That's correct.
Q. And part of the FEMA guidelines -- and if you go back and read under the Flood Damage Control Ordinance is that this ordinance essentially adopts the FEMA guidelines, research regs and findings. And part of that is is that they made the determination for safety purposes that when you're building a residential structure -- I don't know why anybody would build a residential structure in a floodplain to begin with -- but because you can do it, you have to do it in accordance with their guidelines and regulations.
For example, that if they say you're in a floodplain you can't measure from grade, you have to measure from the base certified flood level, base flood level, whatever that number is, whether it's 11 feet, 12 feet, and then 1 foot above that,

and that's a certified first floor level, and you measure it from there to the midpoint between the eave and the highest point of the roof. And there's a reason why FEMA describes that, you know, how you determine height when you're in a floodplain. And there's a reason why they do it.

And to the extent that the Association or Tidewater DRB or Tidewater Board is trying to circumvent FEMA guidelines, wouldn't it be your opinion that they run the risk of getting kicked out of the National Flood Insurance Program?

MS. CARY: Object to the form.

BY MR. BELLAMY:

Q. You can answer that.

A. I don't know as to what jeopardy that would put them in in getting out of it. But the mandate is that to ensure, with an E, insurability, with an I, of the properties and assets within that area, that is the purpose of this flood insurance program is to unify that minimum standards are met and to codify those so that they are uniform throughout that area.

Q. And if you don't comply with 23-106, essentially the property owner who's building in South Island, they're really losing -- for example,

they're losing that first foot, okay? If they're measuring from grade, remember when you have the base flood level that's 1 foot above that, so as far as building height they're losing that foot. And then they're losing the additional footage they would have by measuring from the midpoint between the eave and the highest point of the roof. They're losing about 4 or 5 feet.

Essentially what the DRB for Tidewater and the Board is they're basically squishing houses down.

A. That's correct.

Q. Okay.

A. And the purpose for defining a separate building height measurement requirement, because you do have to start at a different location, in general is to reconcile these potential conflicts between different aspects of the code, whether it's within a PUD district or whether it's any other zoning district.

And the way that I like to think about it is if for all of the homes that are built outside of the floodplain, they're only going to start from a certain elevation. So in this case let's call it 12 plus 1 foot, so 13.

Q. Okay.

A. By definition, everybody who is outside of that floodplain is starting from 13 or more, right? So the bottom of their home is going to be at a starting elevation of 13 or more and the building height requirement is 42 feet, correct? So the highest point from sea level of any of those homes is going to be 13 plus 42, which is embarrassing if I get it wrong since I'm an engineer, but I want to say 55 feet or so.

Q. Right.

A. So let's just say 55 feet is the -- that is the point where -- that's the lowest a roofline would be if it's at a maximum height, right?

Any home built within the floodplain, the existing grade is going to start from lower, so those would be by definition lower, but they will never be any higher because you cannot start from anything further than 13 feet. So that unifies everything. It does not put any kind of other developability burden on top of a property owner or a future property owner. And so it maintains that consistency throughout the total.

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

Thank you, Matt.

MS. CARY: Just one follow-up question.

EXAMINATION

BY MS. CARY:

Q. Are you aware of any FEMA regulation that other than requiring that you build your first finished floor from, you know, 1 foot above the base flood elevation or higher, is there any requirement about where you measure height from for the overall height of the structure?

A. I'm not aware of any FEMA requirement as to what the overall height is, no.

Q. Okay.

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

THE WITNESS: Okay.

MS. CARY: Thank you.

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

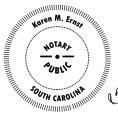
(The deposition was concluded at 1:02 p.m.)

CERTIFICATE OF REPORTER

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

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

Witness my hand, I have hereunto affixed my official seal this 23rd day of June, 2025, at Myrtle Beach, Horry County, South Carolina.



Karen Ernst

_____

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

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Matt Hines
mhines@bowman.com

June 25, 2025

RE: Tidewater Plantation Community Association, Inc. v. Norton, Suzanne N., Et Al
6/13/2025, Matt Hines (#7352016)

The above-referenced transcript is available for review.

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

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

Return completed errata within 30 days from receipt of testimony.

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

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

Matt Hines (#7352016)

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Matt Hines Date

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

Matt Hines (#7352016)

ACKNOWLEDGEMENT OF DEPONENT

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

_____ _____

Matt Hines Date

*If notary is required

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_____ DAY OF _____, 20___.

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

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

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

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