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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM HORRY COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2024-000144

Case No. 2021-CP-26-07489

City of North Myrtle Beach,

Appellant,

v.

Sun TRS Ocean Club, LLC, Sun TRS
Carolina Pines, LLC, and Sun Carolina
Pines RV, LLC,

Respondents.

**FIRST AMENDED
RECORD ON APPEAL**

VOLUME III

Cheryl D. Shoun (SC Bar No. 5092)
Rhett D. Ricard (SC Bar No. 102353)
MAYNARD NEXSEN, PC
205 King Street, Suite 400
Charleston, SC 29401
cshoun@maynardnexasen.com
rricard@maynardnexasen.com
(o): (843) 577-9440; (f): (843) 720-1777

Attorneys for Appellant

Richard H. Willis (SC Bar No. 6159)
John G. Tamasitis (SC Bar No. 101875)
WILLIAMS MULLEN
1230 Main Street, Suite 330
Columbia, SC 29201
rwillis@williamsmullen.com
jtamasitis@williamsmullen.com
(o): (803) 567-4600; (f): (803) 567-4601

Attorneys for Respondents

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1 the DJ warming up at 6:00 in the morning. And we had cars
2 in the parking lot, a lot of pickup trucks with big
3 trailer hitches hanging out in the back. I don't have any
4 problem with that, but they don't belong in our parking
5 lot.

6 I asked one guy to leave one day, and he was pulling
7 in and heading over there. I asked him to leave one day.
8 So he pulled out and he went down the street and pulled
9 into the first drive at Sea Cloisters II, pulled over and
10 parked there and went in that way.

11 Q From a permanency standpoint to a transient
12 standpoint as, you know, residents or vacationers, can you
13 describe the difference in the folks that were coming to
14 the beach club, comparing Seabrook and Robber's Roost to
15 the RV resort?

16 A It was a -- it was the volume --

17 MR. WILLIS: Your Honor, that's -- I don't think
18 Mr. Ricard has laid a foundation for that, so we object to
19 it.

20 MR. RICARD: I'll lay a foundation, Your Honor.

21 BY MR. RICARD:

22 Q Mr. Shortle, have you been able to have
23 conversations with folks that were visiting the cabana
24 house over the years?

25 A Yes.

1 Q And figuring out where they're from and where they
2 live?

3 A I haven't talked too much to the ones from the RV
4 resort, but there was -- one of the guys came up to me and
5 started talking. He was from Seabrook Plantation, and he
6 had been offered a buyout and was thinking, "Well, should
7 I take it or shouldn't I?" He was asking my opinion.

8 But, yeah, I have had discussions with -- not so
9 much the RV people, the RV resort.

10 Q Is it your understanding that the Seabrook
11 Plantation folks are more permanent residents?

12 A Yes.

13 Q Okay.

14 A You know, when you look at this, the deposition you
15 read this morning, Mr. Onken said we have got 3,000 people
16 to take care of here. We have got 3,000 people and 800
17 campsites going to a less-than-half-acre lot versus
18 there's 241 homes in Seabrook. And the average capacity,
19 according to the government, is 2.1 persons per household.

20 So you have got about 500 people from Seabrook and
21 3,000 people from the RV resort.

22 Q Let's talk about some of the events that you're
23 aware of. And understanding that there's an objection
24 based off of hearsay, but eventually, the HOA received
25 some complaints about events; is that right?

1 A Yes. Several times.

2 Q And, eventually, the HOA takes action on that?

3 A Yes.

4 Q And we'll talk about that in a second. But from the
5 HOA's perspective, what events did y'all become aware of
6 that occurred at the cabana house?

7 A Well, we had -- there was a wedding there one night
8 that went on until 3:00 in the morning. There was the
9 sunrise wedding; I heard a lot about that one. It was
10 6:00 in the morning, and it was over spring break. So
11 people like Emily Alshire were down here from Ohio and her
12 next-door neighbor was here and I was here. But --

13 Q Was there music being played at those weddings or
14 events?

15 A It started at 6:30 in the morning.

16 Q You're talking the music did?

17 A The DJ did, yes.

18 Q And what about the late night?

19 A Late night, the band keep going. The Carolina Pines
20 people pulled out, left the liquor, and told the father of
21 the bride, "If anybody shows up, just tell them this
22 liquor is yours." And they left the party going on.

23 Q Did you talk with Mr. Martucci about any of these
24 events?

25 A Yes. He was gone by the time the sunrise wedding

1 started and stuff. I distinctly talked to him about the
2 one that went on late, and I said, "Chris, we can't have
3 this anymore." I think that was the last one, when he was
4 still employed.

5 Q Okay. But then after you had that conversation with
6 Mr. Martucci, there was another wedding after that?

7 A Oh, yeah. Yes.

8 Q Can you describe the use of the pool as far as noise
9 and language and just general behavior that was observed?

10 A It's kind of like a fraternity house at a kegger
11 some days. Every chair is full. They had, I don't know,
12 30 lounge chairs around there. Every chair is full. And
13 the pool is packed shoulder to shoulder with people. And
14 they all got their coolers next to them. And they're
15 shouting across the pool, "Get the F out of my way" and
16 all that stuff. And, meanwhile, the music is playing from
17 the speakers.

18 Q Who would control those speakers, if you know?

19 A I would assume the attendant that was at the cabana
20 house, and that was either Pat or Teresa.

21 Q So when you say "speakers," these are not speakers
22 that are being used by the guests at the cabana house.
23 These are speakers -- where are they?

24 A Mounted on the back of the building. That was a new
25 addition in '21.

1 Q Okay. Was trespassing also observed?

2 A Oh, yeah. I have provided quite a few pictures
3 of -- they'd park in the 18th Avenue street area.

4 There you go. That is our exit driveway.

5 Q Wait one second, Mr. Shortle.

6 MR. RICARD: So, just for the record, I have
7 displayed what's been marked as Plaintiff's Exhibit 66.

8 BY MR. RICARD:

9 Q Do you recognize -- I haven't started playing it
10 yet, but there's a screen shot here. Do you recognize
11 this?

12 A Yes.

13 Q What is it?

14 A That is a video that I took of a typical occurrence.
15 One day I was sitting in not this parking space in the
16 foreground but two over, and it took me 20 minutes to get
17 out of the parking lot because this was going on, one
18 after another. They'd pull up and they'd park and they'll
19 back up and they unload their stuff there to go in.

20 And then sometimes they'll back up and pull in a
21 parking space after they're unloaded. But this guy
22 usually would go park in one of the parking spaces.

23 Q So you took this video?

24 A Yes, I believe I did.

25 Q And it's fair and accurate?

1 A Yes.

2 MR. RICARD: For the record, I'm going to go ahead
3 and play it, if it cooperates.

4 A At the base of the second palm tree from the left,
5 you can see the barbecue grills. That's the grilling area
6 where Larry Pasciutti was when he had the issue.

7 (Pause in the proceedings for technical
8 difficulties.)

9 MR. RICARD: My apologies, Your Honor. Looks like
10 our internet is having a little difficulty here. We're
11 going to try a different method.

12 MR. WILLIS: Your Honor, we wouldn't have an
13 objection to Mr. Shortle describing the contents of the
14 video without necessarily having to play it.

15 THE COURT: Either way is fine with me.

16 MR. RICARD: And we have entered flash drives into
17 the record, Your Honor, so the Court will have a copy of
18 these videos.

19 MR. WILLIS: That's right. It's in the record.

20 BY MR. RICARD:

21 Q But, Mr. Shortle, can you describe what's depicted
22 in this video?

23 A Yes. It's patrons from the beach club. You can see
24 the beach club sign in the background. You got a big
25 pickup truck with dualies and a fifth-wheel attachment on

1 it, and there's people hauling their stuff from the beach
2 club through our shrubbery through our parking lot.
3 They're blocking our exit drive while they load up.
4 Sometimes these people aren't in any kind of a hurry.

5 The gentleman in the blue shirt is our property man,
6 lawn guy. Trying to think. So that's -- that was
7 typical. And that had gone on dozens of times a day.

8 Q Okay. I'm going to remove this and introduce what's
9 been marked as Plaintiff's Exhibit 67, which is next in
10 line. It's another video. I'm going to see if the
11 internet will be a little bit better for this video.

12 (Video playing.)

13 BY MR. RICARD:

14 Q Mr. Shortle, do you recognize this video --

15 A Yes.

16 Q -- or still shot?

17 Okay. Did you take this video?

18 A Yes.

19 Q Fair and accurate from what you observed that day?

20 A Yes.

21 Q I'm going to go ahead and play it.

22 (Video plays.)

23 A You can see they're walking with their coolers and
24 beach chairs and stuff, and they step right over the wall.
25 And we had erected a whole row of signs to keep them out

1 of the shrubberies and there. It says, "No Carolina Pines
2 access."

3 There are also signs like that, although they're
4 taller, at the opposite end of the property facing the
5 18th Avenue beach parking. They also ignore those.

6 Q Okay. So Sea Cloisters took steps to try to prevent
7 the trespassing?

8 A Yes. And on the backside of that signs -- there was
9 one of those signs every other parking space all the way
10 down to Ocean Boulevard.

11 On the backside of those signs was those metal "No
12 Trespassing" -- they're black metal with orange letters on
13 it you buy at the hardware store.

14 So there was a whole row of "no trespassing" signs
15 facing them. It didn't matter.

16 Q So I take it the signs did not prevent the
17 trespassing?

18 A No.

19 Q Are you aware of any altercations that occurred?

20 A I'm aware of the one with Larry Pasciutti, yes.

21 Q And what about landscaping issues? Can you inform
22 the Court as to any landscaping issues that were observed?

23 A We've got a row of monkey grass, which is little
24 tall shrubs, and it's all down that side. We used to have
25 some taller shrubs in there, but we no longer have the

1 taller shrubs. They were all broken off. And the monkey
2 grass was just mashed down.

3 Wherever there was a space between cars -- between
4 the two cars that are pulled nose-in, there was a path
5 through the shrubbery and the grass.

6 Q And what was that caused by?

7 A People -- people walking through there, heading to
8 the ocean club.

9 Q Let's talk about alcohol permits. Were you aware of
10 any alcohol permit sign that was posted out at the cabana
11 house?

12 A Yes.

13 Q Okay. So is that something you physically observed
14 yourself?

15 A Yes. And I took pictures of it.

16 Q What did you do in response?

17 A It was an ABL sign that says there's been a permit
18 applied for at this address, what have you.

19 So I went to the ABL website and looked to see what
20 we do. This sign might have said something about for
21 protest or if you disagree with this. It's a -- it's a
22 requirement to get a liquor license. I think you have to
23 post a public notice like that and also put it in the
24 newspaper, but post a public notice like that for ten days
25 or something.

1 So I saw it and went to get the protest form, and I
2 was going to type an email, send it out to all the
3 homeowners, "Hey, here's a copy of the protest form.
4 They're doing this. You guys want to send in a protest?"

5 The last line on the back page says, "You must be a
6 resident of Horry County to file this protest." You must
7 be able to appear in the court, which is in Columbia. So
8 I went ahead and filled one out, and I shared it with a
9 few other people -- our property manager, a couple of
10 homeowners -- one owner that lives at Sea Cloisters II.
11 And we had -- maybe there was a half a dozen protest forms
12 that made it into the ABL.

13 MR. RICARD: And for the record, I have displayed
14 what's been marked as Plaintiff's Exhibit 64.

15 BY MR. RICARD:

16 Q Is this your protest form, Mr. Shortle?

17 A Yes, it is.

18 Q And this is technically page 3 of this exhibit.

19 Actually, let me stop right quick. So you send this on
20 July 1st of 2021; is that right?

21 A Yes.

22 Q Okay. And I'm going to scroll up to page 1. Do you
23 recognize the name Robert Durant?

24 A Yes, he was a permanent resident in Sea
25 Cloisters II.

1 Q And this appears to be dated July 3rd, 2021;
2 correct?

3 A Yes.

4 Q So from that April 2021 wedding through this first
5 week of July 2021, let's say, what are the HOA's concerns
6 and what is the HOA doing in response?

7 A From the wedding?

8 Q Right. Let me ask you this: In that time period,
9 was there any straw that broke the camel's back?

10 A I think the sunrise wedding is the straw that broke
11 the camel's back. This is just another bale of hay.

12 We were working on -- Mike Stevenson, the president
13 of Sea Cloisters II, and I were working on the zoning
14 ordinance complaint. I think, at that stage, we were
15 still in what we can do. We didn't know what was all in
16 there yet.

17 And then this came up and I --

18 Q And by "this," what do you mean?

19 A The liquor application. I dropped that and put
20 this -- because this was time critical. I'm thinking that
21 it was July 9th it had to be in by or something along
22 those lines.

23 Q So going back to Plaintiff's Exhibit 68 to page 1 of
24 this document, so this appears to be a document dated July
25 12th of 2021.

1 A Yes.

2 Q So shortly after the alcohol permit protest forms?

3 A Yes.

4 Q What is this document?

5 A That is a formal complaint to the City of North
6 Myrtle Beach. In the zoning ordinance, there's
7 instructions on how to file a complaint, and we took this
8 as the method.

9 Q Okay. Who prepared this document?

10 A I did most of it. I did a lot of the research.
11 Mike Stevenson had some input. Both boards had input.
12 And our lawyer, Michael Barnett, had input.

13 Q Who approved it?

14 A The boards.

15 Q And once executed, who was it sent to?

16 A It was hand-delivered to Ben Caldwell, the Zoning
17 Administrator at City Hall.

18 Q Prior to submitting this written letter -- and this
19 is 19 pages?

20 A Yep, yes.

21 Q Prior to sending this written complaint to the City
22 of North Myrtle Beach, had you attempted to call the
23 general manager of the RV resort, Troy Bittner?

24 A Yes.

25 Q For what reason?

1 A I believe it was the Larry Pasciutti assault issue.
2 And then there was -- I sent Robin Striker, who was Chris
3 Martucci's replacement, I sent her a video of people
4 trespassing and trampling through. And I said, "Look,
5 this stuff's got to stop. We've got to do something."

6 She texted me back that she was out of town, call
7 Troy Bittner. So I called Troy Bittner over the next
8 couple of days several times and left him messages. And I
9 do believe it was his cell phone.

10 Q Did you ever hear a response from Mr. Bittner?

11 A I did not hear from Mr. Bittner until sometime in
12 November after the newspaper article came out about the
13 City's lawsuit.

14 Q Okay.

15 A So it was in July when I was trying to contact him.

16 Q So this letter -- and I'll scroll down to the last
17 page before your attachments.

18 A Mm-hmm.

19 Q This is certifying that you and Sea Cloisters II,
20 y'all are doing this on behalf of the homeowners
21 associations; correct?

22 A Yes.

23 Q So as the president of Sea Cloisters I Homeowners
24 Association, what number of people are you speaking on
25 behalf of?

1 A The 45 homeowners, including myself.

2 Q Okay. Once you send this letter to the City, were
3 you ever made aware of the City sending a cease-and-desist
4 letter?

5 A After this went in and I sat down with Mr. Caldwell
6 in the conference room -- and we went through this at
7 great length and his face was white and his jaw was
8 hanging open -- I didn't have any contact with anybody up
9 there until getting into September.

10 We have our HOA meeting -- our annual HOA meeting
11 coming up in the first Saturday in October, and I was
12 preparing for that. Because of COVID and other things, we
13 had an option -- in '21, I think we had a Zoom meeting.
14 But we had to mail everything out. Normally, you walk
15 into the meeting room and pick up the handouts and the
16 budget and that stuff. We had to mail everything out. So
17 it had to go out several weeks earlier.

18 So it was the early part of September. I called, I
19 think, Mr. Caldwell, and he said it had been turned over
20 to the -- Mr. Noury.

21 So I called Mr. Noury, and he says, "Oh, yeah,
22 there's a cease-and-desist letter that went out." So I
23 sent him an email with a FOIA request, and he sent me a
24 copy.

25 Q You didn't have any coordination or preparation in

1 that cease-and-desist letter that the City --

2 A No.

3 Q And then, likewise, similar line of questioning.
4 Eventually, you became aware of a lawsuit that the City
5 filed; is that right?

6 A I became aware of the lawsuit in November. I think
7 it was November 17th. I got a call from Christian Bashalt
8 (ph) from -- I believe it's My Horry News. He had been at
9 City Hall and he had this and say, hey, my name is on the
10 complaint and stuff. You know, can you give me your
11 insight on this? What's your side of it, basically? So
12 he can write a newspaper article. That was my first
13 knowledge of the lawsuit being filed.

14 Q So you and the HOA did not have any coordination
15 with the City in that lawsuit being filed?

16 A Not at all. We sent him the zoning complaint, and
17 the City took it from there.

18 Q Did Sea Cloisters I and II also send a written
19 complaint to Carolina Pines?

20 A Our lawyer did.

21 Q Okay. And he did that based off y'all's
22 instruction?

23 A In September, yeah. Yes.

24 Q So I'm displaying what's been marked as Plaintiff's
25 Exhibit 69. Is this the letter you were just referring

1 to, Mr. Shortle?

2 A I believe it is. Yes, it is.

3 Q And it has similar allegations to the allegations
4 that you set forth in a letter to the City?

5 A Yes, but he concentrates a little bit more on the
6 deed restrictions -- the covenants -- restrictive
7 covenants.

8 Q And this was sent not only to Carolina Pines RV
9 Resort in Conway but who else?

10 A It was sent to their home office twice.

11 Q Why did the HOA send this letter to Carolina Pines
12 and the headquarters when the City had already sent a
13 cease-and-desist letter?

14 A When I was discussing with Mr. Noury about that, he
15 said you guys might want to -- about the original
16 cease-and-desist letter, getting the FOIA requested, and
17 he says, "You guys might want to cover yourself," you
18 know.

19 Q Did you ever receive a response to this letter, this
20 September 9th, 2021, letter, prior to the City filing a
21 lawsuit in November?

22 A I have received no written communication at all from
23 Sun or Carolina Pines or anything. The first time I heard
24 from somebody was Troy Bittner called me the day the
25 newspaper article hit, which was several days after they

1 had been served with the lawsuit. And he wanted to talk,
2 "What can we do? We want to be good neighbors." And that
3 was November 11th -- November 17th. November 17th. And
4 it was -- it was kind of a strange conversation because
5 his secretary called me. I assume it was his secretary or
6 assistant or whatever and said, "Mr. Shortle, Mr. Bittner
7 would like to talk to you. Okay?" And I held on. And
8 then he picks up the phone and says, "Who is this?"

9 So I don't know if there were other people --
10 whether that was a conference call that they were plugging
11 me into or what, but it was just kind of strange.

12 And then he asked me some very strange almost
13 juvenile questions. "Well, why can't we have a bar
14 there?"

15 "Well, because Zoning says you" -- it's like he had
16 no understanding of what a zoning ordinance is.

17 He says, "There's a bar right up the street."

18 "Well, yeah, there's a gas station around the corner
19 too, but it's not zoned for it there."

20 Q So your knowledge of the zoning ordinance and the
21 issues related to Defendant's ownership and use of the
22 property, when did Sea Cloisters and when did you become
23 aware of those issues?

24 A That it was a violation of the zoning ordinance?

25 Q Right.

1 A In July, when we started doing the research.

2 Q Prior to that time, from 2007 when the cabana house
3 was being built all the way to July of 2021, did you or
4 Sea Cloisters as an entity know that the -- about the
5 project requirement or the HOA requirement?

6 A No.

7 Q After this letter of September 9, 2021, did any
8 issues continue to arise from Defendant's ownership and
9 use of the cabana house?

10 A Yes.

11 Q Can you describe those for the Court?

12 A There were always two light posts -- I want to go
13 through lights first. There were always two light posts
14 back by the pool deck, shining down. And they were
15 old-fashioned metal lights, those great big screw-in
16 bulbs, but shine down.

17 In late spring of 2021, they replaced those with
18 LEDs. They shined out. So we filed an additional zoning
19 complaint for those lights.

20 It was October 28th, there was an electrician there
21 that finally replaced them. I'm getting my years screwed
22 up here. They put in -- that was of '22, I'm sorry. They
23 replaced them in '22 -- October 28th -- with worse lights.
24 I mean, they shine right in the bedroom windows.

25 Q Around the time the City filed a lawsuit, you're

1 aware that the City also filed a motion for a restraining
2 order as well; right?

3 A Yes.

4 Q Do you know whether or not there was a hearing on
5 that restraining order?

6 A Yes, and I attended it.

7 Q Do you recall what was the result from that hearing?

8 A A consent order, I believe it is.

9 Q And, for the record, I'm displaying now what's been
10 marked as Plaintiff Exhibit 75.

11 A Yeah, that's it. A consent order. And I believe
12 that was done with negotiations outside of the courtroom,
13 and this is something that Mr. Willis might have had --

14 Q Okay. So following --

15 A -- typed.

16 Q Yeah. And following the entry of this consent
17 order, which is Court stamped as January 11th of 2022,
18 what did you observe after this consent order being
19 entered?

20 A Well, if I can step back to the lights. In
21 December, I was having another conver- -- I got another
22 call from Troy Bittner, and I reminded him that he had
23 promised to turn the lights off. "Oh, yeah, I'll get
24 somebody out there today." And he said.

25 So late in September, they turned those lights off,

1 the original offending lights.

2 This hearing was in January. Didn't hear anything,
3 do anything, whatever. In April, they opened the pool,
4 and they turned the lights back on.

5 So, once they opened the pool -- this document says
6 they will close the pool, but they closed the pool -- they
7 actually quit using the facility for the RV resort but
8 they allowed the paying members to use the parking lot,
9 the restrooms, the beach access, but it says we're going
10 to close the pool. They never closed the pool. So the
11 pool was used all summer in '21 and all summer -- or '22
12 and all summer in '23.

13 Q Okay. Let's go back to January of 2022 around the
14 time of the hearing that we're talking about here.

15 A Mm-hmm.

16 Q Did you ever have any meetings with representatives
17 of Carolina Pines?

18 A Yes. I met Mr. Willis and Mindy Kirtley at that
19 hearing. And she wanted to have a meeting. We met at the
20 ocean club, at the cabana house.

21 Q Who was at the ocean club?

22 A Mindy Kirtley and the new -- by that time, Troy
23 Bittner was gone, and a new general manager -- his name
24 was Ryan Crots, C-r-o-t-s. We met there, and she wanted
25 to talk how could we be a good neighbor and what have you.

1 Q And did you recognize, like, who Ms. Kirtley was,
2 like, what her position was?

3 A Yeah, she told me she was the vice president of the
4 region or the district or whatever. She was Troy
5 Bittner's and ultimately this Ryan Crots's boss.

6 Q Okay. Did you ask Ms. Kirtley whether Defendants
7 knew of the ordinances and whether they could use it as
8 they intended?

9 A Yes.

10 Q Can you describe that conversation for the Court?

11 A I asked them why they would buy that when they knew
12 that they couldn't use it for what they were using it for.

13 And she said, "Well, I just" -- should I do it? She
14 actually -- we were sitting in the upper level, the second
15 floor, and it's giant glass windows on the front and the
16 back of the room. And it's a pretty good-size room. It's
17 maybe 30 by 30. I mean, it's a good-size room.

18 We were sitting at what is like a dining room table.
19 My back was towards the parking lot and her back was
20 towards the ocean. It was a beautiful winter day with the
21 sun shining on the ocean. The ocean was relatively flat.
22 And I asked her why they bought this place when they knew
23 they couldn't use it. And she stood open and walked over
24 to the windows and held her hands up and said, "Because of
25 this. I saw this and I had to have it." And that is her

1 exact words.

2 Q Did you have any conversations about the liquor
3 license application or the alcohol license application?

4 A Yes. I then asked her why they applied for a liquor
5 license when there's restrictions. And she kind of
6 flippantly said, "Well, we wanted to offer something for
7 our guests here, and we were going to see what we could
8 get away with."

9 Q Is that what she said or is that the impression that
10 you were left with?

11 A It was words to that effect.

12 Q I understand that, following some of these
13 conversations, that Carolina Pines attempted to make some
14 remedies to the property and try to fix some of these
15 issues. Can you describe to the Court what those are and
16 whether they have satisfied Sea Cloisters?

17 A Well, at that meeting, I brought up the trespassing
18 and the lights and other stuff. And Ryan was kind of
19 walking around the table, and he says, "We'll put a fence
20 up." Oh, and the air-conditioners that are hanging into
21 the setback area.

22 He said, "We'll put a fence up. What kind of fence
23 do you want? We'll put it all the way down the side. You
24 want six-foot privacy fence? We'll do your fence. We'll
25 take a look at what it costs to -- we'll put gates in for

1 you at your parking lot. We'll take the air-conditioners
2 down and we'll replace them with mini splits there."

3 And then the lights. He says, "Well, you know,
4 we've got to have lights because of the pool. So we'll
5 put the lights like we use at the campground. They have
6 motion detectors and they dim down when nobody is around."

7 I says, "You can put whatever lights you want up
8 there as long as they're not shining on our property,
9 whether you trip the photo cell or not."

10 And it was almost like he was wanting to give away
11 the bank to -- their goal was and -- their stated goal was
12 to get us to pull the zoning complaint.

13 Q So was there ever a fence installed?

14 A The fence was installed on June 30th and July 1st of
15 2022.

16 Q Okay. Is it to the satisfaction of Sea Cloisters?

17 A It -- it does not solve the problem. Those people
18 we saw in the video would have the same access right
19 around the front. So it does not solve the access
20 problem. And it creates other problems.

21 In the back of the building, the original pool fence
22 goes around the pool and ties back into the building so
23 you can't hit up alongside the building. You're trapped
24 in there. You have to go through the building to get into
25 the pool area.

1 Now, they did the same thing with the parking lot.
2 You have the gates out front to get the cars in. And the
3 fence goes around it, and it comes back and ties into the
4 front corners of the building, which leaves a
5 10-by-whatever-length-of-the-building-is area alongside
6 the building that is not accessible without coming through
7 our property.

8 It wouldn't be bad except their electric meter is in
9 there, their main electrical service, their
10 air-conditioners, and their spa heater, which all needs
11 maintenance. So they have fenced off their equipment from
12 their own property, and it's not right.

13 Q So in order to get that -- in order to access and
14 inspect and provide maintenance to those units --

15 A They either have to go on Sea Cloisters II to get to
16 the pool heater or Sea Cloisters I to get to the meters
17 and the air-conditioners.

18 Q Okay. So, essentially, they'd have to trespass in
19 order to get there.

20 A Yes.

21 Q Okay. You mentioned gates. And let's talk about
22 gates at Sea Cloisters. Does Sea Cloisters have gates?

23 A No.

24 Q And when I say "gates," I'm talking, like, vehicular
25 gates to enter the parking lot.

1 A Right.

2 Q Sea Cloisters doesn't have those?

3 A No.

4 Q Neither I or II?

5 A No.

6 Q Why not?

7 A They're expensive. They have never been necessary
8 before.

9 Q About what about the offer for Sea Cloisters -- or,
10 excuse me, for Defendants to pay for gates?

11 A Their offer apparently ended when I left that day
12 because I never heard anything from them.

13 Q Would gates be something that Sea Cloisters would
14 want?

15 A Yes, but it would be -- we'd have to really think
16 hard about it because they're expensive to maintain and
17 they're expensive to administer.

18 Q Can you talk about the administrative?

19 A Well, you have got 45 different homeowners. They
20 come and go on their own schedule. You've got 14 to 15,
21 16 units that rent. So you've got renters coming in.
22 With that, you've got the rental agencies, maids coming in
23 and what have you.

24 The access code has to be -- I mean, the security on
25 those gates is only as good as the security you keep on

1 the access code. So we'd have to change it quite often,
2 and then you have to get out to all these different
3 people. And then we have got police and fire. We've got
4 -- you know, it's a big deal.

5 MR. RICARD: Bear with me one moment, Mr. Shortle.

6 BY MR. RICARD:

7 Q If Sea Cloisters had wanted gates, would they have
8 gotten them prior to all of this?

9 A We have been talking -- we have talked about it in
10 the past a couple of times.

11 Q But Sea Cloisters hasn't gone with it?

12 A No. The need has never been there to justify the
13 cost.

14 Q Okay. I want to talk a little bit about property
15 values, Mr. Shortle. If Defendants were allowed to use
16 the property as they were using it in 2021, what impact
17 would that have on property values of Sea Cloisters units,
18 especially the neighboring ones, Buildings C and D?

19 A Well, I can only -- in my experience, the
20 neighborhood has a lot to do with the property value, and
21 when I talked to an appraiser one day who was coming out
22 -- he was appraising the place, and he told me --

23 MR. WILLIS: Your Honor, this is pretty clear
24 hearsay.

25 THE COURT: I understand.

1 A But, you know, it's clear that if we had, you know,
2 a party center, a bowling alley, or gas station next door,
3 our property values would not be where they're at.

4 MR. WILLIS: Your Honor, my objection is just what
5 the appraiser might have said. Mr. Shortle is perfectly
6 capable of testifying as to opinion as to property values.

7 THE COURT: I understand.

8 MR. RICARD: One moment, Mr. Shortle.

9 THE WITNESS: Uh-huh.

10 BY MR. RICARD:

11 Q Mr. Shortle, you may have heard some testimony from
12 Mr. Martucci regarding the buses or vans, shuttles,
13 whatever they were --

14 A Yes.

15 Q -- accessing Sea Cloisters parking lots.

16 A Mm-hmm.

17 Q Can you talk about the time frame that that took?

18 A It was a couple of months. He asked me if they
19 could bring their buses -- their gate system was an
20 in-gate and out-gate, and right in the middle of the
21 driveway was a pedestal that had the keypad on it. And
22 the big buses could not make the turn to get in there past
23 that keypad thing. So, for a couple of months, we allowed
24 them -- they came in our south drive, and they drove up to
25 the north drive, and they off-loaded people at the

1 sidewalk to go over and around.

2 Q Okay. And that -- but that ended at some point?

3 A Oh, yes. That was purely temporary, and it was
4 pretty much off-season.

5 Q Do you recall what year that was?

6 A That would have been '19.

7 Q Okay. And so that predated all of the intensity of
8 use that you observed and others observed in 2021?

9 A Oh, yes.

10 Q Thank you, Mr. Shortle. I don't have any further
11 questions for you, but sit tight. Opposing counsel may.

12 THE COURT: Cross?

13 MR. WILLIS: Your Honor, I may have -- I'm probably
14 going to be about 30 minutes. This might not be a bad
15 time for a break, if you want, and then we can conclude.

16 THE COURT: We'll take a break and then wrap it up.

17 (A recess was taken from 4:15 p.m. to 4:31 p.m.)

18 THE COURT: The defendant?

19 MR. WILLIS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WILLIS:

22 Q Mr. Shortle, you and I have met. I'm Dick Willis.
23 Let me introduce myself for the record. I represent Sun
24 Communities.

25 You mentioned in your direct examination that we met

1 during the original hearing on preliminary injunction.

2 A Yes.

3 Q And do you recall at that meeting Ms. Kirtley was
4 here --

5 A Yes.

6 Q -- on behalf of Sun. I was present, and I had
7 another lawyer with me. I believe you were there;
8 correct?

9 A Yes, sir.

10 Q I believe Mr. Noury was there on behalf of the City.

11 A Yes.

12 Q And fairly early into the hearing before Judge
13 McCoy, I got up and I suggested that perhaps we could
14 solve this preliminary injunction hearing by a consent
15 order that sort of froze the status quo of the cabana
16 house and essentially close it down until we could get a
17 ruling on the merits of our constitutional challenge. Do
18 you remember all that?

19 A Yes.

20 Q And then I asked Ms. Kirtley to meet with you and
21 sort of get a laundry list of things that Sea Cabins [sic]
22 I and II wanted in terms of improvements to the property.

23 A Okay.

24 Q And you had a meeting with her to that effect;
25 correct?

1 A Yes.

2 Q And some of those things were done; fair to say?

3 A No.

4 Q Well, they put up a fence. And I know you don't
5 like the fence but they put up a fence; right?

6 A They put up an ineffective fence that causes more
7 trouble than it solves, yes.

8 Q Are you a fan of Robert Frost?

9 A Yeah.

10 Q Good fences make good neighbors?

11 A Yeah, okay, but you said "good fences."

12 Q Well, the fence can be improved, can't it? I mean,
13 anything can be changed; correct?

14 A Yes, sir.

15 Q All right. Now, your unit, you no longer live
16 there; correct?

17 A I don't live there full time, no.

18 Q Do you rent it out?

19 A No.

20 Q Have you ever rented it out?

21 A Years ago.

22 Q Again, I have asked other witnesses. How did you go
23 about doing that?

24 A Through a rental agency.

25 Q And do you recall what you charged?

1 A It was a long time ago. I think it was -- it was
2 like -- we were clearing, like, seven or eight hundred
3 dollars a week.

4 Q So the agency would get some money and you would get
5 700 or \$800?

6 A 700 to \$800. It's significantly higher than now.

7 Q But it's fair to say, for a period of time, you were
8 a participate in the real estate market in North Myrtle
9 Beach as a renter; correct?

10 A I guess.

11 Q Now, the -- in 2017-2018, that time frame when
12 Mr. Watts and Mr. Oates bought the cabana house and the
13 property from Ben Powell and Pan, LLC, did you know
14 Mr. Watts? Did you ever meet him?

15 A Not before then, no.

16 Q But did you meet him thereafter?

17 A Yes.

18 Q And did you know Mr. Oates?

19 A Not until he --

20 Q Not until he bought it?

21 A -- purchased the place.

22 Q But after that, you got to know him; correct?

23 A Yes.

24 Q And is it your understanding that they operated
25 the -- what we're calling the cabana house today as a

1 private beach club?

2 A Yeah.

3 Q And they had the Seabrook members, the members from
4 that -- the original Ben Powell/Seabrook accessory
5 building, they became members of the beach club by and
6 large, I believe?

7 A Yeah.

8 Q And then there were additional members; correct?

9 A As far as I know, yes.

10 Q And you haven't looked at the list to determine
11 which ones lived in the City of North Myrtle Beach and
12 which ones didn't, did you?

13 A Actually, I did.

14 Q Well, then you understand that some people were
15 residents of the City of North Myrtle Beach and some
16 people were not; correct?

17 A It was -- it's hard to look at that list that was
18 part of the consent order because there's like -- there's
19 one guy that lives in Virginia or someplace. Now, he
20 certainly doesn't come down here to go to the beach club.
21 He's got to have a property down here some place, and I
22 have no idea where that is.

23 Q And we don't need to go over in detail. I'm just
24 trying to just make the general point that you were aware
25 of it.

1 A There was one or two. After the consent order was
2 filed, yes. There was one or two outside.

3 Q And would you be surprised to learn that, of the
4 approximately 50 members of the beach club, roughly half
5 of them were not in the Seabrook subdivision and lived
6 outside the City of North Myrtle Beach?

7 A Actually, I would, because the list we had -- I
8 think there was 24 on there.

9 Q Now, let's make sure the Court understands what list
10 you're talking about.

11 A The list that's attached to the consent order.

12 Q Do you need some water? There's some water right
13 there, sir.

14 A I'm good for right now.

15 I think there's 24 people on the list.

16 Q Right.

17 A And the vast majority of those was from Seabrook.
18 So where the 50 people and half of them were outside the
19 North Myrtle Beach comes from, I couldn't speculate.

20 Q I want to make my question more clear then. I'm not
21 talking about the members that remained in January '22
22 when the consent order was entered.

23 MR. WILLIS: For the Court's benefit, we made a
24 list, Your Honor, of members who were allowed to come onto
25 the property, use the beach club for access to the beach

1 and back, use the bathrooms. Mr. Shortle is right; they
2 were not supposed to use the pool, and we'll address that
3 later.

4 BY MR. WILLIS:

5 Q What I'm asking about is the original list of
6 members of the North Myrtle Beach ocean club/beach club
7 that Mace Watts and Ben Oates put together, roughly about
8 50 people at the time that was sold to Sun. Were you
9 aware of that?

10 A No.

11 Q And roughly half of them were Seabrook residents;
12 the other half were from all over.

13 A Mm-hmm.

14 Q All right. You were not aware of that; correct?

15 A I was not.

16 Q Now, you mentioned that the culture of Sea Cabins --
17 I'm sorry; I keep saying "Sea Cabins" because it's another
18 lot.

19 A Sea Cloisters.

20 Q Sea Cloisters. My apologies.

21 The culture of Sea Cloisters, you would prefer that
22 to be essentially residential; correct?

23 A Well, it is. I mean, what's my choice? I would
24 assume what to be residential? Sea Cloisters?

25 Q Yeah. Mr. Ricard asked you about the culture of Sea

1 Cloisters and the neighborhood, and you said it's
2 essentially residential?

3 A It is. The neighborhood is, yes.

4 Q But you're aware, are you not, that it's not zoned
5 R-1 residential. It's zoned R-4 resort residential.

6 A Yes.

7 Q And let's pull that up so you can see it. And I'm
8 sure you have seen this before.

9 A Uh-huh.

10 Q So the orange there, that's resort residential;
11 correct?

12 A Yes.

13 Q And so there are extensive commercial uses in that
14 orange zone that are permitted by the ordinance; isn't
15 that right?

16 A No.

17 Q Well, you have got -- let's just take the Tilghman
18 Golf and Beach Club, for example, on the other side of the
19 street.

20 A That's a residential. That's a ten-story Sea
21 Cloisters. It's condominiums.

22 Q How many condominiums are over there?

23 A Oh, 375. Something like that.

24 Q It's a resort; is it not?

25 A Yes, but it's a residence.

1 Q Do you dispute, Mr. Shortle, that the R-4 zoning
2 description permits cabana houses as a special exception?

3 A No. It's in their 23-22 or whatever it is.

4 Q Now, let's go back to your understanding of the
5 original transaction when the Tilghman family sold these
6 two larger properties for the construction of Sea
7 Cloisters I and Sea Cloisters II. And you testified that
8 you believed that Mr. Tilghman kept that narrow strip of
9 property where the cabana house was initially built. He
10 kept that, what, sort of as a buffer between the two?

11 A I don't know. I don't know. It was -- I mean, it
12 specifically -- Sea Cloisters corporation didn't buy it.
13 And whether he didn't sell it or they didn't want to buy
14 it or they didn't want to mash the two together -- but
15 that 86-foot-wide piece of property ended up in there.
16 And as part of the purchase of the two Sea Cloisters
17 properties, he granted that or the family granted that
18 restrictive covenant.

19 Q And I believe you testified earlier that you believe
20 that that restrictive covenant was very valuable --

21 A It is.

22 Q -- to Sea Cloisters I and II.

23 A It is very value valuable.

24 Q It adds value to Sea Cloisters I and II.

25 A Yes, it does.

1 Q Because it restricts the use of that property to a
2 clubhouse for use for recreational purposes; correct?

3 A Yes.

4 Q And that restrictive covenant was placed on that
5 property in 1979; was it not?

6 A Yes.

7 Q And that predates the R-4 zoning designation by 16
8 years; right? 1995 was when the R-4 resort residential
9 district was enacted by the zoning ordinance; right?

10 A Okay. I don't know what it was before.

11 Q Would you have an objection to the cabana house
12 being operated as a clubhouse for recreational purposes
13 consistent with the deed restriction?

14 A I don't -- I don't understand how that would work.
15 You mean like Watts and Oates did?

16 Q Well, if that constitutes a clubhouse. But my
17 understanding is a clubhouse, defined in the zoning
18 ordinance, is a place for club members to gather and
19 recreate; right?

20 A See, part of the issue here is that was to be a
21 clubhouse as for inland housing development and stuff.
22 You have got to remember, if we get in a squabble with the
23 neighbors that's another homeowners association, that's a
24 whole lot different than getting into an issue like this
25 with an \$8 billion company for our HOA.

1 Q Well, I appreciate that, but that's not responsive
2 to my question. I mean, my question is, Would you, as a
3 spokesman for See Cabins [sic] I, be willing to consider
4 the operation of a clubhouse for recreational purpose on
5 that property instead of a cabana house?

6 A It's possible. I couldn't make a decision like that
7 without talking to the boards and the homeowners.

8 Q Now, you testified that, between 2008 and 2014,
9 there was no use of the property at all -- the subject
10 property.

11 A No.

12 Q And that it was overgrown.

13 A Mm-hmm.

14 Q And in bad condition. Correct?

15 A Yes.

16 Q And I assume that that overgrown, bad condition had
17 some deleterious effect on the perceptions or the values
18 of the adjacent properties, Sea Cloisters I and II. It's
19 not something you wanted to see.

20 A It did to some extent, and then, to some extent, we
21 sent our groundskeepers in there to hack it back.

22 Q You actually sent your folks over there to spruce it
23 up from time to time?

24 A The same property guy does Sea Cloisters II and Sea
25 Cloisters I, and there's a narrow strip between the

1 parking lots. And instead of cleaning up our half, he
2 cleaned up the whole thing.

3 Q Now, when Mr. Watts and Mr. Oates bought the
4 property from Ben Powell and they converted it over to
5 this beach club, they made some improvements to the
6 property; did they not? They got it back in decent shape;
7 is that fair to say?

8 A Yeah. They were working on it, yeah.

9 Q Now -- and I believe you said it was nice enough
10 that you even thought, if you didn't have a condo there,
11 you might be interested in joining it?

12 A Yeah.

13 Q And that was an operation that was essentially
14 commercial; correct?

15 A Yes.

16 Q They were selling memberships for a \$5,000
17 initiation fee?

18 A Mm-hmm.

19 Q And then \$900 a month, like the country club you
20 described.

21 A Mm-hmm.

22 Q And you didn't have any problems with that
23 operation?

24 A It doesn't cause us any problems.

25 Q Now, once Sun Communities bought it, you said during

1 the 2019 time frame, because it was off season, things
2 were slow; correct?

3 A Mm-hmm.

4 Q And things remained slow through 2020 because of
5 COVID, but things changed in 2021 with the COVID
6 restrictions being dropped and --

7 A Mm-hmm.

8 Q -- the hordes returning to the Grand Strand;
9 correct?

10 A Yes.

11 Q Now, you pointed out that -- I believe you said
12 there's potentially 3,000 people at the RV park --
13 Carolina RV park. And what's your basis for saying that?

14 A That was in -- read in Mr. Onken's deposition.

15 Q I think you said roughly 1500 sites potentially
16 with --

17 A I said 800 sites. Is there 1500?

18 Q I don't know. I'm trying to come up with --

19 A 800 sites, 3,000 people. That's 3-3/4 people per
20 site.

21 Q Now, you're not here to testify that, during the
22 2021 time frame, all 3,000 people at the RV park came to
23 the beach club; correct?

24 A No, I couldn't do that.

25 Q Now, there's an occupancy restriction I know of on

1 the pool of 50 people; correct? Are you aware of that? A
2 DHEC restriction?

3 A Yes, that's what the sign says.

4 Q And could there be an occupancy restriction placed
5 on the property by agreement between Sun Communities and
6 Sea Cloisters that would make you guys happy?

7 A I have seen the pool with a lot more than 50 people
8 in there at times, so that sign is not working. But --

9 Q Let me interrupt you. What I'm saying is, could
10 there be an agreement between Sun and Sea Cloisters that
11 would involve the City that would place a limit on the
12 number of people that could be shuttled to the RV park at
13 any given time that would address your concern about
14 overuse or overcrowding? Isn't that possible?

15 A To date, they have violated the zoning ordinance
16 multiple times. They flat out ignored the covenants --
17 the restrictive covenants. We have been working for going
18 on two years now to get lights fixed that are shining.
19 They put a fence up without really looking at the
20 situation.

21 What mechanism would there be to enforce anything
22 when the mechanisms of enforcement before haven't worked?

23 Q Well -- and I realize that you have -- is it fair to
24 say you have a lack of trust right now in --

25 A Deservedly so, I would think.

1 Q And let me finish my question, but I think you and I
2 agree; you have a lack of trust in the level or the
3 commitment on the part of Sun Communities to address the
4 problems that you guys have raised?

5 A Mm-hmm.

6 Q But if that trust could be restored and the cabana
7 house operated according to operational restrictions in
8 the zoning ordinance -- not talking now about the
9 ownership restrictions or the residency requirement, but
10 the operation restrictions -- would that satisfy Sea
11 Cloisters?

12 A There would have to be some cast iron enforcement
13 mechanism because we'd be in court every week.

14 Q I guess what I'm saying is, do you really care about
15 who owns the property -- what entity owns the property or
16 whether it is limited to the exclusive use of residents in
17 North Myrtle Beach?

18 A I don't -- I don't have a personal opinion on that
19 because -- my point is, there's a zoning ordinance that we
20 have been depending on to keep us safe from this stuff,
21 and you violated it. And we have got the covenants, and
22 you violated them. And I really don't -- I don't have a
23 love for the zoning ordinance but it protects us. If
24 there's something else that can do that, yes. But like I
25 said, nothing has been -- if you look at -- you don't have

1 a business license.

2 You know, this is our community. All those Sea
3 Cloisters owners, they have a vested interest in the City
4 of North Myrtle Beach. And it's to their advantage to
5 make North Myrtle Beach prosper and survive. When you
6 go -- you don't have a business license. Every one of
7 those homeowners at Sea Cloisters that rents their unit
8 has to have a business license. They're paying for that.
9 Okay?

10 You have these parties and stuff catered there from
11 Carolina Pines. You haul this stuff in. The billing and
12 everything is done at Carolina Pines. Is North Myrtle
13 Beach getting its share of the sales tax? Is North Myrtle
14 Beach getting its share of the hospitality tax? Have we
15 even looked at this?

16 Q We have gone pretty far afield, though, from my
17 question; right?

18 A Mm-hmm.

19 Q And my question is, Does it matter to Sea Cloisters
20 what entity owns the cabana house?

21 A No.

22 Q And does it matter to Sea Cloisters what entity uses
23 the cabana house as long as the operational zoning
24 requirements are adhered to strictly with some ironclad
25 consequences, as you said?

1 A That would take much more discussion to see what
2 those ironclad consequences are and that, but it's --

3 Q You didn't -- you were not aware of the zoning
4 ordinance limitation on ownership by an HOA or use by a
5 project in North Myrtle Beach until July 2021 when you
6 guys looked into it --

7 A In May probably is when we started looking into it.

8 Q And then prepared your complaint that you filed with
9 the City.

10 A Mm-hmm.

11 Q You're aware that there are no more weddings and
12 events that are held at the facility?

13 A I'm aware that you said that, and they have said --
14 but they said they turned the lights off too.

15 Q I know, but answer my question. Have you seen any
16 weddings or events since the place was shut down?

17 A No. I have not seen anybody but swimmers.

18 Q The complaints about the liquor license, the efforts
19 to get the liquor license, those efforts were ceased.
20 That application was never made, was never followed
21 through with it, and it was voluntarily withdrawn;
22 correct?

23 A I don't know that.

24 Q Do they have a liquor license?

25 A The application was made because that would get the

1 sign out front. It's an ABL sign. It's not something
2 that they painted up.

3 Q So, sitting here today, you're not aware that the
4 liquor license application has been withdrawn,
5 Mr. Shortle?

6 A Yes, I do know that it was withdrawn. Well, I don't
7 know if it was withdrawn or it was turned down. I believe
8 it was withdrawn when the administrative court hearing was
9 being set. But I do know that it was withdrawn. I do
10 know that the application that was filed was not correct.

11 Q You and Mr. Tamasitis had a discussion in your
12 deposition about this difference between a club for
13 recreational purposes and a cabana house, which was more
14 restrictive. Do you recall that?

15 A No, I don't.

16 Q I've got your deposition out, so let me refer to --
17 MR. WILLIS: If you'll give me an opportunity, Your
18 Honor, to do the ceremonial opening of the original
19 deposition.

20 MR. RICARD: Your Honor, if I may, I'm just going to
21 object. I'm not sure -- is the deposition testimony going
22 to be used for impeachment now? If so, I think you have
23 to have the primary question to be asked first before you
24 do impeachment. So I'm just wondering what the use of
25 this is.

1 MR. WILLIS: Well, if he doesn't remember it, Rhett,
2 I'm going to impeach him.

3 MR. RICARD: But you need to ask --

4 MR. WILLIS: But first I'm going to show it to him,
5 see if I can refresh his recollection, which I'm entitled
6 to do. Right?

7 MS. SHOUN: It's not proper impeachment.

8 MR. WILLIS: I'm not impeaching him.

9 BY MR. WILLIS:

10 Q All right. Let me show you your deposition,
11 Mr. Shortle. Take a look at let's say the bottom of page
12 74 to the bottom of page 75. And just read that.

13 What I'm trying to do is refresh your memory of the
14 conversation you had with Mr. Tamasitis about the
15 difference between a clubhouse and a cabana house.

16 (Pause in the proceedings while the witness reviews
17 the deposition transcript.)

18 BY MR. WILLIS:

19 Q Can you see it?

20 A Yeah. But what am I reading here? It says that
21 the --

22 MR. RICARD: I'm going to object. I'm going to
23 object. I'm going to object.

24 THE COURT: Read it to yourself.
25

1 BY MR. WILLIS:

2 Q Yeah, you don't have to read it out loud. You can
3 read it if you want to out but you don't have to. Just
4 read it to yourself. I just wanted to see if I can help
5 you remember the contents of that --

6 A Well, it's referencing paragraphs, and I'm trying to
7 figure out what the paragraphs are.

8 Q Let me see if I can help you.

9 A Something says that the -- right before it gets into
10 lettering of the paragraphs, it says, "My client's..." --

11 Q Right. So Mr. Tamasitis asked you about the letter
12 from your lawyer.

13 A Oh.

14 Q And he made the point that your lawyer didn't say
15 anything about the zoning ordinances. The lawyer was
16 focused on -- as I believe you were talking about, the
17 deed restrictions.

18 A Yes, yes.

19 Q And the conditions of use; right?

20 A Yep.

21 Q All right. And, in that conversation, you
22 acknowledge that there are essentially two sets of
23 restrictions that apply to this property.

24 MR. RICARD: I'm going to object, Your Honor. I
25 mean, if we're doing refresh your recollection, at this

1 point, the witness shouldn't have the document in front of
2 me.

3 THE COURT: What he needs to do, he needs to read
4 it, hand it back to you, and then he can answer.

5 MR. RICARD: Right.

6 THE COURT: Just read it to yourself.

7 MR. WILLIS: And, Your Honor, I'm not trying to
8 impeach Mr. Shortle. I'm just trying to remind him of
9 this subject, because I just want to ask him a question.
10 And there have been lots of issues, and we don't remember
11 them all.

12 (Pause in the proceedings while the witness reviews
13 the deposition transcript.)

14 A Okay. I have read it.

15 BY MR. WILLIS:

16 Q All right. So now you remember now that you had a
17 conversation with Mr. Tamasitis about the two different
18 sets of restrictions; right?

19 A Mm-hmm.

20 Q There are the deed restrictions that restrict the
21 property to a clubhouse for recreational purposes?

22 A Mm-hmm.

23 Q And then there is the conditions of the special
24 exception for the cabana house that Ben Powell obtained
25 and was passed on to Mace Watts, which was passed on to

1 the son.

2 A Mm-hmm, all right.

3 Q And I believe you characterized both of these as
4 restrictive but just in different ways; correct?

5 A Okay.

6 Q And I think the point you made -- and it was a good
7 one -- was the original deed restriction didn't attempt to
8 restrict ownership or use of the property; correct?

9 A Correct.

10 Q Instead, it described what could be built, and it
11 limited it to a clubhouse for recreational purposes.

12 A Correct.

13 Q And you believe that restriction actually added
14 value to Sea Cloisters I and Sea Cloisters II?

15 A Yes.

16 Q Now, when your lawyer wrote to Sun and Carolina
17 Pines in September of 2021, no mention was made of the
18 zoning ordinance that required ownership of an HOA or a
19 project in Myrtle Beach; correct?

20 A Correct.

21 Q And that was because the lawyer was more focused, I
22 believe you said, on the restrictive covenants and on the
23 use restrictions.

24 A Yes. I think he was attempting to augment the
25 City's complaint.

1 Q And it's your understanding that this property has
2 never, since its inception, been owned by an HOA?

3 A I can't --

4 Q When you did the research, did you ever find any
5 title to any HOA in the --

6 A I didn't do a title search, but --

7 Q But you looked at the deeds; right?

8 A Yes.

9 Q Did you look at any --

10 A No, I didn't look at the deeds. I looked at the
11 property records online. The online stuff.

12 Q In your research, did you find any ownership by any
13 HOA?

14 A No.

15 Q Now, you understand that the City is asking for two
16 different kinds of relief from the Court today. It's
17 asking that the Court order that Sun divest itself of the
18 property.

19 A Mm-hmm.

20 Q And that use as a cabana house cease.

21 A By Sun, right. Mm-hmm.

22 Q If Sun divests itself of this property, do you have
23 an understanding as to what entities could purchase it
24 under the existing zoning ordinance? It would only be an
25 HOA; correct?

1 A Yes.

2 Q And only an HOA in North Myrtle Beach?

3 A Yes.

4 Q I believe you were asked, I think by Mr. Tamasitis,
5 if you -- if Sea Cloisters was interested in purchasing
6 it. And what was your answer?

7 A I thought that was a joke. I said, "I don't think
8 we can afford it." Something like that.

9 Q What's your -- you're the president of the HOA.
10 What's the annual budget of your organization?

11 A This year, it's \$425,000.

12 Q And what are the monthly dues for each individual
13 property?

14 A It's about \$22.50 a quarter.

15 Q And I assume that money is spent --

16 A \$220,000 for insurance out of 425.

17 Q So half of it goes to insurance?

18 A Mm-hmm.

19 Q Probably the rest of it goes to maintenance of
20 common areas, I would assume.

21 A Mm-hmm.

22 THE COURT: He probably needs to answer with a yes
23 or no instead of "mm-hmm."

24 A Yes.

25 BY MR. WILLIS:

1 Q You don't have \$2-1/2 million sitting around to buy
2 a cabana house, do you?

3 A No, sir.

4 Q Do you know of any HOA in North Myrtle Beach that
5 would?

6 A There's a few new developments that are potential.

7 Q In the city?

8 A Mm-hmm.

9 THE COURT: Is that a yes?

10 A Yes.

11 BY MR. WILLIS:

12 Q Is it fair to say that, if Sun could operate this
13 facility consistently with the zoning ordinances dealing
14 with operation, most of your problems -- Sea Cloisters'
15 problems would be solved?

16 A I don't understand. If you operated it --

17 Q If Sun was able to operate this facility consistent
18 with the operational limitations in the zoning ordinance
19 -- lights, noise, pool, beach access, the various things
20 you complained about -- if they were able to solve that
21 problem, your problem would be largely solved; correct?

22 A The problem with that is the history of Sun
23 operating that. They're real bad at it.

24 Q Thank you, sir. That's all the questions I have.

25 A Mm-hmm.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. RICARD:

4 Q Just real briefly, Mr. Shortle. I have a few
5 questions. I won't try and take too long.

6 You were asked some questions on cross-examination,
7 Mr. Shortle, about when Mace Watts and Ben Oates owned the
8 cabana house. Do you recall that line of questioning?

9 A Yes.

10 Q Okay. I believe you testified that, as far as you
11 were aware, that that might have been a commercial
12 operation, the selling of memberships and such?

13 A (Witness nodding.)

14 Q Did Mace Watts or Ben Oates --
15 I'm sorry. We need a verbal.

16 A Yes.

17 Q Did Mace Watts or Ben Oates, did they host any
18 events at the cabana house?

19 A Not that I'm aware of.

20 Q Did they serve alcohol at the cabana house?

21 A I never saw it.

22 Q Did they serve food at the cabana house?

23 A I never saw them.

24 Q And did they bus any of their members to the cabana
25 house?

1 A I never saw more than two cars in the parking lot.

2 Q You were also asked some questions about the fence.
3 Sitting here today, the fence that currently exists is not
4 to the satisfaction of Sea Cloisters; right?

5 A Correct.

6 Q Even if that fence were improved, as was suggested
7 by defense counsel, would there still be issues that could
8 arise, say, from noise?

9 A Yes.

10 Q Because the fence is not going to stop the noise
11 from the second and third floors of the Sea Cloisters,
12 would it?

13 A No.

14 Q And the fence, I take it, probably isn't going to be
15 two or three stories high?

16 A We wouldn't want to restrict those views of the
17 ocean.

18 Q Exactly.

19 And so Emily Alshire's unit, for example -- you know
20 where she lives in Sea Cloisters?

21 A Yes.

22 Q She has a view from her balcony or her porch area
23 into the cabana house pool?

24 A Yes.

25 Q Okay. So a fence wouldn't stop the noise and

1 behavior that she would observe from her unit, would it?

2 A No.

3 Q Okay. And a fence doesn't address the parking
4 issues either?

5 A No.

6 Q And a fence wouldn't impact the lights either, would
7 it?

8 A No.

9 Q Going to the next topic, Mr. Shortle, you said you
10 attended the hearing for the -- that ended up resulting in
11 the consent order; correct?

12 A Yes.

13 Q And I believe defense counsel mentioned that they
14 were the ones that prompted that discussion. Is that your
15 recollection?

16 A I don't know. There was some talking going on in
17 front of the courtroom as we were in the back, so...

18 Q Do you recall seeing Mindy Kirtley there?

19 A Yes.

20 Q Do you recall if she participated in those
21 discussions?

22 A I don't recall.

23 Q Okay. But, ultimately, it was a consent order?

24 A Yes.

25 Q Okay. During the break that we just took before

1 cross-examination began, I saw there was some discussion
2 between you and defense counsel. Was it about the
3 substance of this case?

4 A No.

5 Q There was some questions about, if the defendants
6 could come to -- into compliance with the use ordinance in
7 this case and if they could do this and if they could do
8 that -- do you recall questions along those lines on
9 cross-examination just now?

10 A Could you repeat that?

11 Q Sure. You've had some settlement negotiations or
12 attempts to try to negotiate remedies to the property with
13 Defendants; correct?

14 A Well, I wouldn't call them negotiations. I have
15 been pretty much non-negotiable since the City filed the
16 suit.

17 Q Right. But there have been offers that have been
18 made from the defendants?

19 A Yes, they have made offers.

20 Q And some of the questioning from defense counsel,
21 they have also attempted to say, "Well, if we fix this or
22 we fix that" --

23 A Yes.

24 Q -- would that satisfy Sea Cloisters, would this
25 satisfy Sea Cloisters; correct?

1 A Yes. The one I caught was, well, you know, the
2 lights, we can just turn off the switch. The switch was
3 turned off in December of 2021. In April, they got turned
4 back on. There has to be permanent solutions.

5 Q None of those conversations took place prior to
6 Defendant's purchase of the property, did they?

7 A No.

8 Q Would you agree that they're seeking your permission
9 at this point -- or, excuse me, seeking your forgiveness
10 at this point?

11 A Yes.

12 Q Rather than your permission prior to purchase?

13 A Yes.

14 Q Thank you, Mr. Shortle. I don't have any further
15 questions for you.

16 THE COURT: Anything further?

17 MR. WILLIS: No, Your Honor. Thank you.

18 THE COURT: Have a good day.

19 THE WITNESS: Do you want the official copy?

20 MR. WILLIS: We'll get it, Jim. Thank you. Just
21 leave it there.

22 THE COURT: Do y'all want to take a break until 9:30
23 in the morning?

24 MR. RICARD: Sure.

25 MR. WILLIS: Yes, sir.

1 THE COURT: See you in the morning.

2 MR. RICARD: Thank you, Your Honor.

3 (The trial adjourned at 5:09 p.m.)

4 WEDNESDAY, NOVEMBER 1, 2023

5 (The trial commenced at 9:37 a.m.)

6 THE COURT: Plaintiff ready to proceed?

7 MR. RICARD: Yes, Your Honor. Before we do, we just
8 wanted to remind the Court that we had the outstanding
9 motion. I'm not sure if the documents have been sent for
10 an in camera review or if the Court has made a ruling on
11 that.

12 THE COURT: Anything from the defendant?

13 MR. TAMASITIS: Yes, Your Honor, a couple of real
14 quick housekeeping items. We have Exhibit No. 62 we're
15 going to be introducing into evidence today. We already
16 provided a copy to opposing counsel. It's actually -- it
17 was part of Exhibit 58. We have just broken it out so,
18 for ease of discussion, some testimony that's going to be
19 today, so it's easier to refer to it.

20 And, also, I have discussed with Mr. Ricard that we
21 have a witness that is coming in this afternoon. To the
22 extent that we decide to run long, we may take her out of
23 order just to have her -- because she's not going to be
24 available for the next two days.

25 THE COURT: No problem.

1 MR. TAMASITIS: Thank you, Your Honor.

2 THE COURT: I'm going to respectfully find that those
3 documents are privileged.

4 I'm ready to proceed when you are.

5 MR. RICARD: All right. Thank you, Your Honor. The
6 plaintiff calls Mr. Mike Mahaney.

7 MICHAEL MAHANEY,

8 after having been duly sworn, was examined and
9 testified to as follows:

10 THE CLERK: And if you'll state your name for the
11 Court, please.

12 THE WITNESS: My name is Michael Greg Mahaney.

13 DIRECT EXAMINATION

14 BY MR. RICARD:

15 Q Thank you, sir. Could you spell the last name for
16 the court reporter.

17 A M-a-h-a-n-e-y.

18 Q Thank you, sir.

19 Where do you work, Mr. Mahaney?

20 A I'm the City Manager of North Myrtle Beach.

21 Q When did you begin that position?

22 A I came to North Myrtle Beach as City Manager in
23 2010.

24 Q Have you served as a City Manager before coming to
25 serve in the City Manager role for North Myrtle Beach?

1 A Yes.

2 Q Where else?

3 A Deerfield Beach, Florida. Nassau County. A number
4 of positions.

5 Q For how long have you worked in city management in
6 your career?

7 A Over 45 years.

8 Q Can you describe your job duties currently?

9 A Sure. The budget currently is about 180 million.
10 There's -- we peak at about 650 employees in the summer.
11 There's about 20 million visitors to the Grand Strand a
12 year, you know. On any given summer day -- the 100 days
13 of summer, so to speak -- we'll have 100,000 people
14 running around. It's about 36,000 calls into public
15 safety on the police side and about 5,000 on the fire
16 side. So it's pretty much management by exception.

17 There's certain events that come up to me night or
18 day, 24 hours a day. If there's a police officer killed,
19 a police officer shot, bad wrecks, basically anything that
20 the media is going to respond to, there's a chain of
21 command that -- including, if necessary, coming to my
22 house and beating on the door if they can't get me to
23 answer the phone so that I can communicate up-line to the
24 seven elected officials before they turn on the TV and,
25 you know, see whatever has transpired.

1 Q Do you track how many visitors come into North
2 Myrtle Beach on an annual basis?

3 A Well, the numbers are down a little bit this year.
4 It's probably going to be about 18 million for the year.

5 Q Okay. And how many permanent residents are there in
6 North Myrtle Beach?

7 A Less than 20,000.

8 Q What are the implications of that number of
9 residents?

10 A Well, you know, our -- we're a tourism environment,
11 and we recognize that and we try to facilitate that as
12 much as possible, but because we're able to keep the tax
13 rate very low because of that. We have one of the lowest
14 tax rates in the State of South Carolina for a
15 full-service city that provides everything from court
16 services to you-name-it because of the tourism dollar.

17 Q If there are issues in a small city, what might
18 happen amongst, you know, word around town?

19 A Well, the quality of life is always very important
20 to our citizens and, therefore, to the elected officials.
21 We are a tourism environment and we love them, but the
22 quality of life, noise, parking, acting out, those kind of
23 things are very important.

24 Q Bear with me, Mr. Mahaney. I'm going to try to
25 display an exhibit here.

1 Can you see that, Mr. Mahaney?

2 A Yes.

3 MR. TAMASITIS: For the record, I have displayed
4 what's been marked as Plaintiff's Exhibit No. 2. This is
5 Section 23-1 of the City of North Myrtle Beach's zoning
6 ordinance.

7 BY MR. TAMASITIS:

8 Q And you can read that to yourself. I'm going to
9 cover a little bit of the high points, and then I'm going
10 to ask you a question regarding this section, Mr. Mahaney.

11 Generally speaking, this is the -- technically, it's
12 the second section, Section 23-0 is the first. But this
13 code of ordinance covers some of the goals that are
14 promoted by the zoning ordinance, so it talks about public
15 health, safety, convenience, order, appearance, the
16 welfare of the community, and then some other purposes and
17 considerations such as the provision of adequate light and
18 air, prevention of overcrowding, convenient and attractive
19 communities, protecting ecologically sensitive areas,
20 regulating density, and ensuring the safety of the public
21 and, again, public welfare.

22 Why are these particular purposes important from a
23 city management perspective?

24 A Well, a zoning ordinance is -- I'm not aware of any
25 cities anywhere of any size that don't have a zoning

1 ordinance. You know, it facilitates a lot of things.
2 It's not really a good idea to have bars or strip joints
3 next to the school or the church. So, you know, this
4 facilitates those kind of things and indirectly everything
5 I was talking about as far as the quality of life -- the
6 noise pollution, parking.

7 Q Do the City zoning ordinances generally support
8 these purposes that are outlined in Section 23-1?

9 A Yes.

10 Q And, in your experience, you've never worked for a
11 municipality that doesn't have a zoning ordinance or
12 zoning plan?

13 A No.

14 Q What concerns would you have if North Myrtle Beach
15 didn't have a zoning plan or zoning ordinances?

16 A Oh, I can't even imagine. It would be total chaos.

17 Q The Wild, Wild West of sorts?

18 A Yes.

19 Q The last paragraph here in Section 23-1, that last
20 sentence talks about, "It's the further objective of the
21 City to encourage future growth and tourism in an orderly
22 fashion without compromising the character of residential
23 areas or the natural environment."

24 Mr. Mahaney, is it fair to say that the City is
25 trying to strike a balance between catering to tourism but

1 also protecting residents in the residential communities?

2 A Yes, that would be a fair statement.

3 Q All right. I'm going to switch topics a little bit,
4 Mr. Mahaney. When did you first become aware of the
5 issues that were surrounding Carolina Pines RV Resort's
6 ownership and use of the cabana house in this case?

7 A Well, I can't give you the exact date, but when I
8 started receiving calls and calls coming up-line from the
9 president of the HOA of that area, Jim Shortle.

10 Q Okay. And what did you do in response when you
11 became aware of these issues?

12 A Well, I reached out. I tried the cell phone number
13 and emailed the manager of the campground on 90 and never
14 got a return call or email, which is highly unusual. I
15 mean, look, I have been in this business for over 40
16 years. When the City manager calls, particularly on a
17 public safety line, and says, "I need to talk to you,"
18 this is the first occurrence in that entire career where I
19 did not get a call back or an email back.

20 Q When you said "90," are you referring to Highway 90?

21 A Yes.

22 Q And the campground out there, that's the one that is
23 owned and operated by Defendants?

24 A Right.

25 Q Okay. And the general manager that you refer to, is

1 that Troy Bittner?

2 **A** I don't remember his name. I know there are some
3 other difficulties that are going on there, but I didn't
4 know that at the time.

5 **Q** So, ultimately, you were not successful in getting
6 the general manager to give you a call back?

7 **A** No.

8 **Q** Okay. I'm going to show you the next exhibit,
9 Mr. Mahaney. This is Exhibit 70. Plaintiff's Exhibit No.
10 70. And you can take a second to read that. I'll
11 represent that this is an email from you, and it copies a
12 number of different people. But this is from August 16th
13 of 2021.

14 So let's go through the line here. Who is Chris
15 Noury?

16 **A** Chris Noury is the City attorney.

17 **Q** Okay. And the next email on the line,
18 TBittner@SunCommunities.com. Do you recognize that email?

19 **A** Yes. That was the manager at that time.

20 **Q** Okay. Seeing his email address, does that refresh
21 your recollection as to what his last name was?

22 **A** Well, yeah, it's Troy Bittner.

23 **Q** Got it. Okay.

24 And then the rest of the folks on this email chain,
25 are those -- who are they?

1 **A** Well, Sarah Clayton is in charge of business
2 licensing. Ben Caldwell is zoning. Jim Wood is the
3 planning director, and Pat Delling was the PIO at that
4 time.

5 **Q** And, in this email, what you directing to occur?

6 **A** Well, I'm basically saying, "Chris, prepare a letter
7 to Troy Bittner on the issues surrounding the cabana."

8 **Q** Okay. And you even mentioned that you have been
9 unable to reach him by phone?

10 **A** Yes.

11 **Q** Okay. Did you intend to copy Mr. Bittner onto this
12 email?

13 **A** Yes. I was hoping it would get his attention.

14 **Q** Okay.

15 **A** I mean, I have called. I have emailed. You know,
16 "Hey, I'm trying to reach you."

17 **Q** Okay. And to this email, did he -- Mr. Bittner, did
18 he ever respond?

19 **A** No, there was no response.

20 **Q** Following this email, was there a cease-and-desist
21 letter that was sent by the City or on the City's behalf
22 to the Carolina Pines RV Resort?

23 **A** Yes.

24 **Q** And, generally familiar, that was around September
25 2nd of 2021?

1 A That sounds correct.

2 Q Okay. Were you ever made aware of any substantive
3 response to that cease-and-desist letter?

4 A As far as I can remember -- and, you know, memory is
5 not 100 percent because this is a couple of years ago, but
6 you know, we got a -- when we sent the cease-and-desist
7 letter, we got something back from their headquarters that
8 basically said, "We got your letter. We'll be back in
9 touch." I mean, that's my interpretation of what it said.

10 Q Right. But then no substantive response after that?

11 A Not to my knowledge.

12 Q Okay. Mr. Mahaney, I want to switch topics again.

13 Have you had to coordinate and communicate with
14 homeowners associations before in your role as City
15 Manager?

16 A Yes.

17 Q How frequently does that occur?

18 A Not a whole lot. Maybe once a year.

19 Q Can you describe their degree of responsiveness?

20 A Well, generally, they're very responsive. You know,
21 whether it's, you know, Barefoot or Tidewater or The Links
22 or whatever. You know, I call -- generally a call to
23 whoever the president of the HOA, and they get back to me
24 almost immediately.

25 Q And how many times -- you mentioned the public

1 safety line. How often are you using the public safety
2 line?

3 A I use the public safety line any time it's an issue
4 that I need a response on because, generally speaking,
5 when it prints up North Myrtle Beach Public Safety
6 Department, they have more of a tendency to answer. If it
7 prints up North Myrtle Beach City Manager, sometimes they
8 won't answer because, "Oh, I know who this is."

9 Q And you used the public safety line in your attempts
10 to contact the Carolina Pines RV Resort?

11 A Yes.

12 Q Going back to HOAs, does the City of North Myrtle
13 Beach have good relationships with the HOAs in the city?

14 A Yes.

15 Q Can you describe their degree of care for their
16 property, their neighbors, and the general quality of life
17 for the city?

18 A Well, they care because they're physically located
19 in the city. And if you call them that, look, there's a
20 problem or whatever, they are very responsive because, you
21 know, it affects them directly. It's, you know, 20,000
22 people. Everybody knows everybody. So, you know, they're
23 very responsive.

24 Q In comparing the responsiveness that you've had over
25 the years with HOAs compared with your responsiveness that

1 you received from Carolina Pines when these issues were
2 coming up when you were trying to get in contact with
3 them, fair to say there's a difference there?

4 A Absolutely.

5 Q The ordinances that are at issue here, Mr. Mahaney,
6 they apply to the R-4 resort residential district; is that
7 your understanding?

8 A That's my understanding.

9 Q Okay. Could a commercial use of a property versus a
10 noncommercial use of a property lead to quality of life
11 concerns in a residential district?

12 A Absolutely.

13 Q And in your experience in city management, can this
14 type of incompatibility or a conflict in neighboring uses
15 impact property values?

16 A Yes.

17 Q Thank you, Mr. Mahaney. I don't have any further
18 questions for you have, but sit tight because opposing
19 counsel might.

20 THE COURT: Cross?

21 MR. TAMASITIS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. TAMASITIS:

24 Q Good morning, Mr. Mahaney. How are you?

25 Sir, I'm John Tamasitis. I represent the defendants

1 in this case. We have met and talked before; right?

2 A Right.

3 Q So you testified earlier, with respect to your
4 position and your duties as the City Manager, that your
5 managerial style by necessity is a management by
6 exception; right?

7 A Correct.

8 Q And that means you don't really have time to get
9 down in the weeds; correct?

10 A That is correct.

11 Q As such, you're not really well-versed in the zoning
12 ordinance; right?

13 A No.

14 Q And that's the Zoning Administrator's job?

15 A Well, Zoning Administrators or the Planning Director
16 or, you know, if there's controversy, he consults with the
17 City Attorney.

18 Q When there's a controversy?

19 A Right.

20 Q And, generally speaking, the Zoning Administrator,
21 he or she speaks on behalf of the City with respect to
22 enforcement and interpretation of the zoning ordinance;
23 right?

24 A Generally speaking.

25 Q And, I mean, are you -- you're not really familiar

1 with the zoning letter; right?

2 A No. No, I don't normally get down -- I set the
3 broad goal. All right? In other words, when all this
4 went down, I went to Chris and I said -- and then -- and
5 said, "Look, you guys got to do something. From my
6 perspective, you have got to do something." Because, you
7 know, in this type of situation, fining them on a daily
8 basis of \$500 a day to a corporation of this size, that's
9 nothing.

10 So I said you have got to do something to resolve
11 this problem, because in the middle of all this -- and,
12 you know, I can't even remember exactly the time frame,
13 but you, your client, applied for an alcohol license. All
14 right? And that hit the paper and whatever. And we had
15 no other HOAs that had alcohol licenses. And so that was
16 like throwing gasoline on the fire of what was already
17 burning, so...

18 Q So you don't really get involved in zoning letters;
19 right?

20 A No.

21 Q To dovetail what you were just talking about, you
22 weren't really involved in the decision about whether to
23 seek an order from this Court requiring my clients to
24 divest themselves from ownership of the property; right?

25 A No. I set the broad goal and left the details up to

1 them.

2 Q And you were talking about the fines and that \$500
3 fine wouldn't have a significant impact on Sun
4 Communities. But that wasn't really the reason that you
5 guys filed the suit. It was actually because there was no
6 way to cure the ownership of the cabana house because it
7 wasn't a homeowners association or a project in North
8 Myrtle Beach; right?

9 A Well, I think that's -- that, again, is not a detail
10 that I'm normally involved in. That's better addressed to
11 the attorneys.

12 Q Okay. Regardless, I do want to discuss the
13 ordinance that's at issue in this case. Okay?

14 A Okay.

15 Q So if we could pull up Defendant's Exhibit No. 35.

16 A Oh, lord.

17 Q It should pop up there.

18 A Yeah, it's up there.

19 Q Yeah. We'll zoom in for you.

20 A Okay.

21 Q I'm going to read to you the definition of the
22 cabana house. Okay?

23 A Okay.

24 Q And it's "a structure utilizing single-family design
25 and development standards in close proximity to the

1 oceanfront to be used by projects in North Myrtle Beach
2 not located near the ocean." Do you see that?

3 A Yes.

4 Q Did I read that correctly?

5 Okay. Now, under this definition, you, as the City
6 Manager for North Myrtle Beach, have no idea why a project
7 utilizing cabana house within the City must be located in
8 North Myrtle Beach; right?

9 A I really don't know.

10 Q Let's look at Exhibit No. 33 -- Defendant's Exhibit
11 33. And we'll turn to -- this is -- I'll represent to you
12 that these are questions that we asked of the City at the
13 beginning of this litigation, and the responses are called
14 interrogatory responses.

15 MR. TAMASITIS: If we can turn to Interrogatory
16 Response 18. Thanks, Jim.

17 BY MR. TAMASITIS:

18 Q So we posed a question to the City in the beginning
19 of this case that asked the City to explain how the
20 limitational use of cabana houses exclusively to projects
21 in North Myrtle Beach furthers the goals of the City.

22 And the response provided in part was that: it
23 encourages investment in the City rather than projects
24 outside of the City. Do you see that?

25 A Yes.

1 Q You agree with that rationale, don't you?

2 A Well, let me think about this for a second.

3 Okay. Ask your question again, please.

4 Q Yeah. In part, that response provides that: it
5 encourages investment in the City rather than projects
6 outside of the City. Do you see that?

7 A Yes.

8 Q And you agree with that; right?

9 A Yes. Generally, I guess I do.

10 Q And the same holds true for restricting the
11 ownership of the cabana house to a local homeowners
12 association; right? A local homeowners association.

13 A Well, it would seem to.

14 Q Now, the residency requirement restrictions that we
15 are discussing here, that a cabana house must be owned and
16 utilized by a local homeowners association for a project
17 in North Myrtle Beach, are the only restrictions that you
18 are aware of in the zoning ordinance that restricts the
19 ownership of certain property.

20 A To my knowledge.

21 Q But, ultimately, you know, we have talked before,
22 your primary concern here with respect to this beach club
23 in this lawsuit is about the use of the property --
24 weddings, noise complaints, parking issues -- and not who
25 actually owns it; right?

1 A Correct.

2 Q And this case isn't dealing with a strip club or a
3 bar next to a church; correct?

4 A No.

5 Q And the City has not conducted any studies on how
6 this residency requirement supports or encourages quality
7 of life?

8 A To my knowledge.

9 Q And it hasn't conducted any such studies as regards
10 to responsiveness?

11 A No.

12 Q No further questions, sir. Thank you.

13 THE COURT: Any redirect?

14 MR. RICARD: Yes, Your Honor, briefly.

15 REDIRECT EXAMINATION

16 BY MR. RICARD:

17 Q Mr. Mahaney, you were asked some questions about the
18 economics of this -- the economic relationship of this
19 ordinance. Would you agree that there are other purposes
20 and goals behind these ordinances that are at issue in
21 this case?

22 A Well, yeah. The quality of life issues.

23 Q Right.

24 A The late-night noise, etc.

25 Q Okay. And you're aware that there are other

1 representatives of the City that are going to be speaking
2 more to the ordinances in this case and the specific
3 policy goals that are being promoted?

4 A Yes.

5 Q Okay. And you set the broad goals for the City as
6 the City Manager; correct?

7 A Correct.

8 Q Thank you, Mr. Mahaney. I have no further questions
9 for you.

10 THE COURT: Thank you. You may step down.

11 Call your next witness.

12 MR. RICARD: Yes, Your Honor. We'll contact -- or,
13 excuse me, we'll call Mr. Ben Caldwell to the stand.

14 BENJAMIN CALDWELL,

15 after having been duly sworn, was examined and
16 testified to as follows:

17 THE CLERK: And will you state your name for the
18 Court, please.

19 THE WITNESS: Benjamin E. Caldwell.

20 DIRECT EXAMINATION

21 BY MR. RICARD:

22 Q Just bear with me one moment, sir.

23 Sir, I know you stated your name. Could you spell
24 your last name for the record.

25 A C-a-l-d-w-e-l-l.

1 Q Can you describe your educational background for the
2 Court.

3 A Sure. I have a bachelor's degree in parks and
4 recreation management and a master's degree in regional
5 planning.

6 Q Okay. How long have you been in the planning
7 business involved in city planning?

8 A 21 years.

9 Q Are you a part of any professional organizations?

10 A Yes.

11 Q What are those?

12 A American Institute of Certified Planners.

13 Q Can you describe for the Court generally what that
14 professional organization is?

15 A It's continuing education, for the most part. Need
16 to get your CEUs, a certain amount every two years. Just
17 to keep up with the current trends in planning and issues
18 in planning.

19 Q What type of topics and issues are discussed in that
20 continuing education?

21 A It's a broad range. Parking trends. Flood zone
22 management. Just all kinds of different topics.

23 Q Okay. And where do you work currently?

24 A City of North Myrtle Beach.

25 Q What's your title?

1 **A** Zoning Administrator.

2 **Q** When did you begin that position?

3 **A** About three years ago. Three and a half.

4 **Q** What did you do prior to becoming the City Zoning
5 Administrator?

6 **A** I was the Assistant Zoning Administrator.

7 **Q** Okay. And how long did you serve in that role?

8 **A** 15 years.

9 **Q** When did you become aware of the alleged violations
10 of the City zoning ordinances by the Carolina Pines's
11 ownership and use of the cabana house?

12 **A** The complaint that was hand-delivered by Mr. Jim
13 Shortle.

14 **Q** Okay. Bear with me one moment, Mr. Caldwell. I'm
15 going to display that on the screen.

16 Is this that complaint you were just referring to?

17 **A** It is.

18 MR. RICARD: For the record, I'm displaying
19 Plaintiff's Exhibit No. 68.

20 BY MR. RICARD:

21 **Q** And did you receive it on or about July 12th of
22 2021?

23 **A** Sounds right.

24 **Q** Okay. And you mentioned the name Mr. Shortle. Are
25 you familiar with him?

1 A Yes.

2 Q Had you interacted with him at all before meeting
3 him with this complaint?

4 A I believe we met prior to that.

5 Q Okay. Any significant interactions or lengthy
6 interactions with him?

7 A No.

8 Q Okay. And you understood -- who did you understand
9 that this letter was being filed by or submitted by?

10 A By the person who handed it to me.

11 Q Okay. But you understood that he was speaking on
12 behalf of the HOA?

13 A Yes.

14 Q And there's actually two HOAs. Was it your
15 understanding that this letter was from both HOAs?

16 A I believe he explained that.

17 Q Okay. When you sat down and spoke with him, did you
18 have concerns? Did you share his concerns about the
19 allegations that he was sharing with you?

20 A Yes, it was concerning. It was a complaint,
21 basically. So we take complaints seriously. And we read
22 through the document with him in our conference room.

23 Q Okay. How often do you receive written complaints
24 that are, you know, 19 pages long or so?

25 A This is the first of that length.

1 Q Right. Okay.

2 What investigation did you do following receipt of
3 this letter?

4 A I drove by the cabana house to see if I could see
5 anything to substantiate some of the complaints.

6 Q Any other type of investigation or research that you
7 conducted?

8 A I checked the Horry County GIS just to see what the
9 ownership was at that time.

10 Q Okay. And just for the record, what is the GIS?

11 A I think that was -- what is GIS?

12 Q Yes.

13 A It's the Geographic Information System. It contains
14 addresses, ownership, partial details.

15 Q What were you able to glean from your research into
16 the GIS system?

17 A I think it was Sun TRS that was listed at the time
18 as the owner.

19 Q As the owner of what?

20 A Of the cabana house.

21 Q Okay. Could you determine if there was an HOA that
22 owned or operated the cabana house?

23 A I don't know how I would have determined that. I
24 couldn't find that data anywhere.

25 Q Okay. But what you were able to confirm was that

1 Defendants owned the property?

2 A Correct.

3 Q Okay. Were you aware that they were an LLC or not?

4 A I don't recall.

5 Q Okay. Did you check to see if they had a business
6 license?

7 A I did not, no.

8 Q Do you know if another department in the City did?

9 A I notified Business Licensing about the complaint,
10 and I think they determined they did not have one at that
11 time.

12 Q Okay. Do you recall if the defendants had ever
13 applied for a special exception to use this property?

14 A No.

15 Q Okay. Is that something you would have remembered?

16 A Yes.

17 Q So you didn't have to go back and check the records
18 to see if they had applied for a special exception?

19 A I did not check.

20 Q After you conducted your investigation following the
21 Sea Cloisters complaint, what happened at that point?

22 A I'm sorry; could you repeat that?

23 Q Sure, yeah. After you conducted your investigation
24 after you received this written complaint, what did you do
25 next?

1 A I talked with Jim Wood next. That's my supervisor.
2 Then we spoke with Chris Noury, the City Attorney. And
3 that was the next step.

4 Q Okay. Did you have any knowledge of these issues
5 related to the Carolina Pines's use and ownership prior to
6 speaking with Mr. Shortle and prior to receiving this
7 written complaint in Plaintiff's Exhibit 68?

8 A I don't think so.

9 Q How does the Zoning Department operate generally?

10 A Could you be more specific?

11 Q Sure, sure. Do y'all actively hunt for zoning
12 ordinance violations, or do you rely on the general public
13 or from sources to complaints and tips of potential zoning
14 issues?

15 A For the most part, we're complaint based in our
16 compliance.

17 Q Okay. And why is that?

18 A We have a small staff. We have myself, we have a
19 zoning technician, and a zoning enforcement officer.

20 Q So it's just three people in the Zoning Enforcement
21 Department?

22 A That's right.

23 Q Fair to say that it's a municipality, it's a
24 governmental entity so resources can, at times, be
25 limited?

1 A That's right.

2 Q Going back to the discussion about the special
3 exceptions, would Carolina Pines have needed to apply for
4 a special exception once they bought the property?

5 A Yes.

6 Q Okay. And why is that?

7 A Because it's an organization that's taking over a
8 cabana house, and in order to operate a cabana house,
9 there are certain criteria that the board needs to find
10 that's achieved before they can issue the special
11 exception.

12 Q Okay. And in this particular case, the special
13 exception for cabana houses, there's a criteria for who
14 owns it; is that right?

15 A Correct.

16 Q Okay. And is that also a special consideration for
17 your opinion here?

18 A Yes.

19 Q Okay. Switching topics a little bit, Mr. Caldwell.
20 As a part of your job as the Zoning Administrator, do you
21 have any role in approving building permits?

22 A I do.

23 Q How many permits do you review on a monthly basis or
24 a yearly basis?

25 A Well, I review all -- currently -- are you talking

1 about currently?

2 Q Yes, sure. Currently.

3 A Currently, I review all commercial building permits
4 that is not single-family residential. Anything other
5 than single-family residential, I review. And we're
6 approaching 5,000 if not at 5,000 this year.

7 Q Okay. Are they somewhat matters of routine for the
8 Zoning Administrator or not?

9 A Many of them are. I can, just through institutional
10 knowledge, sign off on a permit without having to check
11 anything else, and in many cases, I have to go to the GIS
12 or go to a street view -- Google Street View to see what's
13 there. Sometimes I have to go out and look for myself.
14 It varies.

15 Q Okay. So fair to say does it depend on the context
16 sometimes of what the permit is seeking?

17 A Correct.

18 Q Okay. Let's talk about sign permits in particular.
19 Where do they fall on the spectrum of being, you know,
20 simple versus complex that require more time and analysis?

21 A Well, we have to verify square footage. We have to
22 verify the proposed location of the sign itself. We have
23 to know if there's any signage already on the building or
24 free-standing because we have limitations to how much
25 signage can be on a building or if it's free-standing.

1 It's a fair amount of review.

2 Q Are you checking the content of the sign at all?

3 A We're not supposed to review content.

4 Q Okay. And why is that?

5 A I believe there's laws against unapproved or not
6 approving signs based on content.

7 Q Okay. So First Amendment issues?

8 A I believe so.

9 Q Did you review a sign permit for the cabana house in
10 this case?

11 A I don't believe I did.

12 Q Let's take a look at Defendant's Exhibit 28, which
13 I'll pull up here. Are you familiar with this document?

14 A I am.

15 MR. RICARD: Okay. And I'll represent to the Court
16 this is a sign permit that was applied for by the
17 defendants.

18 BY MR. RICARD:

19 Q I'm going to zoom here in on the last page,
20 Mr. Caldwell, before but I do, are you familiar with the
21 Certificate of Zoning Compliance?

22 A I am.

23 Q Okay. And what is that?

24 A That is after a sign has been installed, in this
25 case. An inspection is done to make sure that it's in the

1 correct location, that it's shown on the plans, that it
2 doesn't exceed the square footage on the plans.

3 Q Okay. And is that -- are these your initials there
4 at the bottom?

5 A They are.

6 Q Okay. So can you describe for the Court kind of
7 your mindset as you're certifying that the Carolina Pines'
8 sign was certified from a zoning perspective?

9 A Yes. There was a previous sign in, I think, just
10 about the exact same location, and this was just a
11 replacement of that.

12 Q Okay. So, from a zoning perspective, again, are
13 y'all checking every single zoning ordinance that may
14 apply to a particular property, or are you just focused on
15 the zoning requirements that deal with signs?

16 A For this particular permit, just what's called for
17 on the permit or described in the application.

18 Q Okay. And are you aware, Mr. Caldwell, that --
19 well, who was your supervisor when you were the Assistant
20 Zoning Administrator?

21 A Paul Blust.

22 Q Okay. And do you recall who the Director of
23 Planning and Development was prior to Mr. Wood?

24 A Yes. Doug Maddock.

25 Q Did you ever work under him as well?

1 A I did.

2 Q Okay. Throughout your years working for the City,
3 the Zoning Administrator -- does the Zoning Administrator
4 speak for the City? Can they bind the City on all issues
5 related to zoning, or is there a collaborative effort at
6 times with the Director of Planning and the City Attorney?

7 A It is a collaborative effort.

8 Q And are you aware in this particular case that there
9 has been a designated representative for the City to speak
10 on behalf of the purposes of the ordinances in this case?

11 A Yes.

12 Q All right. And you're not that representative?

13 A I am not.

14 Q All right. Thank you, Mr. Caldwell. I don't have
15 any further questions for you.

16 CROSS-EXAMINATION

17 BY MR. TAMASITIS:

18 Q This is heavier than it looks. Good morning,
19 Mr. Caldwell. How are you?

20 A Good morning.

21 Q My name is John Tamasitis. We met before. I
22 represent the defendants in this case.

23 So Mr. Blust was your mentor; right?

24 A Yes.

25 Q And you were his assistant from 2005 to 2020?

1 **A** Yes.

2 **Q** Now, generally speaking, you, as the City Zoning
3 Administrator, you're the voice for the City on zoning
4 issues; correct?

5 **A** In most cases, yes.

6 **Q** And you make zoning decisions on behalf of the City;
7 right?

8 **A** I do.

9 **Q** And the City relies on you as the Zoning
10 Administrator when making zoning-related decisions;
11 correct?

12 **A** Correct.

13 **Q** Now, let's discuss these zoning letters. Normally,
14 a zoning letter is a letter from your office that verifies
15 the zoning district for a particular piece of property and
16 indicates whether or not specified use is permitted under
17 the City zoning ordinance; right?

18 **A** That's part of them. Sometimes there's more
19 specific than that.

20 **Q** Like what?

21 **A** If somebody wants to know if can I do these uses on
22 this property and if so, more information maybe like
23 building height or signage. Sometimes they're very
24 lengthy.

25 **Q** And so usually what happens then is, when you get a

1 zoning letter request, you ask for a form letter stating
2 what the requestor wants to know, and then you plug in the
3 relevant information and send it back to the requestor;
4 right?

5 A Yes.

6 Q And these letters are important because they're
7 dealing with how someone can use the property in the City
8 of North Myrtle Beach?

9 A Correct.

10 MR. TAMASITIS: Can we pull up Exhibit No. 3. And
11 go to the second page of it.

12 BY MR. TAMASITIS:

13 Q Does this look like a standard form zoning letter
14 that you would request from someone interested in
15 receiving one?

16 A Yes.

17 Q And if you issue a zoning letter and it doesn't get
18 appealed or doesn't get challenged, it becomes the
19 position of the City with respect to that issue; right?

20 A I think that's fair to say.

21 Q And a property owner or requestor can rely on a
22 zoning letter as to what property can be used from a
23 zoning perspective; correct?

24 A Correct.

25 Q Now, let's discuss some of the zoning ordinances at

1 issue in this case.

2 MR. TAMASITIS: If we can go to Exhibit No. 35. And
3 scroll down to the cabana house definition, please.

4 BY MR. TAMASITIS:

5 Q We haven't talked about this definition, but I want
6 to focus on a structure utilizing single-family design.
7 Okay?

8 A Okay.

9 Q That means a building that would appear to be a
10 single-family home; right?

11 A I think that what that means is that the
12 construction method must meet what the building code
13 requires for single-family homes.

14 Q Explain that to me.

15 A I don't think we have any requirements as to what it
16 looks like.

17 MR. TAMASITIS: Can we go to Exhibit No. 45?

18 BY MR. TAMASITIS:

19 Q Would you agree with me that this does not appear to
20 be a single-family home?

21 A Yes.

22 Q And this is the Barefoot cabana house; right?

23 A Yes.

24 MR. TAMASITIS: Okay. Let's go back to Exhibit 35.

25 BY MR. TAMASITIS:

1 Q So we have talked about the requirement that the
2 project must be -- the cabana house must be used by a
3 project in North Myrtle Beach. Are you aware of the fact
4 that the City's interpretation of this provision requires
5 that a cabana house must be exclusively used by a project
6 in North Myrtle Beach?

7 A That's my understanding.

8 Q And you, as the Zoning Administrator, you consider
9 an RV resort located in North Myrtle Beach to satisfy the
10 definition of "project"; right?

11 A Yes.

12 Q But you don't know why this geographical limitation
13 of the project must be exclusively be used by a project in
14 North Myrtle Beach is present in the zoning ordinance, do
15 you?

16 A I don't know what the original intent was of the way
17 that ordinance was written.

18 Q And you don't know if this geographical restriction
19 serves any purpose related to public safety, health,
20 morals, order, appearance, or prosperity in North Myrtle
21 Beach; right?

22 A No.

23 Q Moving forward on Section 23-2, it also provides
24 that a cabana house shall be owned and maintained by a
25 homeowners association; correct?

1 A Correct.

2 Q But you don't know why that restriction is there or
3 how it promotes all of these public health, safety,
4 morals, order, appearance, or prosperity of North Myrtle
5 Beach; right?

6 A I don't.

7 Q All right. I want to change course a little bit,
8 and I want to talk about some of your earlier testimony
9 regarding special exceptions more broadly. Now, I heard
10 your testimony earlier, but there is nothing in the zoning
11 ordinance that you are aware of that requires a property
12 owner purchasing a property subject to an approved special
13 exceptions to reapply for a new special exception; right?

14 A I don't believe it says that anywhere.

15 Q Okay. And do you know whether the other owners of
16 the property at issue in this lawsuit ever reapplied for a
17 special exception after they purchased it?

18 A The previous owners of the cabana house?

19 Q Yes.

20 A No.

21 Q And you aware of Mr. Blust's testimony where he
22 confirmed that there is no need to reapply for a special
23 exception?

24 A I wasn't aware.

25 Q So let's shift now back to the actual zoning

1 ordinance.

2 MR. TAMASITIS: If we can go to Exhibit No. 36. And
3 go down to 4(d).

4 BY MR. TAMASITIS:

5 Q Now, 23-22 governs the R-4 resort residential
6 district; right?

7 A Right.

8 Q And the property that is subject to this lawsuit is
9 located in the R-4 resort residential district; correct?

10 A Correct.

11 Q And will you agree with me that we have two things
12 that are being regulated in 23-2 and 23-22? You have the
13 ownership of the cabana house and then you have the use of
14 the cabana house; is that fair?

15 A Can you be more specific on what you mean by use?

16 Q Sure. If you look at -- we just talked about 23-2,
17 which says it must be owned by a project -- or must be
18 utilized by a project in North Myrtle Beach, must be owned
19 by a homeowners association. In subsection (D)(1), it
20 says that the homeowners association must have been
21 established for the project. So we have got a homeowners
22 association and the project must own and operate the
23 cabana house. And then if you look 2 through 7, those
24 deal with the use of the cabana house itself.

25 A Okay.

1 Q So we're really regulating two different things with
2 respect to the cabana house: the ownership and use -- or
3 the ownership and then the use. Would you agree with
4 that?

5 A Yes.

6 MR. TAMASITIS: Let's go to Exhibit No. 52.

7 BY MR. TAMASITIS:

8 Q Do you recognize this map and overlay?

9 A Yes.

10 Q Does this appear to be the city zoning map and
11 overlay of the zoning districts for the portion of the
12 city?

13 A It does.

14 Q And do you see the subject property there?

15 A Yes.

16 Q And that's in the R-4 resort residential district;
17 correct?

18 A Right.

19 Q And in the yellow, that R-1 district, is that the
20 single-family residential low density?

21 A Yes.

22 Q And that's a different use classification than R-4;
23 right?

24 A It's a different zoning classification, and there
25 are different uses allowed in both.

1 Q And in the R-4 resort residential district, there is
2 a mixed-use allowance; right?

3 A Yes.

4 MR. TAMASITIS: And let's go to -- back to 36,
5 please. And if we can zoom in on the purpose. Thank you.

6 BY MR. TAMASITIS:

7 Q Can you read for the Court the purpose of the R-4
8 district.

9 A "The purpose of this district is to provide for the
10 orderly development of certain areas within the community.
11 Both year-round and seasonal or resort housing may be
12 developed where, because of proximity to the ocean, such
13 mixed development would promote the year-round use of the
14 public facilities and permit housing choices in response
15 to market demands but not at the expense of ocean
16 visibility and access by the community."

17 Q Thank you.

18 And so you -- that means the purpose of this section
19 is to have a land use classification that allows mix of
20 uses and also protects the oceanfront; right?

21 A Correct.

22 Q And a mix of uses means a mix between residential
23 and commercial uses; correct?

24 A Yes.

25 Q Now, there are properties located in the R-4

1 district that are owned by persons or entities who do not
2 permanently reside in North Myrtle Beach; right?

3 A Correct.

4 Q And some of those properties are investment
5 properties?

6 A Yes.

7 Q And some might be used as rental properties?

8 A Yes.

9 MR. TAMASITIS: Jim, if you can scroll down to 4(B).

10 BY MR. TAMASITIS:

11 Q So Subsection 4(B) of Section 23-2 deals with the
12 cabana house special exception specifically; correct?

13 A Yes.

14 Q And Section 1 states that "a homeowners association
15 shall have been established for the project and a
16 maintenance agreement has been submitted to the Planning
17 Department." Did I read that correctly?

18 A Yes.

19 Q So a homeowner's association must own the property
20 pursuant to Section 23-2 and also must be established for
21 the project under Section 23-22; right?

22 A Right.

23 Q So, naturally, a cabana house would be owned and
24 operated by a homeowners association for a project located
25 in North Myrtle Beach; is that right?

1 A Right.

2 Q Turning to the beach club in this case, you wrote
3 the staff reports for the Board of Zoning Appeals for Pan
4 LLC's special exception requests in 2007; is that right?

5 A That's right.

6 Q And that special exception was approved?

7 A Yes.

8 Q And you never did check to see if Pan, LLC, conveyed
9 the property to an HOA after special exception was
10 approved, did you?

11 A I did not.

12 Q And you aren't aware of other sections in the zoning
13 ordinance that have a restriction attached to a use;
14 correct? Or sorry, have an ownership restriction attached
15 to a use; correct?

16 A In the deposition, I said no. I wasn't aware of
17 any. But in looking at it -- and in thinking about your
18 question then, I was having a hard time coming up with an
19 answer because of the terminology in Subsection D-1 here.

20 For privately owned amenities in, like, the other
21 R districts, they do require ownership and maintenance
22 from an HOA.

23 Q Which privately owned amenities are those?

24 A In other neighborhoods that don't have a cabana
25 house, they may have commonly owned amenities within the

1 projects, like swimming pool, playgrounds, things like
2 that. Those are required to be owned and operated by a
3 homeowners association.

4 Q And what's the purpose behind that ownership
5 requirement?

6 A I think because it's within the project.

7 Q And so it's within the project. It's the project
8 has to be associated with the amenity itself.

9 A Correct.

10 Q And that's similar to 23-2 and 23-22. The project
11 and the amenity are tied.

12 A Correct.

13 Q So if you're looking at the amenity, you necessarily
14 have to also look at the project.

15 A Correct.

16 Q But you do consider this ordinance unique in its
17 nature; correct?

18 A We only have one cabana house use.

19 Q And this lawsuit actually prompted you and Mr. Wood
20 to locate all the cabana houses in the city as part of an
21 inventory; right?

22 A Correct.

23 Q And that was the first time you have done that
24 inventory?

25 A It is.

1 Q So once you realize that the owner of the property
2 that is the subject of this case was not a homeowners
3 association for a project located in North Myrtle Beach,
4 you and the other decision-makers at the City demanded
5 defendants relinquish the property; correct?

6 A Relinquish the use.

7 Q Relinquish the use?

8 A Yes.

9 Q You're not familiar with the lawsuit here where
10 they're asking for us to relinquish ownership and use?

11 A I'm not aware of the relinquishment of ownership
12 part.

13 Q So divesting ownership and relinquishing ownership
14 are not the same thing to you?

15 A They are.

16 Q And the demand that was made by the City, after
17 reviewing the allegations in the Sea Cloisters complaint
18 we were just talking about, and in determining the
19 defendants were not a homeowners association for a project
20 in North Myrtle Beach and could not come into compliance
21 with the zoning ordinance was the reason why you had to
22 come to court; right? You couldn't do it by normal
23 enforcement mechanisms?

24 A Correct.

25 Q And this course of action was never brought to the

1 attention of City Council?

2 A Not to my knowledge.

3 Q And you realized today that none of the prior owners
4 of the property since 2007 were homeowners associations;
5 right?

6 A I do.

7 MR. TAMASITIS: If we could turn to Exhibit -- it's
8 the Technical Review Committee exhibit, if we could turn
9 to that.

10 MR. WILLIS: It's 32.

11 MR. TAMASITIS: 32?

12 BY MR. TAMASITIS:

13 Q As the Zoning Administrator, do you attend Technical
14 Review Committees?

15 A I do.

16 Q Are you aware of whether you attended a Technical
17 Review Committee on May 17th of 2018?

18 A I think I did.

19 Q What is a Technical Review Committee?

20 A It's a group of different City departments that meet
21 at a single place to discuss with applicants whatever they
22 want to do, whatever they want to build or develop within
23 the City.

24 Q So it's like you can come on the City and check on
25 what you want -- do and doesn't work with the zoning

1 ordinance and other --

2 A And other city ordinances, yes.

3 Q How often do you attend these?

4 A Weekly. Once a week.

5 Q Okay. So you're -- I mean, this is a part of your
6 job? This is what you do?

7 A Yes.

8 Q If you can scroll down to the next page. You said
9 you were at this meeting; right?

10 A I believe I was.

11 Q Do you recall Mr. Ben Oates and Mr. Mace Watts
12 attending this meeting?

13 A I do.

14 Q And they were attending, it appears, as club
15 representatives on behalf of the Ocean Club at Tilghman
16 Beach?

17 A Yes.

18 Q And that's the beach club that's at issue here in
19 this case; right?

20 A Right.

21 Q And it looks like, in the zoning section -- so this
22 is staff comments. Would this be your office?

23 A Yes.

24 Q In the staff comments, it says, "Private beach club
25 not allowed in R-4. To come into compliance, must convert

1 to a restaurant with 60 percent food sales." Do you see
2 that?

3 A I do.

4 Q Was that guidance you provided to Mr. Watts and
5 Mr. Oates at the review committee?

6 A Yes.

7 Q So you were aware in May of 2018 that the property
8 here was being operated as a private beach club?

9 A I don't know if it was already operating or if they
10 had come to us to try to see what they would need to do to
11 operate.

12 Q Well, it looks like they're -- to come into
13 compliance. It sounds like they were already operating
14 it.

15 A It could be.

16 Q And it says, "In R-4, all restaurant signage must be
17 on the building." We talked about signage. And then
18 "need to have a site walk-through to determine
19 requirements for restaurant conversion. Scheduled for
20 Monday, May 21st at 10 a.m." Do you see that?

21 A Yes.

22 Q Did you do that walk-through?

23 A I don't believe that ever occurred.

24 Q That walk-through never occurred?

25 A I don't think so.

1 Q Do you know why not?

2 A I don't remember.

3 Q That's 2018. That was a long time ago.

4 So when your department becomes aware of the zoning
5 ordinance violation, is it natural to assume, based on
6 your earlier testimony, that the City still doesn't take
7 action unless there's a public complaint?

8 A In most cases.

9 Q So we have to wait until a public complaint before
10 we do anything?

11 A In most cases.

12 Q Now, you would agree with me that the restrictions
13 with regards to the cabana house are designed to protect
14 economic considerations within the City; right?

15 A I don't know.

16 Q You don't?

17 And you agree that the restriction that the
18 exclusive use of the cabana houses to projects in North
19 Myrtle Beach encourages investment in the City rather than
20 projects outside the City; correct?

21 A I don't know.

22 Q You don't know?

23 A I don't.

24 Q I'm going to ask you this again. You would agree
25 with me that these restrictions with regards to a cabana

1 house are designed to protect economic considerations
2 within the City; right?

3 A I don't know that.

4 MR. TAMASITIS: No further questions, Your Honor.

5 THE COURT: Redirect?

6 MR. RICARD: Yes, Your Honor. Thank you.

7 REDIRECT EXAMINATION

8 BY MR. RICARD:

9 Q Mr. Caldwell, you were asked some questions about
10 the zoning map of North Myrtle Beach. Do you recall
11 seeing that on the screen a moment ago?

12 A Yes.

13 Q Was that map available -- was that readily available
14 in 2019?

15 A Yes.

16 Q So Defendants could have looked at that map prior to
17 their purchase of the cabana house?

18 A They could have.

19 Q And that map, is there a hard copy or a digital copy
20 located in the zoning office at the City of North Myrtle
21 Beach?

22 A There is.

23 Q Okay. So the defendants could have gone to the City
24 and checked out that map if they didn't check it out
25 online?

1 **A** They could have.

2 **Q** Okay. And the defendants didn't do that?

3 **A** I don't know.

4 **Q** Does the City track when ownership of a property
5 changes hands?

6 **A** I don't.

7 **Q** Okay. So, yeah, specifically the Zoning Department
8 doesn't track ownership of when it changes for a property,
9 does it?

10 **A** We do not.

11 **Q** The Zoning Administrator's role -- I think there's,
12 like, three different particular roles. I think
13 enforcement is one of them; right?

14 **A** Correct.

15 **Q** Can you describe for the Court what the three roles
16 are for a Zoning Administrator?

17 **A** Interpretation, administration, and enforcement of
18 the zoning ordinance.

19 **Q** The Zoning Administrator is the -- the purpose of
20 the Zoning Department is not to set forth the purpose of
21 the zoning ordinance, just for enforcement and
22 interpretation?

23 **A** Correct.

24 **Q** Okay. The purpose of the zoning ordinance, who is
25 that set by?

1 A Planning Commission and Council.

2 Q Working together in tandem?

3 A Yes.

4 Q Okay. Bear with me one moment, Mr. Caldwell. I'm
5 going to bring back up on the screen Defendant's Exhibit
6 32.

7 So we were just looking at page 2 of Defendant's
8 Exhibit 32, and I have put that back on the screen here.
9 Was the City aware of how Mace Watts and Ben Oates were
10 using the property back in 2018?

11 A Yes. They came to us with their plan.

12 Q Okay. Was the City aware of how they were using it
13 before they came to the City, though, with their plan?

14 A Not to my knowledge, no.

15 Q Okay. Was the City aware if they were trying to use
16 it as a cabana house special exception or not?

17 A They never applied for a special exception.

18 Q Right. Here, though, they're applying for -- it
19 looks to be, like, a private beach club/restaurant
20 situation.

21 A From memory, I think they were trying to see how
22 they could operate the building.

23 Q Right. Right. Okay. It doesn't look like they're
24 trying to use it as a cabana house here, does it?

25 A Well, I think were trying to sell membership to a

1 beach club, and we were trying to get to a place where
2 they could operate, and a restaurant is an allowable use
3 with special exception in that district.

4 Q A restaurant is a different type of special
5 exception under R-4?

6 A Correct.

7 Q Okay. So you would agree that Mace Watts and Ben
8 Oates, they come to the City to ask for permission to use
9 it as a restaurant or a private beach club?

10 A I think that they were trying to get our blessing on
11 using the property the way they wanted to in selling
12 memberships. And we were saying, "Well, what you can use
13 it for is a restaurant if you need to set the criteria."

14 Q Okay. And do you know if they ever came to prove to
15 the City that they were going to be able to meet those
16 requirements?

17 A I don't know that I ever talked with them again
18 about it.

19 Q Okay. Essentially, the City -- in effect, the City
20 said, "No, you can't use it unless you meet these
21 requirements;" is that right?

22 A I think that's what I was saying in those staff
23 comments.

24 Q Thank you, Mr. Caldwell. No further questions.

25 MR. TAMASITIS: Thank you, Your Honor.

1 If you could put back up Exhibit No. 32.

2 RECROSS-EXAMINATION

3 BY MR. TAMASITIS:

4 Q When did we talk --

5 MR. TAMASITIS: And go to the second page.

6 BY MR. TAMASITIS:

7 Q When did we talk about selling memberships at the
8 beach club?

9 A I think I heard testimony yesterday about that.

10 Q Okay. So you got that from testimony here. You
11 didn't have personal knowledge of that through what was
12 being told to you at the Technical Review Committee?

13 A No, I think they explained that's how they wanted to
14 operate.

15 Q That's how they wanted to. They weren't operating
16 like that at the time?

17 A I don't know.

18 Q Okay. And if we could go down to the Planning
19 Commission, do you see that subsection there at the
20 bottom? It says, "Need plan submitting package showing
21 conversion to restaurant use." Do you see that?

22 A I do.

23 Q And your testimony is you don't know what they were
24 converting from to the restaurant?

25 A I think they were wanting to use it to sell

1 memberships.

2 Q At a restaurant?

3 A No, no. I think that they wanted to operate it and
4 just sell memberships, but we were saying this is how you
5 can move forward if you convert it into a restaurant.

6 That is an allowable use with a special exception.

7 Q Okay. And then, actually, there's an alternative
8 remedy there that they may be to pursue a zoning text
9 amendment, allowing a private beach club use by right. Is
10 there a difference between use by right in the R-4 zoning
11 district and a use by special exception?

12 A Yes.

13 Q So you could see how we would think that they were
14 actually operating the beach club at the time of this
15 Technical Review Committee; right?

16 A They may have been.

17 Q But you don't remember?

18 A I don't.

19 Q You talked about how part of your role was
20 interpreting the zoning ordinances. So I want to go back
21 to that question I asked you previously.

22 You would agree with me that the restrictions with
23 regards to a cabana house are designed to protect economic
24 considerations within the City; right?

25 A I have really never thought about it.

1 Q And you took a deposition in this case; correct?

2 A I did.

3 Q And you promised to tell the truth?

4 A Yes.

5 Q Mr. Caldwell, I just handed you your deposition
6 transcript from the deposition that you took. What was
7 the date that you took that deposition?

8 A April 26th, 2022.

9 Q And that was the deposition we just spoke about?

10 A Yes.

11 Q If you could turn to page 107 of that deposition on
12 line 18.

13 A What page again?

14 Q 107.

15 A Okay.

16 Q Follow along as I read this. Okay?

17 A Mm-hmm.

18 Q Line 10. Sorry, line 10.

19 "Please explain how the zoning ordinance's
20 limitation of the use of properties is" -- sorry. Let's
21 start on page 8. This is a question. So a similar
22 question but same thing for Question 18.

23 "Please explain how the zoning ordinance's
24 limitation of the use of properties zoned as a cabana
25 house, exclusively to projects in North Myrtle Beach,

1 furthers the general purpose of guiding development in
2 accordance with existing and future needs in promoting the
3 public health, safety, morals, convenience, order,
4 appearance, property, and general welfare for the City of
5 North Myrtle Beach."

6 And the answer in that document is: "Plaintiff
7 herein incorporates by reference its answer to
8 Interrogatory No. 17 and supplements with the following:
9 This requirement operates to encourage and support local
10 private developments and their corresponding homeowners
11 associations as opposed to nonlocal corporate enterprises
12 by providing them with a private beach club and access
13 point to the beach. It also encourages investment in the
14 City rather than projects outside of the City.
15 Ultimately, this requirement is reasonable and has a
16 tendency to promote the general welfare of the adjoining
17 properties in the R-4 residential district specifically in
18 the City generally."

19 QUESTION: "Did you provide any import or help draft
20 this particular answer?"

21 ANSWER: "No."

22 QUESTION: "Do you have any find any disagreement
23 with any of the statements within this answer?"

24 ANSWER: "No."

25 QUESTION: "Instead, do you agree with all the

1 statements in this answer?"

2 ANSWER: "I do."

3 Did I read that correctly?

4 A Yes.

5 Q Thank you. No further questions.

6 THE COURT: Anything further?

7 MR. RICARD: No, Your Honor. Thank you.

8 THE COURT: You may step down.

9 You may call your next witness.

10 MS. SHOUN: If it please the Court, Your Honor.

11 Before I do this again, may we have a short break?

12 THE COURT: Yes.

13 MS. SHOUN: Thank you, sir.

14 THE COURT: Thank you.

15 (A recess was taken from 10:43 a.m. to 11:07 a.m.)

16 THE COURT: Ready to call your next witness?

17 MS. SHOUN: Yes, sir. May it please the Court, Your
18 Honor?

19 THE COURT: Yes, ma'am.

20 MS. SHOUN: Plaintiff calls Paul Blust to the stand.

21 THE CLERK: Please raise your right hand and place
22 your left hand on the Bible.

23 PAUL BLUST,

24 after having been duly sworn, was examined and
25 testified to as follows:

1 THE CLERK: Thank you. You may be seated. State
2 your name for the Court, please.

3 THE WITNESS: Paul Blust.

4 DIRECT EXAMINATION

5 BY MS. SHOUN:

6 Q Good morning, Mr. Blust.

7 A Good morning.

8 Q Let's find out a little bit about you personally
9 first. Where do you currently live?

10 A In Little River, South Carolina.

11 Q And can you give us a brief statement of your
12 educational background?

13 A Well, I went to high school in Greensboro, North
14 Carolina. And from there on, I went to college at East
15 Carolina University, and I majored in urban and regional
16 planning.

17 Q And did you get a degree from there?

18 A Yes, ma'am. A B.S. degree.

19 Q Okay. And is there any post-college education?

20 A No, ma'am.

21 Q All right. Are you currently employed?

22 A No, ma'am.

23 Q Were you -- are you retired?

24 A Yes, ma'am. I'm retired.

25 Q Prior to retirement, where were you employed?

1 A City of North Myrtle Beach.

2 Q And how long were you employed by the City?

3 A 35 years.

4 Q Was that the -- your entire career -- professional
5 career?

6 A No, ma'am. I had worked for the -- well, how far
7 back do you want to --

8 Q Just briefly.

9 A My first job out of college was with Union County
10 Planning Department in North Carolina. From there, I went
11 to North Myrtle Beach. That was in 1984. And I worked
12 for North Myrtle Beach until 1986.

13 From there, I was hired with the City of Richmond,
14 Virginia, as the Zoning Administrator and worked at the
15 City of Richmond for two years.

16 While I was in Richmond, the City of North Myrtle
17 Beach contacted me and wanted me to come back to work with
18 them. I decided that I would do that because I liked
19 living at the beach.

20 And, in 1988, I went back -- moved back to North
21 Myrtle Beach and became Zoning Administrator again and
22 then worked through the end of my career.

23 Q Okay. Thank you. All right.

24 So you were the Zoning Administrator for the City of
25 North Myrtle Beach upon your retirement there; correct?

1 A Yes, ma'am.

2 Q Okay. And is it fair to say, then, with that
3 background, your career has largely been one of public
4 service --

5 A Yes, sir.

6 Q -- since college?

7 A Yes.

8 Q Okay. So you retired as the Zoning Administrator of
9 North Myrtle Beach. Can you describe for us briefly what
10 that job entails? Or did at the time. I'm sorry.

11 A Well, simply the -- administering the zoning
12 ordinance, and that would be through enforcement of the
13 code, through business license. Well, enforcement would
14 be through business license also, but any interpretation
15 of the code. We would take issues that dealt with zoning
16 to the Planning Commission and City Council, and any kind
17 of interpretation of that ordinance would be up to the
18 Zoning Administrator.

19 Q Do you recall generally, Mr. Blust, the overarching
20 reason for the North Myrtle Beach zoning ordinances as
21 those to promote health, safety, order, appearance, and
22 general welfare of the community? Does that sound about
23 right?

24 A Well, those kind of words are in the ordinance for
25 sure, but that's not something we particularly enforce.

1 That's something that Planning Commission, City Council
2 adopt as the reasons for the zoning. And then they put
3 the codes in place to get to those -- I guess those goals.

4 Q Okay. All right.

5 Do you recall -- you heard Mr. Caldwell's testimony;
6 correct?

7 A Yes.

8 Q Do you recall generally the R-4 district in North
9 Myrtle Beach?

10 A Yes, ma'am.

11 Q And what is the -- do you recall the full title of
12 that particular district as it appears in the zoning
13 ordinance? Is it resort residential?

14 A I think it's resort residential. It's been four
15 years. I haven't looked the ordinance, so...

16 I think so, yes, ma'am.

17 Q You don't just look at it for fun now that you have
18 retired? You don't go back and read the ordinance?

19 A Not at all.

20 Q Okay. That's fair. That's fair.

21 In your tenure as the Zoning Administrator, how did
22 you look -- how did you view this R-4 district as its
23 primary goal? Was it residential primarily?

24 A It was primarily residential and dealt with, in most
25 places, just a few blocks from the ocean. It was

1 oceanfront back a few blocks. In certain places, it did
2 go much deeper at one time, and the Planning Commission
3 and City Council agreed to reduce that district to make it
4 more of an oceanfront district, and we rezoned -- most of
5 Windy Hill was R-4, and we rezoned that to R-1.

6 Q And R-1 is strictly residential?

7 A Strictly residential, yes, ma'am.

8 Q But R-4 is not exclusively residential?

9 A Well, R-4 would -- at the time would include the
10 commercial uses of hotels and motels.

11 Q Okay. Can you explain for us generally, Mr. Blust,
12 what is a permitted use as used in the ordinances of North
13 Myrtle Beach?

14 A That's a use that's listed in the ordinance under
15 the district, and it's listed as permitted so they don't
16 have to go through any special approvals. If you want to
17 use the property for the use that's stated as permitted,
18 you can do that.

19 Q So if I'm looking at R-1, which is exclusively
20 residential I believe you said --

21 A Well, let me go back. Now, R-1 is exclusively
22 single-family residence.

23 Q Oh, thank you. Okay. All right.

24 So if I'm looking at R-1 as exclusively
25 single-family residential and I want to build a

1 single-family home in there, that, then, would be a
2 permitted use?

3 A It is a permitted use, yes, ma'am.

4 Q Now, I might still have to comply with other
5 guidelines and restrictions, such as setbacks and things
6 like that, but generally speaking, that use would be
7 allowed -- would be permitted as the code says?

8 A Correct.

9 Q Okay. And in the R-4 district, I think you said
10 there were some other uses other than purely residential
11 allowed, like hotels and motels; correct?

12 A Yes.

13 Q And would cabana houses be one of those uses?

14 A It is, but it's not a permitted use.

15 Q Okay. That was my next question. Thank you.

16 Do you remember generally -- and we can pull up the
17 code if we need to do that. Do you remember generally the
18 definition of a cabana house?

19 A No, ma'am.

20 Q Okay. Let's look at Exhibit 3. Does that refresh
21 your recollection?

22 A Yes, ma'am.

23 Q Okay. Thank you.

24 Now -- and what we're looking at is the Section 23-2
25 of the North Myrtle Beach zoning ordinance. Would you

1 agree with that? That looks familiar to you?

2 A Yes.

3 Q Okay. Does that include the definition of a cabana
4 house?

5 A Yes.

6 Q Okay. Did you have any involvement with the
7 drafting of that particular definition, that of a cabana
8 house?

9 A Yes.

10 Q Okay. Tell me what you did to draft this
11 definition.

12 A This was not something that staff came up with and
13 initiated. We were requested to do that to put this sort
14 of a definition in the ordinance back probably the
15 mid-90s. I can't remember a specific date.

16 But we had a new residential -- or I can't really
17 say residential -- a new PUD in town had asked if they
18 could do a cabana house-type situation on the oceanfront
19 in Cherry Grove. And City Council thought that that might
20 be a good idea and asked staff to look at it.

21 Q Okay.

22 A And I was in charge of writing the ordinance. We
23 did that and advertised it to the Planning Commission. In
24 doing that, we do it generally so that, if there are any
25 changes, it still met the terms of the public notice that

1 we would run.

2 And so the original drafting of the ordinance was
3 done by me, and as it went through the process, there were
4 changes made. And I don't remember exactly who made the
5 changes but the Director of Planning might make some
6 changes, the Planning Commission might make some changes,
7 or Council might make some changes. The original is not
8 necessarily what ends up being in the ordinance.

9 Q Okay. So what we're looking at right now, that
10 definition of cabana house, that's not necessarily your
11 original language? That may have been modified, as you
12 said, by Planning Commission, by Council, or by the
13 Planning Director?

14 A Yes, ma'am.

15 Q Okay. All right. If you don't mind -- well, let me
16 ask you this: In your tenure as the Zoning Administrator
17 for the City of North Myrtle Beach, did you have
18 opportunity to interpret 23-2 as far as a definition of
19 cabana house?

20 A When you say interpret that, I'm not sure what you
21 mean.

22 Q Did you ever deal with cabana houses in your tenure
23 as the Zoning Administrator?

24 A Yes.

25 Q Okay. And in doing so, would that definition be

1 critical to dealing with those cabana houses?

2 A Yes.

3 Q And if we can look at 23-2 just a little bit. And
4 I'm going to point you to the language that says
5 "structure utilizing single-family design and development
6 standards." Do you see that?

7 A Yes, ma'am.

8 Q Okay. Now, generally speaking, does that mean --
9 well, generally speaking, what does that mean?

10 A The R-4 is a residential district for the most part.
11 We wanted the -- "we" being everybody involved in writing
12 the ordinance -- staff, Planning Commission, City
13 Council -- we wanted the structure to fit into the
14 community and not just stick out as a sore thumb, more or
15 less, for lack of a better term, when it was utilized; so
16 if you're driving down the street, the structure appeared
17 to fit in among all the other uses that were allowed
18 around it.

19 Q So utilizing single-family design and development
20 standards, would that mean that a cabana house would have
21 to meet with certain setbacks? As I mentioned earlier, if
22 I were even persuing a permitted use, I would still have
23 other things with which I had to comply such as setbacks;
24 correct?

25 A Yes.

1 Q Okay. So if it's a cabana house, it would have
2 other things with which it has to comply to generally be
3 -- to generally utilize single-family design and
4 development; right?

5 A Yes.

6 Q Okay. And you saw Mr. Tamasitis show a photograph
7 to Mr. Caldwell of what appeared to be a cabana house.
8 And I'm sorry; I don't have the exhibit of that one. And
9 say, "Well, does that look like a single-family
10 residence?" Do you recall that as you were sitting in the
11 galley there?

12 A Yes.

13 Q Okay. Now, 23-2, that sentence structure,
14 "utilizing single-family design and development
15 standards," that doesn't say it has to look like a house;
16 correct?

17 A No, it doesn't.

18 Q Okay. And, in fact, I think what you just said is
19 you want it to be consistent with the area in which it's
20 located?

21 A Yes.

22 Q And does that go to substantial harmony with an
23 area?

24 A I'm not sure what you mean by that.

25 Q Well, you don't want to stick out like a sore thumb.

1 A Yes.

2 Q Okay. All right. There's another sentence in
3 there: "In close proximity to the oceanfront." Is there
4 a precise definition of "in close proximity"?

5 A No.

6 Q Without a definition, how are words interpreted in
7 the zoning ordinance?

8 A The Zoning Administrator is responsible for
9 interpreting the ordinance.

10 Q And, generally speaking, would they do so using a
11 customary definition of a word or group of words?

12 A For the most part, yes, ma'am.

13 Q Okay. And would it be fair to say it is an
14 objective of the City of North Myrtle Beach to encourage
15 future growth and tourism in an orderly fashion without
16 comprising [sic] the character of residential areas? And
17 for context, I'll represent to you -- and we can put it
18 up -- that's in 23-1 of the zoning ordinance.

19 A Yes.

20 Q Okay. So consistent with that objective, to
21 encourage future growth in an ordinary fashion without
22 comprising [sic] the character of residential areas, would
23 those goals be considered in the determination or
24 interpretation of the words "close proximity to the
25 oceanfront"?

1 A I would guess so, but that's not something we
2 would -- would normally look at it. I can't say that I
3 looked at that in making any determination on that sort of
4 a situation.

5 Q Well, how would you look at "close proximity to the
6 oceanfront"?

7 A Several blocks, if possible. If it's three blocks
8 back, I might question that if that's close enough or not,
9 but being that you're in the position of having to make
10 that decision, you do so with as many facts as you can
11 behind you because, if someone wants to challenge that,
12 they can take you to the Board of Zoning Appeals and say
13 it's not in close proximity to the oceanfront. And then
14 you're going to have to get up there as the Zoning
15 Administrator and show the Board of Appeals why you made
16 that decision.

17 Q Yes, sir.

18 A So there is a decision to be made, but you really
19 need to have some -- some facts to back you up if it ever
20 is challenged.

21 Q So it is subjective to some degree?

22 A It is subjective, yes, ma'am.

23 Q So the other language, if I might draw your
24 attention to, in the definition of cabana house is "to be
25 used by projects in North Myrtle Beach not located near

1 the ocean."

2 Now, under that, you, as the Zoning Administrator,
3 what might you have considered to be a project?

4 A I have got to go back to the original and why we put
5 this in the ordinance, and that was the Tidewater Planned
6 Unit Development. And in answering your question, it
7 appears that we had in mind that type of project. At the
8 time, Tidewater was 560 acres or so, away from the
9 oceanfront, and it, since then, expanded to, like, 700
10 acres. So it's a good-size project and not in close
11 proximity to the ocean.

12 We kind of use that as a -- as a determination. It
13 could be other things, but mainly, it was -- at the time,
14 PUDs.

15 Q Okay. And would it be fair to say PUDs are
16 generally -- not always but generally applicable or
17 included in larger volumes of land and development?

18 A Yes, ma'am.

19 Q All right. And do you know why Council wanted that
20 particular language in the definition of cabana house?

21 A Council was asked if they would amend the R-4
22 district to allow cabana houses by Tidewater.

23 Q Okay.

24 A Tidewater being the PUD that requested the
25 definition.

1 Q And then it goes on to say "used by projects in
2 North Myrtle Beach." Any idea about that particular
3 language, the reason Council asked for that language --
4 either Planning Commission, Council, or the Planning
5 Director; I think you said those were the three entities
6 that might tweak or modify your language.

7 A Yes, ma'am. That sounds more like our Planning
8 Director. And it was Tidewater that requested that we
9 have this definition and allow them to do a cabana house.
10 And in looking at that, the -- well, we tried to make it
11 as specific as possible to what they wanted to do with the
12 property and --

13 Q But is it fair to say --

14 A I'm having trouble explaining exactly what I'm
15 thinking here.

16 Q Okay.

17 A The definition was designed to meet what they were
18 requesting.

19 Q From an overall standpoint? Is that fair to say?

20 A Yes, ma'am.

21 Q And then it was subsequently -- because it was
22 enacted as an ordinance, is it likewise fair to say then
23 it would have been considered for other applicants or
24 other projects?

25 A Well, you'd have to, yes, ma'am.

1 Q All right. Now, I'm going to ask my partner,
2 Mr. Ricard -- because I don't do technology, Mr. Blust --
3 to pull up Section 23-22 of the code and ask you to take a
4 quick look at that.

5 Do you recognize that?

6 A Yes, ma'am.

7 Q Okay. Did you have any responsibility for drafting
8 this section of the ordinance?

9 A Not direct responsibility. I was involved in the
10 meetings and that sort of thing, and if anybody had any
11 questions, I'm certainly there as the person that enforces
12 it. Quite a bit of this was -- was done by a consultant
13 originally that we hired to rewrite the zoning ordinance
14 in the early '90s and then it was amended periodically
15 since then.

16 Q Okay. Is it fair to characterize 23-22 as maybe
17 setting forth additional detail as to what's allowed in
18 R-4?

19 A Yes.

20 Q Okay. And does it include permitted uses in 23-22?

21 A Yes.

22 Q Okay. And does then it allow uses that are other
23 than permitted?

24 A Yes.

25 Q Okay. And for the sake of our education, Mr. Blust,

1 how would we refer to uses that are not permitted uses?

2 A They usually had conditions along with them that
3 would have to be met before they were allowed.

4 Q Would those be considered special exceptions? I
5 think that might be the language used in 23-22.

6 A Well, special exceptions are one. I guess you could
7 have conditional uses. I don't know if we have got any
8 listed there. Yeah, okay.

9 Q So is a cabana house a permitted use under 23-22?

10 A Can you go up on the page a little bit more? We
11 have got the permitted uses.

12 Q I think it's 4.

13 A And then can you scroll down?

14 Q There we go. So cabana house --

15 A Yeah, cabana house is under special exception.

16 Q Okay. All right. And can you read for the Court,
17 please, the language immediately following the designation
18 of Section 4 that starts "Special exceptions"?

19 A "Owing to their potential negative impact on the
20 community and surrounding areas, the following uses may be
21 approved as special exceptions by the Board of Zoning
22 Appeals."

23 Q Okay. So now that says there they're approved by
24 the Board of Zoning Appeals. You, as the Zoning
25 Administrator, did you have any power -- you acting

1 singularly -- to approve a special exception?

2 A No, ma'am.

3 Q Okay. And if one wanted to secure a special
4 exception, what's that process or what was the process at
5 the time you were still the Zoning Administrator?

6 A We had an application for a special exception that
7 would come through the zoning office, and we would give
8 that application to the person that wants to apply for it.
9 And when they brought it back in, we would process it by
10 publishing the public notice in the paper and establishing
11 a meeting date. I guess establish a meeting date, then
12 publish it in the paper as to when that would be.

13 And then we would do a write-up for the Board of
14 Appeals and take it to the Board of Appeals -- Board of
15 Zoning Appeals.

16 Q I was going to say, Board of Zoning Appeals? Okay.

17 And was it your job as the Zoning Administrator to
18 then either advocate for or against a special exception?

19 A No.

20 Q Okay. And let me take you back just a little bit,
21 Mr. Blust. Do you remember when these ordinances -- both
22 the definition and the special exception language as to
23 cabana houses -- do you remember when those were enacted
24 by counsel?

25 A It was in the '90s. I can't remember the date.

1 Q Okay. Is it safe to say there was no challenge to
2 those ordinances or certainly no successful challenge to
3 those ordinances within 60 days of their enactment?

4 A Nobody challenged.

5 Q Mr. Blust, I'm going to change topics just a little
6 bit. I'm putting in this quotes; a quote "zoning letter"
7 closed quote. A zoning letter is requested or was
8 requested of you as a Zoning Administrator. Was there one
9 specific purpose for that?

10 A One specific purpose for zoning?

11 Q Yeah. Was there only one reason somebody might
12 request a zoning letter?

13 A No.

14 Q Okay. Could there have been any number of purposes
15 that such a request was made?

16 A Yes.

17 Q All right. For instance, if one was interested in
18 purchasing a property, might one reach out and say, "I
19 need a zoning letter"?

20 A Yes.

21 Q Okay. And you saw the proposed zoning letter in
22 this case from the law firm in Michigan for Sun
23 Properties. You saw that earlier that was presented to
24 Mr. Caldwell?

25 A Yes.

1 Q Okay. Now, was there always a form submitted to you
2 by the requester, someone who was requesting a zoning
3 letter?

4 A No.

5 Q Okay. When a request of a zoning letter was made of
6 you, what was your routine practice in response to that
7 initial request?

8 A We'd get a lot of requests by the phone, and I'd
9 tell the folks that were requesting to please send me an
10 email and state specifically what you'd like in that
11 letter, because different people for different reasons
12 wanted different information. And what I tried to do is
13 get them to tell me what they wanted in the letter, and I
14 would respond to what they needed for their clients or
15 what they wanted in that letter for the clients.

16 Q So going back to my question before, if one were
17 interested in purchasing a piece of property, they may
18 have specific information they're looking for in a zoning
19 letter signed by you as the Zoning Administrator?

20 A Yes.

21 Q Okay. If it's a bank looking at perhaps a
22 refinance, it may be looking at even different reasons for
23 securing a zoning letter?

24 A Yes.

25 Q Okay. Or maybe even for insurance purposes

1 sometimes?

2 A Yes.

3 Q So a variety of reasons one might request it?

4 A Yes.

5 Q Okay. Do you remember Mace Watts?

6 A Yes.

7 Q And you heard Mr. Tamasitis ask some questions
8 earlier concerning Mr. Watts and the TRC meeting and that
9 sort of thing earlier?

10 A I heard that. I generally didn't attend the TRC
11 meetings.

12 Q All right. Are you aware whether Mr. Watts ever had
13 any ownership interest in the cabana house?

14 A I think that he did.

15 Q Okay. Relative to that, do you remember advising
16 Mr. Watts of permitted uses for the cabana house?

17 A I don't remember specifically. I did talk with
18 Mr. Watts, and we did talk about that piece of property.
19 So very possibly, but I don't remember that.

20 Q Okay. We're going to show you what's been marked as
21 Exhibit 16 and ask you to take a look at that, Mr. Blust,
22 and see if that refreshes your recollection.

23 A It doesn't really refresh my recollection, but I
24 wrote the letter.

25 Q Okay. And can you tell us generally what

1 information you gave to Mr. Watts in that email? I think
2 it's an email. It is an email.

3 A It looks like I just gave him an attachment of the
4 R-4 regulations for uses of property.

5 Q And that includes the information we just spent some
6 time discussing; correct? What's permitted uses and what
7 is uses only by special exception?

8 A Yes.

9 Q And just for clarity, that email, I think, was in
10 January of 2019? Looks to be January 31, 2019?

11 A Yes.

12 Q Now, let's go back to --

13 MS. SHOUN: I'm sorry, Rhett. Let's go back to the
14 letter that we looked at very briefly earlier that
15 Mr. Tamasitis showed Mr. Caldwell from the Jaffe Law Firm.

16 BY MS. SHOUN:

17 Q Do you recall having a conversation with Stephanie
18 Van Newkirk of the Jaffe Law Firm?

19 A No, I don't recall the conversation.

20 Q Okay. Do you recognize that this is an email sent
21 from Ms. Newkirk [sic] to you at your email address at
22 North Myrtle Beach?

23 A Yes.

24 Q Okay. And Ms. Newkirk [sic] does reference in
25 there, "In accordance with our conversation"; correct?

1 A Yes.

2 Q Okay. And then she attaches a sample zoning letter.
3 And if we'll scroll down on that just a little bit. And,
4 again, I don't want to spend a lot of time. Mr. Caldwell
5 went over that.

6 Do you have a recollection of this particular
7 letter?

8 A No.

9 Q Okay. Do you remember if you indeed did issue a
10 zoning letter to the Jaffe Law Firm relative to the cabana
11 house?

12 A No, I don't remember.

13 Q Okay. We'll show you one more exhibit. And that's
14 No. 29, Mr. Blust. And I think that's dated -- I'm sorry.
15 Let me actually get where I can see it. That's dated
16 March 19th, 2019?

17 A Yes.

18 Q Okay. And does that appear to be a letter from you
19 to the Jaffe Law Firm?

20 A It is.

21 Q Okay. And can you tell us generally what you have
22 told Ms. Van Kirk [sic] in that letter?

23 A I stated the zoning district and R-4 permits, the
24 cabana house, has a special exception subject to
25 regulations within the R-4 district.

1 Q And at that time, were there any zoning violations
2 on the property known to you as the Zoning Administrator?

3 A No.

4 Q Okay.

5 MS. SHOUN: Beg the Court's indulgence.

6 BY MS. SHOUN:

7 Q Mr. Blust, that's all the questions I have for you
8 now. I'm sure opposing counsel may have some as well as
9 the Court. Thank you.

10 MR. WILLIS: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. WILLIS: Your Honor, if I can take a minute to
13 get set up here.

14 THE COURT: Sure.

15 CROSS-EXAMINATION

16 BY MR. WILLIS:

17 Q Mr. Blust, you said -- first of all, I'm Dick
18 Willis. We met briefly off the record.

19 A Yes, sir.

20 Q You said you have been the Zoning Administrator for
21 the City of North Myrtle Beach for 35 years in total;
22 correct?

23 A Yes, sir.

24 Q When did you retire?

25 A At the end of June 2020.

1 Q All right. So it's been roughly not quite three
2 years since you have been retired? 2020 -- 2021?

3 A Well, actually a little bit more than three years.

4 Q Four years. Almost four years.

5 So we're -- when you issued the zoning letter or you
6 signed it -- I believe that's dated 2019. So we're
7 talking about some seven years ago, maybe a little longer
8 than that; correct? 2019. That would be five years ago.

9 A Five, yeah. Yes, sir.

10 Q Is it fair to say you don't remember everything in
11 vivid detail about what happened five years ago?

12 A Correct.

13 Q And you get a lot of these zoning letter requests;
14 correct?

15 A Yes.

16 Q Are you sure that you're the one that wrote that
17 letter? Do you ever have letters written for you that you
18 just sign? I know you have a small staff. I'm just
19 asking if you --

20 A I'm trying to think back. I think I wrote all those
21 letters.

22 Q All right. Very good.

23 Well, anyway, I want to thank you for your service.

24 In response to questions from Ms. Shoun, you talked
25 a little about your responsibilities as the Zoning

1 Administrator; correct?

2 A Yes.

3 Q And, generally, you were responsible for
4 administering the City's zoning ordinances?

5 A Yes.

6 Q And that would include enforcement of any zoning
7 violations; correct?

8 A Yes.

9 Q Also interpretation of the meaning of the City
10 zoning ordinances but with, in some cases, input from
11 others -- legal, Planning Development, that sort of thing?

12 A Yes.

13 Q You also drafted zoning ordinance and related
14 documents to assist City Council and the Board of Zoning
15 Adjustment [sic]?

16 A Yes.

17 Q And also part of your job -- and I would ask you if
18 it sounds like an important part -- is working with the
19 public on zoning-related issues.

20 A Yes.

21 Q Including in the public developers of projects in
22 North Myrtle Beach?

23 A Yes.

24 Q Businesses in North Myrtle Beach?

25 A Yes.

1 Q Members of the public that just had a question about
2 zoning?

3 A Yes.

4 Q You were responsive to them; correct?

5 A Yes.

6 Q As well as potential purchasers of real property or
7 businesses that might be governed by the zoning ordinance?

8 A Yes.

9 Q Ms. Shoun asked you about lenders, insurance
10 companies. Lots of different people ask questions about
11 zoning ordinances; correct?

12 A Yes.

13 Q And part of your duties include responding to these
14 what you called zoning verification letters. I believe
15 that's the statement that you used. Are you familiar with
16 that term?

17 A Yes.

18 Q Also called -- it's commonly called zoning
19 ordinance. They mean the same thing; right?

20 A Right, right.

21 Q All right. And these requests for zoning letters
22 come to you through lots of different sources; right? You
23 get a phone call sometimes. Sometimes you get an email.
24 Sometimes you might get a letter?

25 A Yes.

1 Q And because there were all sorts of reasons for
2 these various inquiries, you made a practice of going back
3 to the person who asked the question and asking for an
4 email or something in writing explaining what they wanted?

5 A Yes.

6 Q And sometimes that came to you in the form of a
7 draft zoning letter like you got in this case?

8 A Yes.

9 Q And I believe you said you wanted to know why they
10 were asking for the letter; correct?

11 A Well, yes, sir. But if I could clarify, I'd want
12 them to tell me why they wanted it.

13 Q Exactly. And you also wanted to know what kind of
14 information they wanted?

15 A Correct.

16 Q You also wanted to know to whom the zoning letter
17 should be addressed and where to send it?

18 A Yes.

19 Q And I'm quoting from your prior deposition, but I
20 think this sums it up nicely; your practice was, quote,
21 "You tell me what you want and we'll look into that and
22 answer your question."

23 A Yes.

24 Q You would do your best professional job to respond
25 accurately and in a timely manner?

1 A Yes.

2 Q And you would try to provide accurate and thorough
3 information; correct --

4 A Yes.

5 Q -- that was responsive to their specific requests?

6 A Yes.

7 Q Because you knew that someone or perhaps many people
8 were going to be relying on the information that you were
9 providing in making purchasing or financing decisions?

10 A Well, I would assume that.

11 Q And as Mr. Tamasitis asked your protege,
12 Mr. Caldwell, a few minutes ago -- you were here for that
13 testimony; right?

14 A Yes.

15 Q A city zoning letter is a final statement of the
16 City's position as to zoning status of a piece of
17 property; correct?

18 A It's a final statement at the time it's asked.

19 Q Very good.

20 Now, I believe you are -- well, let me ask you this:

21 What is the American Institute of Certified Planners?

22 AICP.

23 A That's an organization that is established to assist
24 planners throughout the whole country. I don't know what
25 all they do.

1 Q Well, you were a member of that --

2 A Yes.

3 Q -- in fact; were you not?

4 A Yes.

5 Q And the American Institute of Certified Planners,
6 they have a code of ethics and professional conduct which
7 defines the rules of practice and behavior to which all
8 members of the AICP are held accountable; correct?

9 A Yes.

10 Q Now, I went online and I found those rules and
11 regulations. And I don't expect you to have memorized
12 them, but I want to ask you about some of them to see if
13 your practice, when you were the Zoning Administrator, was
14 consistent with these. All right?

15 Under the Section B, it says, "Our rules of
16 conduct," and it goes on to say, "Failure to adhere could
17 result in sanctions or loss of certification." Did you
18 have that understanding?

19 A I can't be specific with it, but I would think that
20 would be in there, yes, sir.

21 Q And you never -- no one ever tried to get you
22 decertified from the AICP code from that organization;
23 correct?

24 A No, sir.

25 Q All right. At all times, you did you best to do

1 your job in the best of your capacity?

2 A Yes.

3 Q Fair to say? All right.

4 Now, in the quality and integrity practice section
5 it says, "Rule 1: We shall not deliberately fail to
6 provide adequate, timely, clear, and accurate information
7 on planning issues." Does that characterize how you tried
8 to do your job as well?

9 A Yes.

10 Q And even if you weren't a member of the AICP, you
11 wouldn't knowingly provide incorrect information to
12 someone requesting it in a zoning letter, would you?

13 A No, sir.

14 Q And if there's information in the letter that's not
15 correct or is in error, fair to say that would be a
16 mistake --

17 A Yes.

18 Q -- as opposed to a deliberate misrepresentation?

19 And I realize that nobody is perfect. Is it
20 possible that you might have made a mistake from time to
21 time?

22 A That's possible, yes, sir.

23 Q In responding to these zoning letters, you tried to
24 answer the questions asked as opposed to saying, "Well,
25 here's the zoning ordinance. You figure it out yourself"?

1 A Yes.

2 Q And as these AICP principles say, you try to do your
3 best to exercise fair, honest, skilled, informed, and
4 independent special judgment in providing this
5 information; right?

6 A Yes.

7 Q And you wouldn't participate in any matter unless
8 adequately prepared and able to render thorough and
9 diligent service?

10 A Hopefully, yes.

11 Q Now, let's look at Defendant's Exhibit 3.

12 MR. WILLIS: Can you pull that up, please, Jim?

13 BY MR. WILLIS:

14 Q And that will pop up on your monitor. And Ms. Shoun
15 asked you some questions about this. Let me get my copy.

16 This is the email from Ms. Stephanie Van Newkirk.
17 Now, you don't have an independent memory sitting here
18 today of getting that email, do you?

19 A No, sir.

20 Q Now, the email is to you; correct?

21 A Yes.

22 Q And it says, "Hi, Paul. In accordance with our
23 conversation, attached is a sample zoning letter. If you
24 have any questions, please call me. Thank you."

25 Now, you were asked about that. You had a

1 conversation with her, but you don't remember the details
2 of it; is that fair to say?

3 A Yes.

4 Q And this is not an unusual way of making a request
5 for a zoning letter, is it?

6 A No, sir.

7 Q Then let's turn to the second page of that document.
8 Well, wait a minute. Turn back for a second. Let me get
9 the timing of it. So that request, that email came to you
10 on Monday, March 18th, 2019; correct?

11 A Yes.

12 Q At 7:58 p.m. That's after close of business; is it
13 not?

14 A Yes.

15 Q So you probably would have seen this email first
16 thing the next morning on Tuesday, March 19th?

17 A Yes, sir.

18 Q All right. Okay. All right. Now go to the second
19 page, please. If -- I realize you don't recall the
20 conversation, but if that conversation had gone according
21 to your normal practice that you just told us about, you
22 would have asked Ms. Newkirk to put in writing what she
23 wanted to know, why, who she was asking for, and to whom
24 the letter should be addressed. Those are the questions
25 you typically ask?

1 A Yes.

2 Q Now, you were previously asked if you knew Mace
3 Watts.

4 A Yes.

5 Q And how do you know Mace Watts?

6 A Mace was in real estate, and I talked to him
7 periodically over the years on different things. I
8 wouldn't know Mace if he walked in the door, but I did
9 have a lot of conversations -- not -- well, I can't say a
10 lot, but I did have conversations with him on the phone
11 from time to time.

12 Q When you got this zoning letter request from
13 Ms. Newkirk, is it fair to say you knew from past
14 conversations with Mr. Watts that he was trying to sell
15 the beach club; correct?

16 A I don't know if he was trying to sell it, but I
17 would assume that, because we had told him he couldn't use
18 the property for what he was advertising it for, as a
19 private club.

20 Q Now, the letter from -- the sample zoning letter in
21 Ms. Newkirk says at the top that she wants it on
22 letterhead of the municipal department. That would be
23 your zoning department; correct?

24 A Yes.

25 Q And you complied with that request; right?

1 A I think so. I generally tried to on that.

2 Q Well, and we can look at -- we'll pull the letter up
3 in a minute. I'll represent to you that you did comply
4 with that request. Is that consistent with your
5 recollection?

6 A Yes, sir.

7 Q That's the letter Ms. Shoun just showed to you.

8 A Okay, yes.

9 Q Now, it's addressed to Sun A-c-q, LLC. And I'll
10 represent to you that's Sun Acquisitions, a Michigan
11 limited liability company, care of Jaffe Raitt Heuer &
12 Weiss, P.C., which is a law firm. So she would have
13 provided that address to you; correct?

14 A Yes.

15 Q And that's the address you used in sending the
16 zoning letter back; right?

17 A Yes.

18 Q And then it says, reference, "re" in the reference
19 line, 1841 Ocean Boulevard North, North Myrtle Beach,
20 South Carolina, the premises. That's the beach club or
21 the cabana house; correct?

22 A Yes.

23 Q Now, let's go over what that letter is asking for.
24 The first thing it asks for is a description of the
25 permitted use; correct? Look at the third line down. It

1 says, "Describe permitted use." Do you see that?

2 A I see it, but I don't --

3 Q And you, in fact, did that in your response; right?
4 You described the permitted use of the premises?

5 A Okay. I'd have to see my letter, but I would assume
6 so.

7 Q Well, I'll help you out.

8 A Okay.

9 Q Let me give you a copy of the letter here. We'll
10 look at them at the same time.

11 A Okay. Thank you.

12 MR. WILLIS: That would be Defendant's Exhibit 2,
13 Your Honor.

14 (Pause in the proceedings while the witness reviews
15 documents.)

16 A Okay.

17 BY MR. WILLIS:

18 Q All right. So you see she's asked for a description
19 of the permitted use?

20 A Yes.

21 Q She also asks for the applicable zoning
22 classification.

23 A Okay.

24 Q That's in the blank letter. Do you see that there?

25 A Yes, sir.

1 Q It says, "Describe applicable zoning application,"
2 all in capital letters and bold; right?

3 A Yes.

4 Q And you provided that as well in your letter;
5 correct?

6 A Yes.

7 Q It also asks what the zoning permits as the use of
8 the premises? What does the zoning rule allow?

9 A Okay.

10 Q And you responded to that as well; did you not?

11 A Yes.

12 Q And what did you tell her in your letter?

13 A Can you ask that question again?

14 Q Yes, sir.

15 A I'm trying to get to where I --

16 Q Yeah. The third thing in that letter requests was
17 what was the -- what the zoning permit -- what the zoning
18 rules allow, what they permit.

19 A Okay. To answer your question, the R-4 district
20 permits cabana houses. Is that what you're asking?

21 Q That's correct.

22 A Yes. Permits a cabana house as a special exception
23 subject to the regulations contained in the R-4 district
24 of the North Myrtle Beach zoning ordinance.

25 Q And the letter goes on to further respond to that by

1 saying: "The existing structure on the property was
2 permitted as a cabana house"?

3 A Correct.

4 Q The letter also -- well, it goes on to say, "And has
5 been legally used as such since construction"; correct?

6 A Correct.

7 Q Now, the letter also asks whether there were any
8 legal nonconforming uses. Do you see that? It's still on
9 that first paragraph.

10 A Yes.

11 Q It says, "If nonconforming, describe rebuilding
12 requirements in the event of casualty or limitations on
13 operation." And it also says -- it asks if the use of the
14 premise is a permitted, legal nonconforming use?

15 A Yes.

16 Q What is a nonconforming use?

17 A That's a use that was -- is legal, was in existence
18 before the ordinance didn't allow it anymore or didn't
19 allow it.

20 Q Are you aware that this particular property was --
21 originally had a deed restriction on it that was placed on
22 it in 1975 that limited the use of the property to a
23 clubhouse for recreational purposes? Were you aware of
24 that?

25 A No, sir, I wasn't.

1 Q Did you do research on that? Did you try to answer
2 that question about whether there were any legal
3 nonconforming uses?

4 A No.

5 Q And then, finally, the letter asks you to confirm
6 that the premises and improvements thereon are, quote,
7 "Not in violation of the aforesaid zoning laws." Do you
8 see that?

9 A Yes, sir.

10 Q And it includes setbacks; correct?

11 A Yes.

12 Q Height -- building height?

13 A Yes.

14 Q Parking requirements?

15 A Yes.

16 Q And whether or not the building is in compliance
17 with the applicable building codes?

18 A Yes.

19 Q And then finally, in bold, it says: "If any
20 violations exist, please state what they are."

21 A Okay.

22 Q All right. Now, this letter that was written
23 doesn't say -- it's not limited by "to the best of my
24 knowledge" or "sitting here today without looking," does
25 it?

1 A No.

2 Q She's not asking for just your reaction off the top
3 of your head; right?

4 A Right.

5 Q And if you gave an answer like that, that wouldn't
6 be consistent with the AICP standards, would it? Those
7 standards require you to be thorough and accurate and do
8 your research; fair to say?

9 A Okay.

10 Q Now, the letter that you sent dated is March 19,
11 2019; correct?

12 A Yes.

13 Q So you would have prepared that on the same day that
14 you saw Ms. Newkirk's email?

15 A Yes.

16 Q And it's my understanding that, to investigate this,
17 you took some action; correct?

18 A I don't know specifically, but generally, on these
19 types of situations, I would go out there and look at the
20 property and then -- then write the letter. So I would
21 assume so.

22 Q Do you remember going, on Tuesday, March 19, you
23 left your office and you drove to the property; correct?

24 A I don't remember that.

25 Q All right. Well, you were asked that question in

1 your deposition. All right? And I'll be happy to show it
2 to you if that would help you refresh your recollection.
3 I believe that's -- we always have to go through the
4 trouble of opening the original. Bear with me.

5 I'm going to hand you your deposition, Mr. Blust.
6 I'm going to turn to page 47, and I'm going to hand you
7 that. And I want you to look down -- look at the question
8 beginning on line 14 and read down to line 21. You don't
9 have to read it out loud. Just read it yourself, and then
10 I'm going to ask you if that helps you refresh your memory
11 of what you did.

12 (Pause in the proceedings while the witness reviews
13 documents.)

14 A Okay.

15 Q So let me ask you again: Do you recall what you
16 did? Does that refresh your memory?

17 A Yes, sir.

18 Q So after you got the letter -- after you got the
19 request from Ms. Newkirk, what did you do in terms of your
20 investigation?

21 A I went out and looked at the property, and there
22 wasn't anything at all being used.

23 Q All right. So now this is Tuesday, March 19. Do
24 you recall whether you went in the morning or the
25 afternoon?

1 A No, sir, I don't.

2 Q It would have been in the daytime, obviously, during
3 working hours?

4 A During working hours, yes, sir.

5 Q And you went out and looked at the property?

6 A Yes.

7 Q Did you walk around?

8 A No.

9 Q Did you get out of the car?

10 A Probably not. I don't remember.

11 Q You say that you saw it wasn't being used; correct?

12 A Yes.

13 Q By that, I take it you mean that no one was there at
14 the time?

15 A Yes.

16 Q All right. But the property wasn't abandoned, was
17 it? You don't recall it being in disrepair?

18 A I don't recall. There's no indication it was a
19 derelict property.

20 Q It wasn't boarded up, power wasn't shut off, that
21 sort of thing?

22 A Yes, yes.

23 Q Now, on a day in March, you wouldn't expect to see
24 many people at a beach club, would you?

25 A No.

1 Q No one would be expected to be using the pool on a
2 65-degree, 70-degree day in March; correct?

3 A Correct.

4 Q Did you get out and go up and look and see if there
5 was a pool?

6 A No.

7 Q Now, the fact that no one was there, I take it that
8 wasn't a surprise to you?

9 A No.

10 Q Now, when you pulled in, did you see the sign that
11 said, "Ocean Club at Tilghman Beach"?

12 A I don't recall that.

13 Q Let me maybe help you remember.

14 MR. WILLIS: If you could pull up Defendant's 28 and
15 show Mr. Blust the sign.

16 BY MR. WILLIS:

17 Q And this may help you remember, Mr. Blust. It may
18 not. But let's take a look at it.

19 And this would be a sign -- permit application. If
20 you could, Jim, pull up the existing sign that that
21 application is seeking to replace. I'm going to represent
22 you to, Mr. Blust, that this is the sign that was in front
23 of the cabana house when you went on March 19 to look at
24 it.

25 A Okay.

1 Q Can you see that?

2 A Yes, sir.

3 Q It says, "The Ocean Club at Tilghman Beach. Members
4 Only. Private Beach Club." And then it's got a phone
5 number down at the bottom to call, (843) 663-CLUB. Did I
6 read that correctly?

7 A Yes.

8 Q And if you had pulled in in your car, you would have
9 seen that sign; correct?

10 A I wouldn't miss it. I can't --

11 Q It's a pretty big sign; right?

12 A Yes, sir.

13 Q All right. Now, you didn't make any phone calls to
14 anybody to inquire as to the nature of the property?

15 A No, sir.

16 Q Or the use of the property?

17 A No.

18 Q You knew it was owned by Mace Watts and Ben Oates;
19 right?

20 A Yes.

21 Q All right. Did you make any effort to go back and
22 look at the Zoning Ordinance 23-22, those seven conditions
23 under 4(d) to make sure that the property was in
24 compliance with those conditions?

25 A No.

1 Q Did you try to determine whether a homeowners
2 association had been established to own the project?

3 A No.

4 Q Did you check and see if a maintenance agreement had
5 been submitted to the Planning Department?

6 A No.

7 Q Did you count the number of parking spaces?

8 A No.

9 Q Did you determine if the use of the house was
10 limited to bathing and changing clothing facilities and
11 occasional use as a guest quarters or other similar uses?

12 A No.

13 Q And you recognize that language; right?

14 A Yes.

15 Q That's one of the conditions?

16 A Yes.

17 Q Did you determine if the Board of Zoning Appeals had
18 previously granted a special exception for use of the
19 cabana house?

20 A Did I determine? No, sir. I was at the meeting
21 that they did allow it.

22 Q So you knew that?

23 A Yes.

24 Q And that information you put in the letter. You
25 just knew that from your own personal knowledge?

1 A Yes.

2 Q You didn't have to go back and look it up and check
3 to see?

4 A Right.

5 Q Did you ever go back to check and see if any of the
6 past owners of that cabana house had ever been cited for a
7 zoning violation related to the property?

8 A No.

9 Q Is there a way to do that? Do you keep a record of
10 zoning violations?

11 A Yes.

12 Q So if you wanted to look that up, you could have?
13 Fair to say?

14 A Yes.

15 Q Did you try at that time to determine whether a
16 private beach club was in compliance with R-4 zoning?

17 A No.

18 Q Did you check for compliance with the applicable
19 setback requirements?

20 A No.

21 Q Did you check the building height?

22 A No.

23 Q Did you review any applicable building codes to
24 determine if the structure was in compliance with the
25 applicable building codes?

1 **A** No.

2 **Q** Now, Ms. Van Newkirk's email to you in her draft
3 letter specifically requested all that information; did it
4 not?

5 **A** I'd have to look at it again.

6 **Q** Mr. Blust, essentially all you did in response to
7 Ms. Newkirk's [sic] request was paid a visit to the
8 property and determined that it wasn't being used at that
9 particular time of day; correct?

10 **A** Yes.

11 **Q** And based on that and that alone, you saw no zoning
12 violations on your visit?

13 **A** Correct.

14 **Q** But you were -- candidly admit that you did not look
15 into the ownership of the property?

16 **A** Correct.

17 **Q** Or its history of use?

18 **A** Yes.

19 **Q** Didn't talk to the owner?

20 **A** No, we didn't.

21 **Q** You didn't check any deeds, do title searches?

22 **A** No, no.

23 **Q** You didn't make a determination, as the letter
24 requests, as to whether there were any non-conforming
25 uses?

1 A No.

2 Q Now, had you investigated this -- had you gone back
3 to determine who owned the property, you would have
4 learned that there was, in fact, the deed restriction on
5 the property that limited it to use as a clubhouse for
6 recreational purposes; right? If you had gone back and
7 pulled the deed, you could have seen that; fair to say?
8 And I'll show you the deed if you want to see it.

9 A Fair to say, but I can't see us ever doing that.

10 Q Do you ever -- when you're doing these
11 investigations, do you ever talk with the adjacent
12 neighbors to determine whether the project is being used
13 in a harmonious way?

14 A No.

15 Q And, at that time, you didn't talk to anybody at Sea
16 Cloisters I or II?

17 A No.

18 Q Now, despite your investigation only consisting of a
19 visit to determine if the property was in use, you wrote
20 this letter?

21 A Yes.

22 Q And you said the existing structure on the property
23 was permitted as a cabana house?

24 A Yes.

25 Q And that's an accurate statement?

1 A Yes.

2 Q But where you go on to state, "It's been legally
3 used since construction," that's not accurate as it turns
4 out, is it?

5 A I can't say it's inaccurate.

6 Q Well, let's -- looking back on it, all right, you
7 heard the testimony of Mr. Caldwell. You were in the
8 courtroom here; right?

9 A Yes.

10 Q There was a Technical Planning Committee meeting in
11 May of 2018 where the Zoning Department told Mace Watts
12 you can't have a private beach club in R-4; right?

13 A I was not at that meeting.

14 Q Let's pull up that exhibit then. I think that's
15 Exhibit 32. And Mr. Caldwell has already talked about
16 this. He believes he was at that meeting.

17 Did you ever go to meetings like this or would you
18 send your staff?

19 A Mr. Caldwell, at the time, was my assistant, and he
20 went to these meetings. Sometimes I would go if I was
21 requested, but generally, it was Mr. Caldwell at the
22 meeting.

23 Q What's a pre-application? What does that mean? It
24 says at the top there, "Pre-applications," and it's got a
25 number of them. Ocean Drive Presbyterian Church,

1 Boardwalk Billy's parking lot. And we go over to the next
2 page. Ocean Club at Tilghman Beach. What's a
3 pre-application?

4 A I think that's when somebody was thinking about
5 doing a project and they would want to get some input from
6 City staff and the Technical Review Committee, and they
7 would apply to come in and describe what they were doing
8 and get comments before they applied to do what they were
9 thinking about doing.

10 Q Now, in the box that talks about the pre-application
11 of the Ocean Club at Tilghman Beach, attending customer
12 representatives Ben Oates and Mace Watts as club
13 representatives; do you see that, right?

14 A Yes.

15 Q Did you know Ben Oates?

16 A Not that I'm aware of.

17 Q And then, in the comments of the zoning, that would
18 be your zoning representative, read along with me. It
19 says: "Private beach club use not allowed in R-4. To
20 come into compliance, must convert to a restaurant with
21 60 percent food sales." See that?

22 A Yes, sir.

23 Q Does that lead you to believe that the zoning people
24 in that meeting told Ben Oates and Mace Watts that a
25 private beach club use was not allowed in R-4?

1 **A** Yes.

2 **Q** And then the planning committee proposed an
3 alternative remedy. Do you see down there? It says -- or
4 the planning representative. It says, "Alternative remedy
5 may be to pursue a zoning ordinance text amendment
6 allowing private beach club use in R-4 by right." Do you
7 see that?

8 **A** Yes.

9 **Q** Process can take up to three months.

10 **A** Okay.

11 **Q** If the zoning ordinance had had a text amendment
12 allowing a private beach club use in R-4 by right, it
13 wouldn't be necessary to get a special exception, would
14 it?

15 **A** Right.

16 **Q** Now, do you get copied in on these minutes? Did you
17 do that when you were the Zoning Administrator?

18 **A** No, sir. Ben, as the representative of the Zoning,
19 a lot of times would fill me in on what happened, but I
20 didn't attend the meetings and get copies of the notes. I
21 wouldn't have -- I haven't seen this particular document.

22 **Q** Now, you're familiar with the zoning ordinance
23 because you helped write it; correct?

24 **A** Yes.

25 **Q** Particularly the special exception for the cabana

1 house?

2 A Yes.

3 Q In view of the requirement in 23-2, in 23-22, that
4 the property be owned by an HOA for a project in North
5 Myrtle Beach, your statement in the letter, "The
6 property's been legally used since construction," turned
7 out not to be accurate; correct?

8 A Can you explain?

9 Q Well, has this -- to the best of your knowledge, has
10 this particular piece of property ever been owned by an
11 HOA?

12 A I don't know.

13 Q In order to say that the cabana house has been
14 legally used as such since construction, wouldn't you need
15 to know that? Because if it's not owned by an HOA, it
16 would not be consistent with the zoning ordinance, would
17 it?

18 A When we permitted it and allowed the special
19 exception, it was done so for a community that was in the
20 City of North Myrtle Beach in a homeowners association.

21 Q Seabrook.

22 A Seabrook. And Mr. Ben Powell was developing
23 Seabrook. And Mr. Powell had asked for the use of the
24 house that is in question as a cabana house. And it was
25 our understanding as staff that, once it got to a certain

1 number of sales, he was going to turn that building over
2 to the homeowners association.

3 Q But you never checked on that, did you?

4 A No, sir.

5 Q If you had gone to the property records, Mr. Blust,
6 and found that the property was, in fact, owned by an LLC
7 and not a homeowners association, would that have changed
8 your response to Ms. Newkirk's [sic] letter?

9 A Maybe.

10 Q Let me ask you to look at page 48 of your
11 deposition. If you'll look at lines 5 through 12. Do you
12 remember giving this deposition?

13 A Yes.

14 Q And you took an oath to tell the truth in that
15 deposition and did your best to do so; correct?

16 A Yes.

17 Q I'm going to read page 48. Well, let's start on
18 page 47. I'm going to read page 47, starting at line 22.
19 You got it?

20 A Yes.

21 Q All right. The question is, "Go with me on this.
22 This is a hypothetical. If, after getting the question
23 posed to you about this letter and you went on into the
24 property records and found this property was owned by an
25 LLC and not a homeowners association, would that have

1 changed your response to this letter?"

2 Mr. Ricard says, "Objection to form. Speculation.
3 You may answer."

4 And your response is, "I don't know. And I say that
5 because the property was not being used. If it were being
6 used at the time and we were interested in who owned it,
7 then, yes, sir, it would change that. But at the time,
8 the property was not being used at all, and I don't know
9 at the time -- well, I have to say I did not look into
10 ownership of the property."

11 Did I read that correctly?

12 A Yes.

13 Q Mr. Blust, are you aware that Mr. John Colman, who
14 is the head of Sun Acquisitions, has testified in this
15 case under oath that, had he been made aware of the
16 ownership and residency requirements for the cabana house,
17 he would have stopped the transaction?

18 A I'm not aware he said that.

19 Q You're not aware of that?

20 A No, sir.

21 Q And he also said he would have asked for a meeting
22 with the City to see if a solution could be worked out.

23 Would the City have been willing to meet with a
24 prospective owner to see if they could have worked out a
25 solution to a potential zoning noncompliance issue?

1 A Yes.

2 Q Is it possible, Mr. Blust -- and I know we're
3 talking about a long time ago. Is it possible you didn't
4 go back and check on the ownership and use of the property
5 because you already knew it was owned by Mace Watts?

6 A It's possible, yes, sir.

7 Q When you sent the copy of the R-4 zoning ordinance
8 to Mace Watts in that email that Ms. Shoun showed you, did
9 you know at that time he was trying to sell the property?

10 A I did not.

11 Q Why else would you have sent him that email?

12 A He may have requested it. I don't remember.

13 Q You don't remember.

14 A No, sir.

15 Q And I believe that email was end of January 2019.
16 Well, let's pull it up so we can be sure.

17 Let's see if I can find it, Mr. Blust. That would
18 be Defendant's Exhibit No. 8.

19 So that's the email you sent to Mace Watts; correct?

20 A Yes.

21 Q And it's dated January 31, 2019; correct?

22 A Yes.

23 Q And it says, "Mace, attached below are the R-4
24 resort residential district standards in the zoning
25 ordinance. Signed, Paul Blust." And then you attached

1 the standards?

2 A Yes.

3 Q Sitting here today, you don't know why you sent that
4 to him?

5 A No.

6 Q Could it have been because you were aware that he
7 was in the process of trying to sell the property?

8 A I would have to think so, yes, sir.

9 Q Mr. Blust, based on the Exhibit 32 that we just
10 looked at, is it fair to say that the Zoning Department
11 knew in May of 2018 that the Ocean Club at Tilghman Beach
12 was not in compliance with the R-4 zoning ordinance?

13 A What was the May of --

14 Q That's the Technical Review Committee minutes we
15 were talking about. Can you pull those back up? It's
16 Exhibit 32. And then let's go down to the next page,
17 please, Jim. And let's -- all right.

18 So, again, Mr. Blust, it says, "Zoning. Private
19 beach club use not allowed in R-4. To come into
20 compliance, must convert to a restaurant with 60 percent
21 food sales"; correct?

22 A Yes.

23 Q So the City knew in May of 2018 that the Ocean Club
24 at Tilghman Beach, which was a private club, was not in
25 compliance with R-4?

1 A They were not using it as a private club, and I am
2 aware that -- because I contacted Mace -- that he was
3 advertising to do that. And so we did make contact with
4 him. I can't tell you the date on it, but it was probably
5 before this particular meeting.

6 Q Well, he's going to testify today. We'll be able to
7 ask him --

8 A Yes.

9 Q -- if he was using the club as a private beach club
10 at that time.

11 But to the best of your knowledge, your testimony is
12 you don't believe he was?

13 A I don't think so, no, sir.

14 Q All right. Let's change subjects and try to wrap
15 this up because I know it's 12:30. I'd like to talk with
16 you a little bit about the history of cabana house special
17 exception and your role in drafting 23-22.4 and 23-2
18 definition. Okay?

19 A Yes, sir.

20 Q Now, you testified, I believe, in response to some
21 questions from Ms. Shoun, that the reason for the original
22 drafting of that ordinance was a request from a plan --
23 what did you call it?

24 A Planned Unit Development.

25 Q Planned Unit Development. And that development was

1 Tidewater; was it not?

2 A Yes.

3 Q A large 580 development about a mile from the
4 oceanfront?

5 A Yes.

6 Q And they wanted a beach club or a cabana house so
7 that they could advertise that to potential purchasers of
8 homes, rental units, and resort property; correct?

9 A I'm not sure of the exact reason. They wanted
10 access to the ocean for sure, yes, sir, to the beach.

11 Q And at that time, Tidewater was being built;
12 correct?

13 A Correct.

14 Q World-class golf course. One of the best in the
15 Grand Strand. I'm a golfer.

16 A Okay. I played Tidewater.

17 Q Did you enjoy it?

18 A Yes.

19 Q And when that idea was proposed to the City
20 planners, fair to say they viewed this as a positive
21 development because it meant that developments, resorts,
22 didn't have to be located on the front beach in order to
23 have private access -- private beach access; right?

24 A That's part of it, but one of the big parts was
25 parking. We were concerned about all these bigger

1 developments being built that didn't have areas that would
2 compete with public parking.

3 Q So the idea of having a cabana house on the front
4 beach that was private that had adequate parking would
5 alleviate pressure on public parking?

6 A Yes.

7 Q And not having to be on the front beach in order to
8 use the front beach would avoid what I call the Miami
9 Beach situation with big high-rises all along the beach
10 that blocks the view of the ocean; correct? And y'all
11 didn't want that.

12 A I'm not sure. That sounds correct.

13 Q Is that a better question to ask of Mr. Wood, the
14 planning developer?

15 A Probably.

16 Q Okay. All right.

17 Now, your office was tasked to draft the text
18 amendment for 23-22 to provide for the special exception
19 for the cabana house?

20 A Yes.

21 Q And you participated in that drafting?

22 A Yes.

23 Q You said you wrote the definition, and then you were
24 sort of involved or aware of the seven or eight conditions
25 that were part of the substantive 23-22; correct?

1 A Yes. I would have been in all the meetings on that,
2 yes, sir.

3 Q As you previously said, it was your practice or your
4 office's practice to draft the ordinance as specific as
5 possible but still meet the City Council's objectives;
6 correct?

7 A Yes.

8 Q Now, that preliminary document, sort of the first
9 draft that you wrote that's in your handwriting, I want to
10 show that to you. And that would be Exhibit 62.

11 So that first page appears to be a folder, and it's
12 got on it the ZTX95-19, add cabana house as use by special
13 exception in R-4. And then a history of the various
14 readings; correct?

15 A Yes.

16 Q Is that your handwriting?

17 A Yes.

18 Q All right. Turn to the next page. Is that your
19 handwriting as well?

20 A No.

21 Q Whose handwriting is that? Do you recognize it?

22 A No, but it -- my guess would be maybe Teresa Pierce,
23 who used to be our planner. I'm not sure. That's not my
24 writing.

25 Q All right. Was this handwritten draft later

1 converted to a typed draft for the purposes of the first
2 and second readings?

3 Let me ask you a better question. How did you go
4 about just logistically doing this? Did you write it up
5 by hand? Did you type it? You tell me. I don't want to
6 try to put words in your mouth. Why would there be a
7 handwritten draft in the file? Maybe that's the better
8 question.

9 A I'm not sure, other than this looks like something
10 that may have been taken to the Planning Commission as a
11 staff-generated change. And, of course, the Planning
12 Department was intimately involved with Zoning in this.
13 So I'm not sure, but it -- I mean, nothing looks out of
14 sorts with it.

15 MR. WILLIS: I want you to turn to the next page.
16 It would be NMB269, Jim. If you could go to the next
17 page. One more. And show that to Mr. Blust.

18 BY MR. WILLIS:

19 Q Mr. Blust, this appears to be a draft of six
20 conditions to be added to Section 22-24. Do you see
21 that?

22 A Yes, sir.

23 Q And I want you to go down to Condition No. 2. It
24 says, "No commercial accessory activity shall be allowed
25 on site." Do you see that?

1 A Yes, sir.

2 Q Now, that condition didn't make it into the final
3 version, did it?

4 A I don't know.

5 Q All right. Well, let's pull up -- let me help you
6 with this. I'm going to show you Defendant's Exhibit 3
7 from your deposition, Mr. Blust. And I'm sure this is in
8 the case, but this is a final copy of 23-22. Take a look
9 at page 13 of 15 where it says, "Cabana house is subject
10 to the following."

11 A Okay.

12 Q All right. Is the condition, "No commercial
13 accessory activity shall be allowed on-site"? Did that
14 make it into the final draft or the final approved
15 ordinance? Do you see that condition in 1 through 7
16 there?

17 A No. No.

18 MR. WILLIS: All right. Let's go to the next
19 exhibit, please, Jim. Exhibit 58. Well, go back one more
20 time to that.

21 BY MR. WILLIS:

22 Q In this handwritten draft, there's no mention of use
23 of the cabana house being exclusively limited to projects
24 in North Myrtle Beach. That's not in there either, is it?
25 That was added later?

1 A Yes.

2 Q All right. Now, let's go to Exhibit 58. What is
3 Exhibit 58, Mr. Blust? Can you see it on the screen
4 there?

5 A What's in front of me are the minutes of the meeting
6 of November 27, 1995.

7 Q And you were present at the meeting?

8 A Yes.

9 Q And you prepared the staff report; correct?

10 A I'm not sure.

11 Q Well, you would have presented the staff report to
12 the Planning Commission? That would have been your role
13 in the meeting?

14 A Possibly. It says the City Planner is Greg Niles.
15 So that was probably Greg's handwriting that I didn't
16 know. And there were times when Greg would do some of the
17 staff reports and I would do some of the staff reports.
18 It just depended on the involvement, but very possibly.
19 I'm not going to deny it.

20 Q Do you know when the phrase, quote, "of large
21 developments in North Myrtle Beach" was added --

22 A No, sir, I don't.

23 Q -- to those minutes?

24 You didn't write that, did you? That would not have
25 been your addition?

1 A No, sir. And this is just speculation, but it
2 sounds like something our director would have done.

3 Q Do you recall whether any legal review was made of
4 that addition to the proposed order?

5 A No, sir, I don't recall.

6 Q Do you recall whether anyone raised any objection in
7 that meeting or any problems with trying to limit
8 ownership of cabana houses to homeowners associations for
9 projects in North Myrtle Beach?

10 A I don't recall.

11 MR. WILLIS: Jim, can you pull up the North Myrtle
12 Beach -- the City's Exhibit 6? I want Mr. Blust to look
13 at that next.

14 BY MR. WILLIS:

15 Q What is that document, Mr. Blust?

16 A This is an issue paper to City Council.

17 Q Did your office prepare that?

18 A Yes, sir. I would have written this with the review
19 and amendment by our director, Doug Maddock.

20 Q It says at the top, "Prepared by Paul Blust.
21 January 8, 1996." Correct?

22 A Yes.

23 Q All right. In the background section of that
24 document, second paragraph, can you read that out loud?

25 A "If approved, this amendment will allow more

1 footprint on the second row. The effect of a greater
2 footprint could be more density; however, due to the cost
3 of oceanfront property, the applicability of oceanfront
4 cabanas will be limited."

5 Q I want to make sure we've got the right exhibit
6 pulled up. All right. That's not the right one. Let's
7 pull up -- it's NMB148, City Exhibit 6. All right. We
8 have got the right one now, Mr. Blust. My apologies.

9 A Okay.

10 Q All right. This says, "Subject: Zoning text
11 amendments to prevent cabana houses as a special exemption
12 in the R-4 district."

13 Do you see that second paragraph there? It starts
14 with, "The purpose of the cabana house"?

15 A Yes.

16 Q That's the one I want you to read out loud. Thank
17 you.

18 A "The purpose of the cabana house is to allow
19 projects not in close proximity to the ocean and beach to
20 take advantage of that asset by utilizing a property for
21 drop-off and parking areas, bathing, changing clothes, and
22 similar uses. The cabana house will utilize single-family
23 design and can be additionally used as occasional guest
24 quarters and similar uses."

25 Q All the cabana houses that your office approved --

1 the Barefoot cabana house, Tidewater, The Links,
2 Beachwalk, I believe, is the other one, as well as the
3 cabana house that was approved for Ben Powell, all
4 essentially follow that single-family design standard;
5 correct?

6 A Yes.

7 Q Even though they don't all look like single-family
8 homes; correct?

9 A Yes.

10 Q As you previously said, it was your objective to try
11 to come up with something to look consistent with
12 surrounding uses.

13 A Okay, yes.

14 Q And you believe you did that; correct?

15 A Yes.

16 Q Now, in that particular document, there's no mention
17 of limitation of ownership to an HOA or any restriction of
18 projects to those inside city limits of North Myrtle
19 Beach; correct?

20 A Correct.

21 Q Now, the definition of cabana house wasn't added, I
22 believe, until the second reading. Is that consistent
23 with your recollection?

24 A I don't remember.

25 Q I'll show it to you. It's Exhibit 60. Can you pull

1 that up? It would be Sun's Exhibit 60. No, Exhibit 60.
2 Six zero. Okay. Got the right one.

3 What's that, Mr. Blust?

4 A Looks like the City -- the minutes of the City
5 Council meeting of February 5th, 1996.

6 MR. WILLIS: If you could turn over to the second
7 page. Jim, pull up the second page. That would be
8 NMB162.

9 BY MR. WILLIS:

10 Q Look about halfway down. It says, "Item 4(a),
11 second reading of an ordinance for zoning text amendment
12 to permit cabana houses as a special exception in the R-4
13 residential district." And it goes on to say, "An
14 ordinance of the City of North Myrtle Beach providing that
15 the code ordinances of City of North Myrtle Beach be
16 amended by revising Section 23-2 and Section 23-22.4 of
17 the said code." Did I read that correctly?

18 A Yes.

19 Q And it's not uncommon, when you're proposing text
20 amendments to zoning ordinances, to change them or amend
21 them between the first and second reading based upon
22 comments of City Council?

23 A It's not uncommon. If City Council wants to amend a
24 proposed ordinance and it's fairly substantial, our
25 recommendation was always to take that change back to the

1 Planning Commission and let them make another
2 recommendation on that change and then take it back to
3 City Council.

4 Q Do you believe that was done with the definitional
5 section or was that just sort of an amendment on the fly?

6 A I don't remember that.

7 Q I can tell you, we have looked through the records.
8 We can't find anything that sends that back to the
9 Planning Commission for another first or second reading.
10 It appears to be an amendment that was made between the
11 two, which is perfectly permissible under your rules;
12 correct?

13 A Yes, sir.

14 Q And in that document, there's no discussion, no
15 debate, no controversy on the definitional section of
16 cabana house?

17 A I don't recall any.

18 Q Now, you heard Mr. Caldwell this morning. He was
19 asked by Mr. Tamasitis if this particular zoning ordinance
20 is the only one to his knowledge that has a residency
21 requirement associated with it; correct?

22 A Yes.

23 Q And you were asked that same question too. Can you
24 recall any others --

25 A No.

1 Q -- other than this one?

2 MR. WILLIS: That's all I have, Your Honor. Thank
3 you.

4 THE COURT: All right. Redirect?

5 MS. SHOUN: Thank you, Your Honor.

6 MR. WILLIS: Thank you, Mr. Blust.

7 REDIRECT EXAMINATION

8 BY MS. SHOUN:

9 Q All right, Mr. Blust. Mr. Willis was quite
10 thorough, so the best way I can think to go through this
11 with you perhaps for follow-up is to do so in a bit of a
12 chronological order, and I'll try to do that.

13 Mr. Willis asked you early on about drafting zoning
14 ordinances. Do you remember a question concerning that?

15 A Yes.

16 Q And I believe that, in my -- in your responses to my
17 direct examination to you, you indicated that you do
18 indeed draft ordinances and did indeed make the initial
19 draft of the definition of cabana house. Is that an
20 accurate recollection of your testimony?

21 A Yes.

22 Q Okay. Is it also an accurate recollection of your
23 testimony to state that, even in the event you did draft a
24 definition or a substantive ordinance, that draft,
25 whatever you prepared, was subject to modification by the

1 Planning Director, the Planning Commission, and City
2 Council?

3 A Yes.

4 Q Would that be the same as to any drafting that you
5 as the Zoning Administrator undertook?

6 A Yes.

7 Q Okay. Now, Mr. Willis asked you a number of
8 questions too here about Mr. Watts -- Mace Watts and what
9 Mr. Watts knew as far as use of what we call the cabana
10 house as a private beach club. Do you recall that line of
11 questioning?

12 A Yes.

13 Q Okay. And, in fact, I believe your testimony -- and
14 again, please correct me if I am wrong -- it was your
15 understanding that Mr. Watts and Mr. Oates were not using
16 what we referred to as the cabana house as a private beach
17 club. Is that a fair and accurate representation of your
18 testimony?

19 A It was my understanding that Mr. Watts never used it
20 as such.

21 Q Okay.

22 A I got involved when I saw the sign in the median and
23 called him. He was trying to set it up like that.

24 Q Let's pull up the TRC exhibit again if we can do
25 that. And I understand you were not at that TRC meeting,

1 but Mr. Willis asked you a number of questions about that;
2 correct?

3 A Yes.

4 Q This document, do you see it in front of you?

5 A Yes.

6 Q And at the top there, it says, "Ocean Club at
7 Tilghman Beach, 1814 North Ocean Boulevard." That's the
8 address of the cabana house; correct?

9 A Yes.

10 Q Okay. And it says on there pre-application; is that
11 right?

12 A Yes.

13 Q Okay. And I think you explained this, but if you
14 will briefly refresh my memory. Why would there be a
15 pre-application meeting?

16 A Well, I'm not sure on this particular one.

17 Q Right. But --

18 A There were a lot of pre-application meetings with
19 people that were thinking about a certain project and
20 wanted to know if there would be any serious problems with
21 the City's regulations, and they'd come in and talk with
22 staff.

23 Q So it's just what it sounds like, a pre-application
24 meeting?

25 A Yes, ma'am.

1 Q Okay. And one of the reasons for that meeting is to
2 determine if there were any serious problems as far as
3 staff is concerned?

4 A Yes.

5 Q Now, if I asked you to look down under planning
6 comments on this exhibit, on this pre-application meeting,
7 that last thing if you see there it says, "Planning," and
8 it says -- well, let me ask you to go back up under
9 Zoning. It says, "Private beach club not allowed in R-4."

10 As the Zoning Administrator for the City of North
11 Myrtle Beach, would you have considered that a serious
12 problem with the application? If the application was for
13 a private beach club --

14 A Oh, yes, ma'am. Yes.

15 Q Okay. So that would indicate a serious complication
16 there; would it not?

17 A Yes.

18 Q And then if you go down to Planning, this is
19 Planning. This is what Planning says to Mr. Watts and
20 Mr. Oates, "You need to submit showing that it's going to
21 be made to comply with the requirements of the R-4
22 district." Correct?

23 A Yes.

24 Q Okay. And you even -- not you but Planning -- the
25 notes here reflect that Planning went so far as to suggest

1 an alternative remedy to pursue a zoning text amendment;
2 right?

3 A Yes.

4 Q Okay. Is a proposal of a text amendment to a zoning
5 ordinance something that an applicant -- a pre-applicant
6 could pursue during your time as the Zoning Administrator?

7 A No.

8 Q So if I was making an application -- or is it your
9 testimony, then, they couldn't have pursued a zoning
10 ordinance text amendment?

11 A They couldn't themselves. What would generally
12 happen, if somebody really wanted to pursue it, is they
13 could contact a member of City Council or the Planning
14 Commission and get those bodies to possibly submit the
15 zoning text amendment.

16 Q Okay. Now I understand. So that would be what's
17 meant by "pursue"?

18 A Yes.

19 Q Okay. Are you aware of whether Sun ever made that
20 attempt to pursue a text amendment during your tenure as
21 the Zoning Administrator?

22 MR. WILLIS: Objection, Your Honor. May we approach
23 on this? I don't want to make the objection in front of
24 the witness.

25 BENCH CONFERENCE

1 (The following bench conference was held outside of
2 the witness and others:)

3 THE COURT: Again, what was your question?

4 MS. SHOUN: Dang if I know. I think I said --

5 MR. WILLIS: Well, my objection --

6 MS. SHOUN: Excuse me, excuse me. He just asked me
7 a question.

8 THE COURT: I just want to know what she asked for.

9 MS. SHOUN: I think the question was does he know if
10 Sun ever made a request for a zoning text amendment during
11 his tenure as the Zoning Administrator.

12 THE COURT: Okay.

13 MS. SHOUN: Does he know that.

14 MR. WILLIS: That's fine. Then I'll withdraw my
15 objection if she asked during his tenure as Zoning
16 Administrator.

17 MS. SHOUN: I think it's in there, and I can ask the
18 court reporter to read it back.

19 MR. WILLIS: Well, maybe I misunderstood. I
20 apologize.

21 THE COURT: Yeah, just ask it like you just said.

22 MS. SHOUN: Will you remind me when I get back there
23 of what I said?

24 MR. WILLIS: Your Honor, the basis for my objection
25 was there has been some discussions about the zoning text

1 amendment in terms of settlement discussions.

2 THE COURT: I understand.

3 MR. WILLIS: And I just didn't want to get into
4 that.

5 THE COURT: I understand.

6 MR. WILLIS: All right. Thank you.

7 (Open court resumes as follows:)

8 MS. SHOUN: Your Honor, may I just indicate for the
9 record that Mr. Willis has withdrawn his objection?

10 MR. WILLIS: Yes, I have. Thank you, Your Honor.

11 BY MS. SHOUN:

12 Q Mr. Caldwell [sic], I'll do my best to ask you this
13 question again. Are you aware during -- if, during your
14 tenure as the Zoning Administrator for the City of North
15 Myrtle Beach, whether Sun Communities or whatever Sun
16 entity it was that ultimately purchased this cabana house
17 pursued a zoning ordinance text amendment through the City
18 of North Myrtle Beach?

19 A I'm not aware of one.

20 Q Okay. Are you aware that that pursuit would have
21 been available to the Sun purchaser of the cabana house?

22 A Yes.

23 Q Now, let's go back to the request from Ms. Stephanie
24 Van Newkirk for the zoning letter. And my partner,
25 Mr. Ricard, is going to put that on the screen for you

1 right now. And if we can go to the second page of that.
2 Exhibit 28.

3 Now, Mr. Willis spent a significant amount of time
4 going over this proposed zoning letter with you in his
5 cross-examination, Mr. Blust. Do you remember that?

6 A Yes.

7 Q Okay. And, in this letter, he indicates that
8 Ms. Van Newkirk is looking for you to describe the
9 permitted use, which I think you did; is that right?
10 Ultimately in your zoning letter. And you may have a copy
11 of your zoning letter up there with you already.

12 MR. WILLIS: I took it back. Here it is.

13 MS. SHOUN: Oh, may I have it?

14 MR. WILLIS: Yeah.

15 MS. SHOUN: May I approach, Your Honor? Thank you.

16 BY MS. SHOUN:

17 Q This is Exhibit 2, Mr. Blust. I'm going to give you
18 this so you can look at that in comparison to what's on
19 the screen as far as Ms. Van Newkirk's request.

20 So would you agree that your zoning letter that you
21 wrote on March 19th, 2019, to Ms. Newkirk [sic] describes
22 the permitted use for the property at question, the cabana
23 house?

24 A Yes.

25 Q Okay. Does your letter describe the applicable

1 zoning classification for the property at question, which
2 is the cabana house?

3 A Yes.

4 Q Does it address any nonconforming use? Does your
5 letter address any nonconforming use?

6 A I don't think there was a nonconforming use, no,
7 ma'am. No.

8 Q Okay. Because you were not aware of any
9 nonconforming use at that time, were you?

10 A No. I mean, yes, I was not aware.

11 Q Yes. Yes, I have no bananas.

12 So Mr. Willis asked you whether you went to the
13 Register of Deeds office and effectively looked at the
14 property records to determine the presence of the
15 restrictive covenants on this property. Do you remember
16 that question?

17 A I do remember, yes.

18 Q Did you do that?

19 A No.

20 Q Would that be your job to do that?

21 A No.

22 Q Would a violation of a restricted covenant equate to
23 a violation of a zoning ordinance?

24 A No.

25 Q Now, let's look at your letter back to

1 Ms. Van Newkirk. And if you go down to the second
2 sentence of this letter, "The existing structure on the
3 property was permitted as a cabana house and has been
4 legally used as such since construction."

5 Now, I'm going to unpack that sentence a little bit
6 based on the questions that Mr. Willis asked you. If, at
7 the time the cabana house was approved as a special
8 exception, it had not met the requirements of a
9 single-family structure as anticipated in 23-2 and 23-22,
10 would it have been approved as a special exception?

11 A Well, they wouldn't have built the building and then
12 asked for the special exception.

13 Q Okay.

14 A So I'm not sure --

15 Q So it had to meet the requirements to be a special
16 exception?

17 A Yes, ma'am.

18 Q Okay. Now, your sentence in there also says that it
19 has been legally used as such since construction. Do you
20 see that?

21 A Yes.

22 Q Okay. That does not ask you about the ownership,
23 does it?

24 A No.

25 Q Okay. And, to your knowledge, however, at that

1 time, you had no known zoning violations; right?

2 A Yes.

3 Q Okay. And as far as the ownership, my recollection
4 is that Mr. Willis asked you, did you pull any deeds to
5 determine if the property had ever been owned by an HOA?
6 Do you remember that?

7 A Yes, ma'am.

8 Q Okay. And I think you told me just a minute ago you
9 did not pull the deeds to this property -- to the cabana
10 house property; right?

11 A Right.

12 Q And, again, would that be your job?

13 A In zoning, I -- I rarely looked at deeds to
14 anything, let alone this one. No, ma'am.

15 Q Would it be safe to say that, had somebody pulled
16 the deeds, they would have seen it had not been owned by
17 an HOA?

18 A Yes.

19 Q And as far as your information as having been an
20 employee with the City of North Myrtle Beach dealing with
21 real property for some 35 years -- and I know you said you
22 rarely looked at deeds -- is it your understanding that
23 deeds are public record?

24 A Yes.

25 Q Now, Mr. Willis asked you about a number of other

1 things as to whether you examined them. Again, did you
2 personally check the setbacks on this property before you
3 wrote the letter to Ms. Van Newkirk?

4 A No.

5 Q Okay. Are the requirements -- setback requirements
6 for a particular piece of property in the City of North
7 Charleston [sic] public information?

8 MR. WILLIS: Myrtle Beach.

9 BY MS. SHOUN:

10 Q I mean -- sorry -- North Myrtle Beach.

11 MS. SHOUN: Thank you.

12 A Are the setbacks?

13 BY MS. SHOUN:

14 Q Yes, sir.

15 A No, I didn't.

16 Q Yes, sir. As a member of the public, may I find, as
17 public information, the applicable setbacks for a piece of
18 property in the City of North Myrtle Beach?

19 A Yes, sir. It would be in the zoning ordinance, but
20 generally, people would just call our office.

21 Q All right.

22 A Common question.

23 Q And would the same apply to building heights?

24 Whatever is required or not allowed by the City of North
25 Myrtle Beach, that would, likewise, be in the zoning

1 ordinance; right?

2 A Yes.

3 Q And the applicable building codes are public
4 information?

5 A I can't speak for the building code.

6 Q Okay. All right. Do you have any reason to believe
7 they're not?

8 A No, ma'am.

9 Q All right.

10 MS. SHOUN: Beg the Court's indulgence.

11 BY MS. SHOUN:

12 Q If those setbacks and height requirements and all of
13 those physical requirements for the structure that's
14 addressed in your response to Ms. Van Newkirk's request
15 for a zoning letter would have had to have been met before
16 the special exception was granted?

17 A The -- the development standards in general for the
18 whole property were already looked at at the time we gave
19 a CO to the building. So we give a zoning compliance
20 letter most of the time, Certificate of Zoning Compliance,
21 that it does meet all the requirements within the
22 ordinance. So we had already checked that. We had that
23 information.

24 Q Okay. And at the time you wrote the letter to
25 Ms. Van Newkirk, who worked for the law firm, who

1 represented the Sun entity that acquired this property,
2 had you had any complaints of zoning violations relative
3 to the cabana house?

4 A No.

5 Q Now, Mr. Willis asked you if you're aware that John
6 Colman has provided sworn testimony on behalf of the Sun
7 entity in this action. Do you remember that?

8 A Yes.

9 Q Had you read Mr. Colman's deposition testimony?

10 A I read the -- I don't remember the names. I read
11 the ones that were sent to me.

12 Q Okay. Do you remember Mr. Willis representing to
13 you that Mr. Colman testified under oath that, if he were
14 aware of the residency and ownership requirements of the
15 applicable ordinance for the cabana house, that he would
16 have stopped the transaction pursuant to which Sun
17 purchased the cabana house? Do you remember Mr. Willis
18 representing that to you?

19 A Yes, I do.

20 Q Have you ever bought a piece of property, Mr. Blust?

21 A Yes.

22 Q Did you have the title searched?

23 A I didn't title search, but somebody --

24 Q But somebody did it for you?

25 A In that process, yes, ma'am.

1 Q Right. And if there was a problem that came up in
2 the title search, would it have been safe to assume that
3 you would have acted accordingly?

4 A I would have made my decision based on that, yes,
5 ma'am.

6 Q I don't have anything else. Thank you.

7 THE COURT: Any recross?

8 MR. WILLIS: Very briefly, Your Honor. And I advise
9 my students never to say that because they never are
10 brief, so I'm going to try to be brief.

11 RECROSS-EXAMINATION

12 BY MR. WILLIS:

13 Q Mr. Blust, the meeting of the Technical Review
14 Committee that we have talked extensively about -- Exhibit
15 32 --

16 MR. WILLIS: Let's pull that up one more time
17 please, Jim.

18 A Yes.

19 BY MR. WILLIS:

20 Q This was a meeting to discuss conversion of the
21 beach club to a restaurant; correct?

22 A I don't know what this particular --

23 Q Let's read it. All right? "Public works. Impact
24 fees may be required. These fees may be extensive for a
25 restaurant use."

1 Down at the bottom it says, "Zoning." It says,
2 "Private beach club use not allowed in R-4. To come into
3 compliance, must convert to a restaurant with 60 percent
4 food sales."

5 Next section: "Restaurant. Walk-through for a
6 restaurant. Need to have a site walk-through to determine
7 requirements for a restaurant."

8 Under "Building. Restaurant. Fire. Planning.
9 Restaurant."

10 This is an application for converting the building
11 to a restaurant; correct?

12 A It looks like it, yes, sir.

13 Q All right. Now, the ownership requirements and the
14 use requirements in 23-22 were part of the zoning
15 ordinance at the time Ms. Newkirk made that request to
16 you; correct?

17 A Yes.

18 Q And you didn't check that; correct?

19 A Yes.

20 Q All right. Had you checked it and had you said to
21 Ms. Newkirk [sic], "Hold on, this property has to be owned
22 by an HOA for use of a project in North Myrtle Beach," we
23 wouldn't be here today, would we?

24 A I don't know the answer to that one.

25 Q That's all I have. Thank you very much.

1 Wait a minute. I'm sorry. Just want to make sure
2 because there's been some earlier testimony from
3 Mr. Caldwell. As the Zoning Administrator during the time
4 you managed the projects, there was no necessity for a
5 reapplication for a special exemption. Once it was
6 granted, it could be passed on to a subsequent purchaser;
7 correct?

8 A If it remained exactly the same, then, yes, sir,
9 that's true. If circumstances changed, maybe not. We'd
10 have to look at it.

11 MS. SHOUN: Your Honor, for the record, my redirect
12 did not go into the special exception part of this. I
13 don't think this is proper recross.

14 MR. WILLIS: I thought you asked the question about
15 special exception.

16 MS. SHOUN: Not on redirect.

17 THE COURT: I'll give you a chance to have the last
18 word.

19 MS. SHOUN: Okay. Thank you, sir.

20 BY MR. WILLIS:

21 Q Look at page 48 of your deposition, please,
22 Mr. Blust.

23 A What was the page again, sir?

24 Q Page 48.

25 And look down at line 13. Just --

1 A Okay.

2 Q Look up when you have got it.

3 A Uh-huh.

4 Q I'm going to read it into the record. It says,
5 "Question by Mr. Tamasitis: There was some testimony when
6 we were talking to Mr. Caldwell about special exceptions
7 for cabana houses in particular, and when a property that
8 has a cabana house on it via a special exception is
9 transferred from one party to another, is there a
10 requirement for that new property owner, the grantee of
11 the property, to seek another special exception for the
12 cabana house on the property?"

13 And your answer was, "No."

14 A Correct.

15 Q Did I read that correctly?

16 A Correct, yes, sir.

17 MR. WILLIS: Thank you.

18 THE COURT: Yes, ma'am.

19 MS. SHOUN: Thank you, Your Honor.

20 FURTHER REDIRECT EXAMINATION

21 BY MS. SHOUN:

22 Q Mr. Blust, that question that Mr. Willis just read
23 to you, does it address if the use changes?

24 A I'm sorry?

25 Q The question that Mr. Willis just read to you from

1 your deposition, does that address whether a special
2 exception is required if the use changes or just the
3 ownership?

4 A It's -- it looks like it's just talking about the
5 ownership.

6 Q Okay. Now, let me follow up on another question
7 that Mr. Willis asked you. He said to you had you gone
8 and determined that this property was not owned by an HOA
9 at the time you wrote the letter to Sun's law firm, we
10 wouldn't be here. Do you remember that question?

11 A Yes.

12 Q If Sun's law firm had made that determination,
13 Mr. Blust, would we be here?

14 A I don't know.

15 Q Okay. Thanks.

16 THE COURT: Let's take a lunch break until 2:10.

17 (A lunch recess was taken at 1:06 p.m. to 2:11 p.m.)

18 THE COURT: Is the plaintiff ready to call your next
19 witness?

20 MR. RICARD: Yes, Your Honor. The City calls
21 Mr. Jim Wood as a 30(b)(6) on behalf of the City.

22 THE CLERK: Raise your right hand and place your
23 left on the Bible.

24 CITY OF NORTH MYRTLE BEACH,
25 by its designee, JAMES WOOD,

1 after having been duly sworn, was examined and
2 testified to as follows:

3 THE CLERK: Thank you. You may be seated. And if
4 you'll please state your name for the Court.

5 THE WITNESS: James Wood. W-o-o-d.

6 DIRECT EXAMINATION

7 BY MR. RICARD:

8 Q Thank you, Mr. Wood. Can you describe for the Court
9 what your educational background is?

10 A I have a bachelor's degree in geography from West
11 Virginia University, a master's in public administration
12 from the College of Charleston, and I went back to study
13 for a Ph.D. in geography at West Virginia. Completed all
14 the coursework but did not complete a dissertation.

15 Q Are you involved in any professional organizations,
16 Mr. Wood?

17 A Yes, sir. I'm a member of the American Planning
18 Association and also a member of the American Institute of
19 Certified Planners.

20 Q Are there any ongoing training and certification
21 requirements for those organizations?

22 A Yes, sir. To obtain AICP certification, there is a
23 mandatory minimum continuing education requirement.

24 Q Can you discuss what those are by details on what
25 topics are required for continuing education?

1 **A** One of the required elements is a land use law
2 element. You have a certain number of hours of that. You
3 have to have a certain number of hours of ethics
4 continuing education. One of the new ones now is, I
5 think, equity. And then the others can be a variety of
6 topics related to land use planning. It's approximately
7 32 hours of continuing education every two years.

8 **Q** Would you say your field is mostly city planning?

9 **A** Correct.

10 **Q** How long have you worked in that field?

11 **A** I have been in city planning for 36 years.

12 **Q** Where do you currently work?

13 **A** I'm employed by the City of North Myrtle Beach.

14 **Q** What's your title?

15 **A** Director of Planning and Development.

16 **Q** When did you begin that position?

17 **A** 15-1/2 years ago. It was March 17th, 15-1/2 years
18 ago.

19 **Q** Okay. Who do you report to?

20 **A** The City Manager.

21 **Q** And just to backtrack, roughly the last 15-1/2 years
22 or so working for the City of North Myrtle Beach, prior to
23 that, where else have you worked in the city planning
24 roles?

25 **A** I have worked for other municipalities. I worked

1 for the State of West Virginia for a short period of time
2 and also, I did a short stint in private consulting.

3 Q Any municipalities that you worked for that didn't
4 have a zoning plan or zoning ordinances?

5 A No. Every municipality or county that I have ever
6 worked for had zoning.

7 Q In your role as Director of Planning and
8 Development, can you describe your typical roles and
9 responsibilities?

10 A I oversee a department of approximately 20
11 individuals, roughly halfway divided between building
12 inspections and building permitting and also planning and
13 zoning. You know, I prepare the budget requests. I
14 supervise the division heads within the department, and
15 you know, I liaise with the City Manager quite frequently
16 on issues related to our department.

17 Q And forgive me if you've already mentioned this, but
18 the divisions that oversee, what are they again?

19 A Building, and Planning and Zoning.

20 Q And then within Planning and Zoning, there are two
21 separate offices?

22 A It's not so much two separate offices. There's two
23 distinct roles and responsibilities. So we have Zoning
24 personnel and then we have Planning personnel.

25 Q Okay. And can you describe the difference in their

1 roles?

2 A Planning personnel would engage in site plan reviews
3 in conjunction with other staff members in other
4 divisions, and they would prepare ordinance amendments,
5 again, in conjunction with other staff members. They
6 would prepare elements of the comprehensive plan. They
7 staff and manage the Planning Commission activities;
8 whereas Zoning is a little more carefully limited to
9 interpretation and enforcement of the zoning ordinance.

10 Q I want to talk about the comprehensive plan in just
11 a second, but to wrap up kind of your introduction and
12 background here, Mr. Wood, you have been designated as the
13 City's Rule 30(b)(6) designee; correct?

14 A Yes, sir.

15 Q Are you prepared to testify on behalf of the City
16 today regarding the facts and claims in this case?

17 A Yes, sir.

18 Q And you have been here this whole trial?

19 A Yes.

20 Q You have sat for every witness?

21 A I have.

22 Q You've listened to all the testimony?

23 A I have.

24 Q Do you agree that was important for you to be here
25 this entire time?

1 A It was.

2 Q Let's talk a little bit about the comprehensive
3 plan. What are the requirements of the comprehensive plan
4 and where do they come from?

5 A The State of South Carolina has enabling
6 legislation, and it requires communities that want to
7 engage in Planning and Zoning to adopt a comprehensive
8 plan. And the State sets forth that there are at least
9 ten minimum elements that must be considered and studied
10 and evaluated in a comprehensive plan. You can have more
11 than ten, but you have to address at least those ten.

12 Q How long does it take to develop a comprehensive
13 plan?

14 A It is quite extensive. If you're doing it for the
15 first time, I would say it's probably about a two-year
16 process. The state law requires you to do sort of an
17 exhaustive redo of your comp plan every ten years, but
18 then it requires tweaks every five. We are coming up on
19 our five-year cycle. Our ten-year cycle was completed in
20 2018. We're coming up on our five-year cycle for some
21 minor tweaks.

22 Q Okay. Let's switch and talk a little bit about the
23 Zoning Administrator's role. Can you describe that for
24 the Court?

25 A The Zoning Administrator is a key member of our team

1 in the sense that a zoning ordinance is one of the primary
2 tools by which we regulate land use. That person is
3 charged with the everyday day-to-day enforcement,
4 interpretation of the zoning ordinance.

5 Q Okay. Are you familiar with the term "zoning
6 letter" or "zoning request letter"?

7 A I am.

8 Q Can you describe that for the Court?

9 A We have a variety of individuals that seek
10 information regarding specific properties, whether those
11 properties are in compliance with our zoning code.
12 Sometimes it might be an inquiry about what they can or
13 cannot do with a particular property. Sometimes it could
14 be as simple as what is my property zoned.

15 So it's sort of a large umbrella type of inquiry
16 that the public would send to the Zoning Division. And it
17 could be for a variety of reasons, a variety of
18 information, a variety of motivations.

19 Q So the request may not always be uniform?

20 A Oh, most certainly not.

21 Q Does the City always know why a requestor may be
22 seeking a zoning request letter?

23 A Not always.

24 Q Mr. Wood, I'm going to display on the screen a
25 particular zoning request letter. This is, for the

1 record, Plaintiff's Exhibit 28. Are you familiar with
2 this zoning request that came via email and attached to
3 the standard letter, Mr. Wood?

4 A I am.

5 Q I don't want to belabor the point because we have
6 already had some testimony about this from Mr. Blust, but
7 what is the City's position as it relates to the issuing
8 of zoning letters like the one that was requested here?
9 And I'll go ahead and display it too just for comparison
10 purposes, Exhibit 29, the zoning letter that followed for
11 Mr. Blust.

12 What is the City's position as it relates to issuing
13 zoning letters like the one issued by Mr. Blust here on
14 March 19th, 2019?

15 A We sometimes will get zoning inquiries from people
16 either by telephone or by email or by letter, and we try
17 to tailor our response specific to what they're asking.

18 You know, in a very busy department, processing
19 6,000 building permits a year, we don't have the time or
20 the inclination to anticipate what every conceivable
21 question that somebody might ask about a property. So we
22 try to tailor it based specifically on what they're
23 asking.

24 Q And when you reviewed Exhibit 28 and 29 --
25 Plaintiff's Exhibit 28 and 29, would you agree there's no

1 indication that the City was asked whether a specific
2 future owner or use was allowed by the City?

3 A That is correct.

4 Q When was the City first made aware of the issues
5 surrounding Defendant's ownership and use of the property
6 in this case?

7 A My understanding is that the City became aware of
8 that with the delivery of Mr. Shortle's complaint.

9 Q And Mr. Shortle delivered that complaint on behalf
10 of Sea Cloisters I and II?

11 A That's correct.

12 Q So at the time that Mr. Blust wrote this letter in
13 March of 2019, the City was not aware of any issues
14 surrounding the prior ownership of the property in this
15 case.

16 A That is correct.

17 Q Briefly, what did the City do in response to the Sea
18 Cloisters' complaint?

19 A Ben brought it to my attention, and then I believe I
20 directed him to consult with Chris Noury, the City
21 Attorney. And then internal staff meetings occurred to
22 discuss the allegations.

23 Q Did the City find that Defendant's ownership and use
24 of the property was in violation of the zoning ordinances?

25 A Yes.

1 Q Mr. Mahaney earlier this morning testified that he
2 was never made aware of a response to the cease-and-desist
3 letter nor to his phone calls and emails to Carolina
4 Pines, but I want to ask you, on behalf of the City, did
5 the City ever receive a substantive response to those
6 efforts?

7 A I do not believe we did.

8 Q So what action did the City take at that point?

9 A I believe that's when the cease-and-desist letter --
10 or, I'm sorry, the motion to seek this action in court was
11 filed.

12 Q Why did the City not pursue a citation instead?

13 A A citation would not have been an effective remedy
14 to cure the violation.

15 Q And what violation specifically?

16 A You cannot cite your way into a proper ownership of
17 the property to be compliant with that special exception
18 that says that it has to be owned by an HOA and it has to
19 be for a project in the City. There is no citation that
20 could cure either of those violations.

21 Q And did Defendants have a business license?

22 A They did not.

23 Q So the City didn't have the option of revoking a
24 business license either?

25 A Correct.

1 Q We talked about the comp plan a little bit earlier
2 -- the comprehensive plan a little bit earlier, but,
3 generally speaking, why does a municipality like North
4 Myrtle Beach promulgate zoning ordinances and zoning
5 plans?

6 A Because the alternative is chaos, unregulated land
7 use, and a destruction of property values and quality of
8 life.

9 Q Are these goals codified anywhere in the City's
10 ordinances?

11 A Yes. The broad intent statements of the zoning
12 ordinance are clearly specified in the beginning of the
13 ordinance, as they are with just about any ordinance I
14 have ever seen in the United States.

15 Q Let's take a look at that. So Plaintiff's Exhibit
16 2, which I have displayed on the screen here, is Section
17 23-1 of the North Myrtle Beach Code of Ordinances. Do
18 these generally codify the goals that you were just
19 speaking about?

20 A They do.

21 Q Okay. How many zoning districts are there,
22 Mr. Wood?

23 A To my recollection, there are approximately 20
24 standard districts and approximately seven overlay zones.

25 Q What are some of the examples of zoning districts?

1 **A** They typically range in sort of -- by order of
2 intensity. You start with, like, the R districts. The
3 R-1, which is the lowest intensity, lowest density,
4 single-family residential district. And then they
5 progress through R-2, R-2A, R-3, R-4. And then you get
6 into some of the commercial districts. We have a few of
7 those. A limited industrial district. So, yeah, it's a
8 pretty comprehensive list of districts.

9 **Q** Let me first ask, you know, why are zoning districts
10 important? And then I take it you just spoke about
11 there's some refinement that goes on depending on
12 intensity. And then I'd like you to go into why
13 refinements are necessary as well.

14 **A** Well, the theory behind zoning is that incompatible
15 land uses are extremely destructive to the quality of life
16 of a community. So by establishing different zoning
17 districts, you select which types of uses are appropriate
18 in which parts of your city, and you exclude other uses
19 that would be harmful.

20 So, for example, if you have an R-1 district, that's
21 a district that is intended to accommodate single-family
22 residential development -- low-density single-family
23 residential development. You do not want a large box
24 store immediately next to that for what should be fairly
25 obvious reasons. So those types of uses are relegated to

1 other districts.

2 Q Could a prohibited use in one district be allowed in
3 another?

4 A Absolutely.

5 Q Bear with me, Mr. Wood. I'm going to display
6 Plaintiff's Exhibit No. 5. Plaintiff's Exhibit No. 5 is
7 Section 23-22 of the City's zoning ordinance. This
8 outlines the R-4 zoning district; correct?

9 A Yes.

10 Q Can you describe the R-4 district generally?

11 A The purpose of the district was to provide for the
12 orderly development of certain areas of the community
13 where both year-round and seasonal or resort housing may
14 be developed and where, because of proximity to the ocean,
15 such mixed development would promote year-round use of
16 public facilities, permit housing choices, but not at the
17 expense of ocean visibility and access by the community.

18 So the district is primarily a residential district.
19 I believe I heard testimony that it's intended for
20 commercial. It is not intended for commercial primarily.
21 It is primarily a residential district and residential and
22 various levels of intensity.

23 Q I want to focus on the last phrase here in the
24 purpose section, "But not at the expense of ocean
25 visibility and access by the community."

1 Can you describe generally the City's concerns about
2 ocean visibility?

3 A Yes. As, you know, you see other examples across
4 the United States -- perhaps Miami Beach, for example --
5 where every square inch of the oceanfront is taken up by
6 large condo projects. You know, that's a very, very high
7 intensity use of the oceanfront. It's to the exclusion
8 sometimes of other residents of the community being able
9 to enjoy and experience that amenity. So it was important
10 to the City that we not follow that example.

11 Q About what about access by the community? What
12 considerations fall under that factor?

13 A Well, the ability for residents who don't live on
14 the ocean to get to the ocean. And it was very important
15 that nine miles of beach that the City of North Myrtle
16 Beach has would be available to all its residents and
17 visitors to enjoy.

18 Q Does that access include parking issues?

19 A It does. The City has sort of aggressively pursued
20 public parking. I believe we have roughly 102 public
21 parking lots and/or street shoulder locations that contain
22 a total of 2,400 parking spaces available to the public.
23 Most of those are now for pay. Approximately 300 of them
24 are still free, but approximately 2,100 are paid parking
25 spaces. But I am not aware of any other community that

1 has been as aggressive in providing parking access to the
2 beach for its residents and visitors.

3 Q And sometimes those visitors come from outside the
4 City?

5 A Absolutely.

6 Q While I have got this on the screen, I want to hit
7 it on real quick. You see here in Section -- or, excuse
8 me, in paragraph 2 of Section 23-22, the permitted uses.
9 Are the defendants using the cabana house in this case in
10 any manner that's permitted under these permitted use --

11 A They are not.

12 Q I'm sorry. Say that again?

13 A They are not.

14 Q Okay. Thank you.

15 Let's go talk a little bit more broadly, Mr. Wood.
16 How are zoning ordinances promulgated?

17 A Well, typically, a community would either in-house,
18 if they had the expertise and the staffing to do it, or
19 they would have a consulting firm prepare a draft zoning
20 ordinance. That draft zoning ordinance would -- you know,
21 in partnership with the Planning Commission -- address
22 zoning ordinance. When it reached its final form would
23 then be considered by the Planning Commission for
24 recommendation to City Council for either adoption or
25 rejection.

1 And then City Council would be the final authority
2 in adopting that zoning ordinance, and if they adopted, it
3 takes two readings of Council to adopt it.

4 Q Are those entities that you just described, are they
5 the ones that kind of set forth the purpose and goals for
6 specific zoning ordinances that are passed?

7 A Yes.

8 Q Not the Zoning Administrator?

9 A Correct.

10 Q Are there records that document this process that
11 you just described?

12 A Well, our zoning ordinance is quite old. Typically,
13 if someone were to search the chain of history on the
14 adoption of the ordinance, I would imagine some of those
15 files could be found.

16 Q Okay. So would some of those files include, like,
17 meeting minutes, agendas, and that sort of thing?

18 A Yes.

19 Q Do those types of documents exist for this
20 particular case for sections -- excuse me.

21 Would documents like that really exist for the
22 special exception cabana house in this particular case?

23 A Yes.

24 Q So, for the record, I'm displaying now what's been
25 marked as Plaintiff Exhibit No. 6. I'll scroll through

1 these, Mr. Wood. Just generally speaking, are these some
2 of the records that are -- that concern the passage of the
3 cabana house ordinances that are at issue in this case?

4 A Yes.

5 Q Let's go through these a little bit -- I'm not going
6 to go through everything. It's 22 pages of it. But I'm
7 going to highlight a few things here, Mr. Wood, and talk
8 about them.

9 So on page 1 of Plaintiff's Exhibit No. 6 -- well,
10 let's discuss this first. Page 1, what is this?

11 A That appears to be an agenda for a Planning
12 Commission meeting.

13 Q Okay. And this was back in 1995?

14 A That is correct.

15 Q And the first item under "New Business" concerns
16 what?

17 A It says that it's a proposed zoning text amendment
18 to permit, as a special exception in the R-4 district,
19 cabana houses. Did you want me to read the rest?

20 Q I'll keep going here. So when it says "Cabana house
21 is designed as single-family structures to be used in a
22 limited, noncommercial manner by homeowners associations
23 of large developments located in North Myrtle Beach, not
24 in close proximity to the oceanfront," what were you able
25 to glean from this historical record?

1 **A** Well, I was not employed with the City at the time
2 so -- but what my understanding is, that the Tidewater
3 community, which is a large residential development not
4 near the ocean, had made a request to the City to consider
5 an ordinance amendment that would allow them to purchase
6 and own and operate a cabana house for their project.

7 That was the stimulus behind staff looking -- staff
8 at that time looking into the adoption -- drafting and
9 adoption of that ordinance.

10 **Q** And this Planning Commission, that would have been
11 the first step in the process of getting an ordinance
12 passed?

13 **A** In the adoption and passing process? Yes. That
14 comes after the drafting process internal.

15 **Q** Okay. But from the very beginning, would you agree
16 that the City had, as its design for the cabana houses, to
17 be used in a limited, noncommercial manner?

18 **A** Absolutely.

19 **Q** All right. I have now moved to page 3, Mr. Wood.
20 What's a request for City Council consideration?

21 **A** That's kind of a fancy term for a staff report.
22 Whenever something goes in front of Council, the relevant
23 department or staff member who is drafting it puts it in
24 this format so it can be properly included in the Council
25 agenda.

1 Q And does this request for City Council
2 consideration, this staff report, does it follow the
3 Planning Commission meeting that we just reviewed?

4 A It does.

5 Q Okay. Zoom in here. I'm going to highlight a
6 portion here, Mr. Wood, and read it for you: "The public
7 benefit for this type of arrangement will be the reduction
8 of competition for the public parking spaces by the
9 residents of these projects. Public parking is currently
10 in short supply."

11 Would you agree that, from this kind of historical
12 record, that the City was trying to promote the access of
13 the community within the R-4 residential district and
14 elsewhere within the City by the passage of the cabana
15 house ordinances?

16 A Yes. At the time, we did not have nearly the public
17 parking inventory that we do today, and public parking was
18 a big issue of concern for the City. And it appears, in
19 looking at the legislative history, the primary motivation
20 of that was to provide a mechanism by which some of that
21 demand could be alleviated.

22 Q So if in-city residents have the ability to shuttle
23 to a cabana house, what does that do for the parking
24 availability for other residents and for folks outside the
25 city?

1 A Well, every person that rides that shuttle is one
2 person that's not driving a car, trying to find a parking
3 space.

4 Q So, in actuality, it helps some travel from
5 out-of-state folks. They have more spaces to park in.

6 A That's correct.

7 Q All right. Again, there's a number of documents in
8 here, Mr. Wood, but I'm just going to highlight a few.
9 Let me go down to page 21 of Plaintiff's Exhibit No. 6.
10 Again, this is a request for City Council consideration;
11 correct?

12 A Yes.

13 Q And this is dated when, Mr. Wood?

14 A November 12th, 2001.

15 Q Has this zoning ordinance related to cabana houses,
16 have they remained static over the years or have there
17 been alterations?

18 A It appears that this was an alteration to that
19 ordinance.

20 Q What would this have been? What type of alteration?

21 A My understanding is that this alteration expanded
22 the eligibility of projects that could apply for a special
23 exception for a cabana house to those projects that were
24 also on the second row; whereas, previously, it had stated
25 that projects not in close proximity to the ocean.

1 Q Okay. After the City had an opportunity to go back
2 and look at its history, would you agree that one of the
3 concerns was, again, that kind of ocean visibility?

4 A Yes.

5 Q Because this talks about oceanfront building height
6 as being a concern?

7 A Yes.

8 Q Going back to Plaintiff's Exhibit No. 5, we spoke a
9 little bit about the purpose behind the resort residential
10 district as well as the permitted uses, but I want to go
11 down and talk about paragraph 4, Special Exceptions. Can
12 you describe what those are?

13 A A special exception is a type of permit to allow a
14 use that might be appropriate for the district but would
15 warrant further scrutiny and the possible inclusion of
16 conditions upon its use by the Board of Zoning Appeals.

17 Q How is a special exception different from a
18 variance?

19 A A variance is basically something where a property
20 owner says, "I cannot comply with a section of the code as
21 it's written, and I would like to have relief from that
22 requirement."

23 And there's a certain findings of fact that a Board
24 of Zoning Appeals has to make in order to justify granting
25 a variance, but that's not even close to being the same

1 thing as a special exception.

2 Q Do variances run with the land?

3 A They do.

4 Q Do special exceptions necessarily run with the land?

5 A No.

6 Q What are the implications of that in this particular
7 case? In other words, if there's a change in ownership of
8 a cabana house like the one in this particular case, would
9 a subsequent owner need to apply for a special exception
10 use?

11 A They would.

12 Q Does the Zoning Department track changes in
13 ownership?

14 A We do not.

15 Q And the City is aware that the defendants are trying
16 to use the property in accordance with the cabana house
17 special exception? Is that the City's understanding?

18 A Yes.

19 Q Okay. I want to highlight here the first clause of
20 the special exception paragraph, "Owing to their potential
21 negative impact on the community and surrounding areas,
22 the following uses may be approved as special exceptions
23 by the Board of Zoning Appeals." Can you speak to why
24 that's important?

25 A Yes. You know, a permitted use -- the assumption is

1 that, as long as it meets A, B, C, D in the ordinance, it
2 is presumed to be permissible and permitted. You can have
3 it.

4 A special exception says maybe. Okay? Yes, you
5 still have to follow all those regulations, but the
6 context of where that use is going is critical and it's
7 important, and that's why it becomes then a subjective
8 judgment of the Board of Zoning Appeals, whether that
9 particular use is appropriate for that site given the
10 context of its surroundings.

11 Q And cabana houses, like you have said, that's a
12 specific type of special exception allowed or at least
13 potentially allowed in the R-4 district?

14 A Correct.

15 Q And there's a number of factors here. It looks like
16 seven. I want to focus first on 2 through 7. Let's talk
17 about subparagraph 2 first. Can you speak as to why it's
18 important for the City of North Myrtle Beach to institute
19 an ordinance that requires a special exception cabana
20 house to have a specific number of parking spaces?

21 A Yes, because if one of the primary motivations for
22 adoption of this ordinance was to provide relief for
23 overcrowded parking areas, then having on-site parking
24 furthers that goal.

25 Q And it also talks about shuttling as well?

1 A Correct.

2 Q Let's turn to the next provision, No. 3, the use of
3 the house be limited to bathing and change-of-clothing
4 facilities and occasional use as guest quarters and other
5 similar uses. Does that track with the limited commercial
6 -- excuse me -- the limited noncommercial manner for
7 cabana houses?

8 A Yes. The limitations listed in that section would
9 be consistent with a noncommercial use of the property.

10 Q And then 4, 5, and 6 talk about, you know, it being
11 within substantial harmony with the area which is located
12 not being injurious to adjoining properties and not
13 discouraging or negating the use of surrounding properties
14 for uses permitted by right.

15 Can you speak to, you know, those types of
16 standards that are -- are these typical standards that are
17 found in special exceptions?

18 A Yes.

19 Q Okay. Why is that?

20 A Well, I think it gives the Board of Zoning Appeals
21 some discretionary authority to make value judgments on
22 whether something is compatible and harmonious with the
23 surrounding context.

24 Q And let's focus on the end of the sixth provision
25 here. So it talks about "special exception will not

1 discourage or negate the use of the surrounding
2 property -- uses permitted by right." Does that imply
3 that special exceptions are not uses permitted by right?

4 A Correct.

5 Q So a person that does not have a special exception
6 does not have the right to have a special exception; would
7 you agree?

8 A Correct.

9 Q Let's go back to subparagraph one here and highlight
10 the end of that clause that a maintenance agreement be
11 submitted to the Planning Department. Why is that
12 important for a special exception consideration here?

13 A I think my understanding is that, in order to sort
14 of further those other goals, like 3, 4 -- or 4, 5, 6, and
15 7, you know, it's important that a property be properly
16 maintained. I mean, if it's not managed well, then it's
17 not going to further those other goals.

18 Q The appearance of property -- the appearance of
19 communities is a stated factor in Section 23-1 of the Code
20 of Ordinances?

21 A Yes.

22 Q And does the maintenance agreement support that
23 goal?

24 A It does.

25 Q All right. Before turning to the next section, the

1 definitional section of cabana houses, which is found in
2 23-2, I'm just going to highlight, "The homeowner
3 association shall be established for the project." Does
4 that kind of refer back to the definitional statements of
5 the cabana house?

6 A It does.

7 Q So let's take a look at that then. I'm displaying
8 now what's been marked as Plaintiff's Exhibit 3, which is
9 Section 23-2 of the City's Code of Ordinances. And so the
10 last sentence in this definition of cabana houses states:
11 "A cabana house shall be owned and maintained by a
12 homeowners association."

13 And that's distinguishable from one of the other
14 requirements that it be used by projects in North Myrtle
15 Beach; correct?

16 A Yes.

17 Q Okay. And so the City views these as two separate
18 requirements?

19 A Yes.

20 Q Okay. What are the City's interests in requiring
21 cabana house to be used by project in North Myrtle Beach?

22 A Well, our experience has been that there is a
23 substantial intensity difference between projects located
24 in the City versus projects that are out that may be more
25 transient in nature. As evidenced by some of the

1 information we found in the discovery, when the cabana
2 house was used primarily by Seabrook residents, they had
3 visitation numbers five, six, seven people a day in the
4 height of summer, but then when it was being utilized by
5 the defendant, those numbers were something like 15, 20
6 times that when the users became more transient in nature.

7 Q Does the City track where its permanent residents
8 are generally located?

9 A I don't understand the question.

10 Q Sure. I guess what I'm trying to ask is, are
11 projects inside the City, do they normally house permanent
12 residents of the City?

13 A It's a mixture. A lot of neighborhoods are
14 primarily owned by individuals who live there full time,
15 but there is a mixture of some second homeowners as well.

16 Q And then folks from outside the City, they're
17 obviously not permanent residents of the City; would you
18 agree?

19 A Yes.

20 Q Would you agree that they tend to be more transient
21 then? Vacationers, tourists, that sort of thing?

22 A Yes.

23 Q So there's a different population that the City
24 expects from the folks inside the City residing in
25 projects versus folks coming from outside the City?

1 **A** Yes.

2 **Q** So that difference in intensity that you just
3 described, what are the ramifications of that? What can
4 that type of intensity difference lead to?

5 **A** Well, I think a permanent resident, you know, would
6 go to the beach occasionally a few times a year or however
7 many times, but then, you know -- they're not going to be
8 -- typically, they're not going to be at the beach all the
9 time; whereas a transient resident would -- you know, if
10 their purpose of coming to the beach is to visit the
11 beach, then it's probably going to be a higher priority
12 during their brief visit to make it to the beach. So that
13 is reflected in the number of users that we see.

14 And as that intensity goes up -- intensity of use
15 goes up, so do the opportunities for negative impacts in
16 the surrounding neighborhoods. Traffic congestion, noise,
17 behaviorial issues.

18 **Q** Overcrowding?

19 **A** Yes.

20 **Q** Just general quality of life issues could result?

21 **A** Absolutely.

22 **Q** And would that, then, have a corresponding effect on
23 property values?

24 **A** It certainly could, yes. For example, if I were in
25 a market for a house and I went to visit the property and

1 I noticed that a next-door neighbor had a very rowdy,
2 highly intense land use with lots of noise and partying
3 going on, I would be far less likely to want to purchase
4 that property, and I would think that that would have some
5 impact on its perceived value.

6 Q This project requirement, it's not discriminating
7 against a certain class of persons, is it?

8 A No.

9 Q Are you familiar with primary and accessory uses,
10 Mr. Wood?

11 A Yes.

12 Q Can you describe those for the Court?

13 A A primary use is, again, like the dictionary
14 definition; it is the principal or main use of a piece of
15 property, whereas an accessory use is something that's
16 smaller and supports the primary use.

17 Q How does this project ordinance compare with primary
18 and accessory uses?

19 A Well, I look at it as a cabana house would be sort
20 of an accessory use to a project. And the primary use
21 would be the project itself. It could be a subdivision,
22 for example. And then the offering of a cabana amenity
23 would be accessory to that primary use.

24 Q What are some other types of accessory uses that are
25 allowed in the City of North Myrtle Beach?

1 **A** The most typical example would be if I have a house
2 and I want to have a storage shed for my lawn equipment,
3 the shed would be the accessory use to the primary use of
4 the residence.

5 **Q** Could hotels have accessory uses?

6 **A** They can. In fact, the R-4 district contemplates
7 that hotels may wish to have them. They do require them
8 to be located within the hotel building itself, such
9 things as newsstands or, you know, coffee shops, things
10 that users of that hotel would find convenient to have
11 inside the building.

12 **Q** Does the City of North Myrtle Beach require
13 accessory uses to be limited to the City of North Myrtle
14 Beach?

15 **A** Certainly.

16 **Q** Expressly within the zoning ordinance?

17 **A** I don't know if it states that language "expressly,"
18 but it's a common sense interpretation of an ordinance
19 that you cannot have an accessory use without a principal
20 use. For example, if I own a house in Loris, I can't go
21 into North Myrtle Beach and apply for a garage on a
22 property in North Myrtle Beach because the principal use
23 is not in North Myrtle Beach.

24 **Q** Are you familiar with R-1 and R-2 special
25 exceptions?

1 **A** Yes.

2 **Q** Are there that are similar to cabana houses?

3 **A** I would say that there is one that is very
4 functionally similar, and that is amenity centers. If you
5 have a neighborhood and let's say they want to have a
6 clubhouse and a swimming pool, that's that neighborhood's
7 amenity. Right?

8 So in the R-1 and R-2 district, to get an amenity
9 approved, you have to get a special exception to have that
10 amenity approved. And the reason behind that is that the
11 Board of Zoning Appeals wants to be sure that the context
12 of where that amenity is going is not going to be
13 injurious to surrounding property owners. Like, if I had
14 a subdivision, I wouldn't want to put the amenity on the
15 very edge next to someone else's neighborhood and have
16 pool noise all day impacting the surrounding neighborhood.
17 So that's why the BZA would have to have a role in
18 evaluating that.

19 It further states that an amenity center has to be
20 on a lot that is platted for an amenity in that
21 development. By implication, if it's a platted lot in a
22 development, it has to be inside the City or else we would
23 have no permitting authority for it. And then it also
24 further states that that amenity has to be in common
25 ownership, managed by the association.

1 Q So that amenity center clubhouse special exception
2 for the R-1 and R-2 districts, that's not too dissimilar
3 from a cabana house in the R-4 district?

4 A That's correct.

5 Q I suppose the difference is the cabana house would
6 be oceanfront?

7 A That and amenity is something that's housed internal
8 to the project; whereas, a cabana house can be outside of
9 the project.

10 Q Okay. So then let's go back to the other
11 requirement in this definition that the cabana house shall
12 be owned and maintained by a homeowners association. What
13 is the City's interest or what are the City's interest in
14 this particular requirement?

15 A We have found over the years that a homeowners
16 association are almost uniquely positioned to be an
17 effective partner with the City in helping to manage land
18 use issues and potential negative impacts of properties.

19 If I call Kelly White of Barefoot Homeowners
20 Association, I get a call back within minutes, if not a
21 couple of hours. If I call Cathy Weiss of the Tidewater's
22 Homeowners Association to discuss a problem with her, she
23 responds that day or, you know, nearly immediately.

24 And, in fact, the Tidewater Homeowners Association,
25 on their front page of their website, brags about the

1 special relationship they have with the City and in being
2 a good partner with the City.

3 Homeowners associations, by their construction, by
4 their nature, their reason for existence is to maintain
5 order and safety and property values for their
6 development, and, you know -- and they have kind of unique
7 tools in the sense that, in some ways, they're more
8 effective than a City issuing a citation.

9 Like if a homeowners association puts a fine on one
10 of their members, that generally constitutes a lien on the
11 property, and that can sometimes get the homeowner's
12 attention more quickly than a citation could from the
13 City.

14 Q Have you had to interact fairly frequently in your
15 individual capacity as the Director of Planning and Zoning
16 -- Planning and Development with homeowners associations?

17 A I have.

18 Q Does the HOA requirement also -- is that also in
19 keeping with the City's stated goal of having the cabana
20 house to be used in a limited, noncommercial manner?

21 A It does, yes. The homeowners association is going
22 to be an entity that is, you know, actively managing that
23 facility from within the City. They're going to be able
24 to be highly responsive, and they have tools at their --
25 they have tools at their beck and call to enforce

1 compliance.

2 They could ban somebody from using a facility fairly
3 quickly without all of the steps that the City -- I mean,
4 we don't have that authority. We can't ban a user from a
5 cabana house, but the homeowner association certainly
6 could.

7 Q Did the City anticipate when it was designing and
8 has the City required currently for cabana houses to have
9 business licenses?

10 A A cabana house, as approved under the special
11 exception requirements, does not require a business
12 license because it's not a business.

13 Q And so, if it's not a business and it's not required
14 to have a business license, how would the City regulate
15 without an HOA?

16 A Without an HOA, the only mechanism we would have
17 would be the issuance of zoning citations.

18 Q So we just discussed the City's interest and goals
19 in requiring that the project be within North Myrtle Beach
20 and the homeowners association owning and operating. Why
21 are these two particular requirements necessary when we
22 discuss some of the use ordinances that also regulate the
23 cabana houses? So why are these two requirements also
24 necessary?

25 A Well, in a community where you have 20 million

1 visitors to the beach, you can imagine that it is quite
2 the Herculean task to control and manage behaviors and
3 problems, and the City has limited resources to manage
4 issues within a community.

5 We don't -- you know, we have Public Safety
6 Department, you know, has to triage complaints as they
7 come in. We have to pay more attention to serious crimes
8 and accidents and drownings and things like that. We
9 don't have the staff capability or the resources to
10 effectively go around and issue hundreds of zoning
11 citations every day, and it would not be in the City's
12 interest to do so anyway because, you know, the courts --
13 the municipal court system would be completely and utterly
14 overwhelmed if we -- if that was the only tool we had to
15 our avail.

16 Q So, in other words, the projects in North Myrtle
17 Beach and the cabana house requirement, that helps
18 regulate the intensity of use so you're not having to
19 worry about the quality of life issues that could result?

20 A It absolutely does.

21 Q We spoke earlier about other zoning districts. What
22 zoning districts are available for other commercial
23 entities to use?

24 A We have a number of commercial zoning districts.
25 Some that spring to mind that allow commercial

1 recreational facilities such as like a clubhouse, for
2 example, would be the RC zoning district; the BC, which is
3 business commercial; and the highway commercial, HC
4 district.

5 Q And I don't believe you described what the RC stands
6 for.

7 A Oh, I'm sorry. Resort commercial.

8 Q How many lots are available in the RC district, if
9 you know? An approximation is fine.

10 A The last time I checked, there were approximately
11 135 distinct properties that are zoned RC in the City.

12 Q Are any beachfront in the RC district?

13 A Yes.

14 Q And are there even more lots that are available in
15 the BC and HC districts?

16 A Yeah. I don't have the exact number, but it is
17 significantly larger than what's in the RC, and some of
18 those districts -- if I'm not mistaken in looking at the
19 zoning map -- the highway commercial district and the
20 business commercial district, they extend as close as 600
21 feet to the ocean in some areas.

22 Q Would those districts allow for recreational uses,
23 the RC, BC, and HC?

24 A Yes.

25 Q Has the City ever prohibited recreational facilities

1 from owning a property in those districts?

2 A No.

3 Q Are those recreational uses, is that a permitted use
4 under those districts?

5 A I believe it is a permitted use.

6 Q And, again, a permitted use would be by right?

7 A Yes.

8 Q I think you said this before, nine miles of
9 beachfront in North Myrtle Beach; is that right?

10 A Approximately, yes.

11 Q And how many public parking areas exist in close
12 proximity to the beach in North Myrtle Beach?

13 A I believe the latest numbers we have
14 approximately -- just over a hundred areas where -- by
15 "areas," I mean either a piece of property owned in fee
16 simple by the City or street shoulders that are designed
17 to accommodate public parking. We have approximately just
18 over a hundred of those areas. Within those areas, there
19 are 2,100 parking spaces available that you have to pay to
20 use. In my opinion, the fee is pretty nominal. And then
21 we have approximately 290 free public parking spaces as
22 well. 36 street ends, and within those, 14 of those have
23 bathroom facilities.

24 Q So how many public beach access points are there
25 along that nine-mile beachfront?

1 A It's well over a hundred.

2 Q And are there some that provide direct access; is
3 that right?

4 A Yes.

5 Q Are there any that provide access to the second row?

6 A Yes. From my memory, a public beach access is
7 basically sort of an easement or a right-of-way that
8 allows people to traverse. And I think approximately a
9 third of those are second and third row, and two-thirds of
10 them would be oceanfront.

11 Q Do these beach access points, do they have -- some
12 of them have additional features to them?

13 A Yes. Like I said, we consider our street ends where
14 we have public parking lots at the end of the street as it
15 terminates at the beach, we have approximately 36 of
16 those, and I believe, of those, 14 of them have publicly
17 available restrooms.

18 Q And that would include changing facilities?

19 A Well, it's not specifically designed for changing,
20 but it is as private restroom stall, and people are
21 certainly free to change their clothes within that stall.

22 Q Is the City prohibiting the defendants or any of
23 their RV resort guests from using the public parking
24 locations that you have just described?

25 A Absolutely not.

1 Q What about the public access points that you just
2 described?

3 A We are not prohibiting that.

4 Q And what about the public bathroom locations that
5 are near the beach?

6 A No, they are welcome to use those.

7 Q Thank you, Mr. Wood. I don't have any further
8 questions for you, but opposing counsel may.

9 A Okay. Thank you.

10 MR. TAMASITIS: May I have a brief moment, Your
11 Honor, so I can get set up?

12 CROSS-EXAMINATION

13 BY MR. TAMASITIS:

14 Q All right. Mr. Wood, good afternoon.

15 A Good afternoon.

16 Q This is the third time we get to do this dance.
17 It's good to see you again.

18 A You too.

19 Q Real quick before I get started, so you're the
20 Director of Planning and Development for the City, and you
21 have been there 14 years?

22 A 15-1/2.

23 Q Okay. And in your position, you attend Technical
24 Review Committee meetings?

25 A Occasionally. Not always. Approximately 35, 40

1 percent of them.

2 Q And you were in the courtroom when we were talking
3 about the previous Technical Review Committee from back in
4 2018; right?

5 A I was.

6 Q Were you at that meeting?

7 A I was not.

8 Q And you were also the City's designee for its
9 Rule 30(b)(6) deposition; correct?

10 A Correct.

11 Q Now, you just mentioned that the defendants are free
12 to come use the public access beaches and to use the
13 parking; correct?

14 A Yes.

15 Q So we're free to use that, but we're just not free
16 to use or own a cabana house in the City; right?

17 A You're not a qualifying entity to own a cabana house
18 in the City.

19 Q Now, in your position as the Director of Planning
20 and Development, you supervise the Zoning Department for
21 the City?

22 A Yes.

23 Q And the Zoning Division handles all interpretations
24 of the zoning ordinance; correct?

25 A Yes.

1 Q And you only get involved on zoning issues when the
2 Zoning Administrator has a question or an issue needs
3 guidance on; right?

4 A That would be our typical practice, yes.

5 Q You would describe the Zoning Administrator as the
6 person at the City who is primarily in charge of
7 interpreting the zoning ordinance?

8 A Yes, that is one of their primary duties.

9 Q And so you would agree with me that, when the Zoning
10 Administrator is providing his interpretation of the
11 zoning ordinance to members of the public, he is speaking
12 on behalf of the City; right?

13 A Generally, yes. I would qualify --

14 Q So first I want to discuss --

15 MR. WILLIS: Your Honor --

16 THE COURT: Let him finish his answer.

17 A I would qualify it by saying that the City is not
18 bound to honor any interpretations that are incorrect.

19 BY MR. TAMASITIS:

20 Q Okay. So if the Zoning Administrator makes a
21 mistake, the City is not bound by it?

22 A That's correct.

23 Q So I want to discuss with you zoning letters. A
24 requestor may submit a request for a zoning letter to
25 determine whether certain uses or planned uses of the

1 property are consistent with the City's zoning ordinance;
2 right?

3 A Yes.

4 Q And the citizen or respective property owner can
5 reasonably rely on the Zoning Administrator's zoning
6 letter; right?

7 A Generally, yes.

8 Q But, in your position, you rarely have any
9 involvement in zoning letters?

10 A Correct.

11 Q As a matter of fact, you have only been involved in
12 maybe one or two zoning letters over the course of 15-1/2
13 years?

14 A I couldn't put a number to it, but it's very few.

15 Q And you are aware of the zoning letter issue in this
16 case?

17 A I am.

18 Q And Mr. Blust, he sent this letter. It was his
19 responsibility to make sure that the statements he made in
20 that letter were correct and he should have done whatever
21 necessary investigation was required to ensure those
22 statements were correct; right?

23 A That would be a general statement of his
24 responsibilities, yes.

25 Q Let's go ahead and turn to Defendant's Exhibit 35.

1 We're going to do a deep dive into these zoning ordinance
2 sections. Okay?

3 A Okay.

4 Q And you would agree with me that Section 23-2 is one
5 of the ordinances that's at issue in this case?

6 A Yes, the definition of cabana house in specific.

7 Q And it's my understanding -- if we want to go ahead
8 and just highlight that definition.

9 It's my understanding that the cabana house special
10 exception was enacted sometime around 1996?

11 A That is my understanding as well.

12 Q And it's your understanding through discussions with
13 Mr. Blust that the City Council is looking for a way to
14 accommodate a request from Tidewater, and the cabana house
15 special exception was written in a narrow fashion so that
16 it would accommodate Tidewater and the cabana houses that
17 already existed without opening up to the entire city;
18 right?

19 A I don't know if I would agree with that last part,
20 "without opening it up to the entire city." What we
21 typically do an ordinance amendment is, if the City
22 Council deems that they want to grant the request of the
23 person who asked for the amendment, they direct staff to
24 prepare it so that it does that but also keep in mind that
25 other individuals may want to take advantage of that

1 ordinance, so don't write it in such a way that, you know,
2 the original requester benefits but then it harms the City
3 by allowing hundreds of other people to benefit too.

4 You know, it's always a balancing act. We consider
5 does the request meet what the applicant has asked for and
6 does it also have, you know, good -- does it make for
7 sound policy for the rest of the City.

8 Q All right. So you don't want it to be excessively
9 broad. There is a narrowness that you're trying to keep
10 with it.

11 A Yes.

12 Q And so let's work through the pertinent parts of the
13 definition in this case. Obviously, the main one -- or
14 one of the main ones -- is it must be used by a project in
15 North Myrtle Beach.

16 Now, you have testified as the City's designee that
17 it's the City's interpretation that a cabana house must be
18 used exclusively by projects in North Myrtle Beach; is
19 that correct?

20 A I believe -- unless you can show me otherwise, I
21 believe my testimony was that by use by those projects
22 and/or their guests.

23 Q Okay. But the project itself, they have to be
24 associated with the project --

25 A Yes.

1 Q -- and that project exclusively.

2 A Yes.

3 Q So it can't be a partnership between the project
4 and, say, another homeowner -- another entity or
5 another -- there can't be an agreement between an
6 in-North-Myrtle-Beach project and
7 an-outside-of-North-Myrtle-Beach project to use the cabana
8 house?

9 A As that was not contemplated that those kind of
10 partnership agreements would be happening, I think the
11 ordinance was written in a way that it did not contemplate
12 that scenario. So I -- yeah, I'm not sure if that answers
13 your question.

14 Q It doesn't. Would it be -- if it's exclusively
15 projects in North Myrtle Beach and those projects' guests?
16 Is that a better way to explain it?

17 A Yes.

18 Q Okay. And the term "project" is not defined
19 anywhere in the zoning ordinance; right?

20 A That's correct.

21 Q But under your interpretation, the term "project"
22 could range anywhere from condo projects to single-family
23 subdivisions or any sort of coherent collection of housing
24 units on a tract of land; right?

25 A Yes.

1 Q And the ordinance does not prohibit commercial
2 projects from owning -- or from being associated with a
3 cabana house; right?

4 A It does not prohibit them in that specific language,
5 the assumption being that a commercial project would
6 likely not have a homeowners association though.

7 Q Okay. But it doesn't expressly prohibit commercial
8 projects; right?

9 A Yes.

10 Q And the ordinance does not state that the project
11 must be a planned residential development; right?

12 A No.

13 Q Now, we have discussed kind of the narrowing nature
14 of the ordinance. It's yours understanding that City
15 Council wanted to adopt something so that there was not a
16 large proliferation of oceanfront properties that are
17 being taken up and used by projects not in the City;
18 correct?

19 A I do not know if their -- in their contemplations
20 they considered that it was necessary to exclude outside
21 projects. I don't know that that was in their motivation.

22 Q So your testimony here today is that you are not
23 sure what City Council's motivation was, and it wasn't to
24 adopt something so that there was not a large
25 proliferation of oceanfront properties that were being

1 taken up and used by projects not in the City?

2 A I have no knowledge whether that was in their mind.

3 Q But you did explain that City Council understood
4 that there's attractiveness of being in the city, and so
5 Council decided to reserve cabana houses for projects
6 within the City as an enticement for developers to come
7 and do economic development within the city instead of
8 outside the city?

9 A Well, I would put it like this: In the state of
10 enabling legislation where it talks about comprehensive
11 plans, there's ten requirements elements in a comp plan.
12 Two of them -- one of them is an economic component.
13 Another one is a priority investment component.

14 So foremost in the mind of the State who crafted the
15 legislation is that comprehensive plans should at least
16 consider, as part of an overall package of other
17 considerations, the health of the local economy. So that
18 informs many of our policymaking decisions.

19 Q So I mean, I'm not -- it's not like it's a damming
20 account on the City. It's saying that part of the purpose
21 behind this was to entice developers to come and do
22 economic development in the City instead of outside;
23 right? It's competition.

24 A Well, I don't know that they considered that at the
25 time. In going back through the legislative history since

1 my original deposition, it's not clear to me that they
2 considered that as an economic enticement. I think their
3 primary motivation was to prevent overcrowding at the
4 beach and to alleviate congestion and competition for
5 public parking.

6 Q Okay. So you are changing your deposition
7 testimony?

8 A Well, I'm refining it based on new information that
9 came to my attention after that.

10 Q Are you refining it or are you just trying to avoid
11 the economic considerations into this zoning ordinance?

12 A I'm not avoiding anything. I freely admit that
13 economic considerations can be a factor, among many.

14 Q Was it a factor in this case?

15 A I don't know that because I was not present during
16 that time. But, you know, based on what I have read since
17 about the legislative history, I find no evidence that
18 economic considerations were forefront in Council's mind.

19 Q And legislative history, you're referring to as the
20 planning documents and the committee meetings?

21 A The trail of paperwork that documented the minutes
22 of the meetings and council consideration, the issue
23 papers and staff reports.

24 Q And this type of restriction, the ownership
25 restriction we're discussing, it does not exist for any

1 other special exception in the R-4 district; right?

2 A Well, not by direct language to that effect.

3 However, again, after reviewing the documents, you know,
4 during the deposition, I don't have the zoning ordinance
5 committed to memory. So during the deposition, it did not
6 occur to me that the amenity thing that we talked about
7 earlier, where a special exception for a residential or a
8 community's amenity, without stating it in those words,
9 the implication in the common sense interpretation would
10 be that it would have to be for a project in the City
11 because it says it has to be a lot platted for an amenity,
12 and that lot is platted by virtue of it being in the City
13 and going through our approval process.

14 And it further states that it has to be owned by --
15 in common ownership by a homeowners association. So, in
16 my view, that is functionally similar to the requirement
17 for the cabana house.

18 Q And what district is that in?

19 A That, I believe, is in R-1 and R-2. It may be in
20 some others as well.

21 Q Well, my question was about the R-4 district.

22 A Oh, I'm sorry. I apologize. I didn't realize you
23 were referring to strictly to R-4.

24 Q There's no ownership requirement for any special
25 exceptions in the R-4 district?

1 A May I look at the --

2 Q Absolutely.

3 MR. TAMASITIS: Let's pull up 22-23 for him. It's
4 Exhibit No. 36. And if you can go ahead and scroll down
5 to where it has special exceptions.

6 A Can you scroll down further, please? More. Yes.
7 You are correct. In the R-4.

8 BY MR. TAMASITIS:

9 Q Now, I want to talk about something -- this is the
10 first time I have heard you talk about this; you did it on
11 the direct -- about the intensity difference between
12 out-of-City projects versus in-City projects. I want to
13 revisit this real quick.

14 So that intensity analysis you did, that just has to
15 deal with Carolina Pines; right? Or did you go to other
16 projects outside North Myrtle Beach to test the density
17 levels or the intensity levels?

18 A To me, the issue becomes the difference in intensity
19 that results from being sort of a permanent or a
20 semipermanent resident versus a transient user. So it's
21 not tied to the geographic location, so to speak. It's
22 tied to the type of user.

23 Q Okay. So then would it mean that short-term rentals
24 have more intense use than the person residing there?

25 A They can.

1 Q They can? Possible?

2 Did that go into your analysis about the different
3 intensity uses from transient folks to folks that are
4 living in North Myrtle Beach?

5 A Not in the context of this case. We have examined
6 whether or not we wish to adopt short-term rental
7 regulations in the last couple of years, and that
8 intensity of use is key and forefront in those efforts to
9 decide whether we want to regulate those.

10 Q But with respect to this case and with respect to
11 this ordinance that the analysis that the intensity is
12 greater from transient or visitors from coming in from
13 outside the City was just based on looking at the Carolina
14 Pines RV Resort; correct?

15 A Well, to me, it's a matter of common sense that's
16 supported by the data -- by the usage data in this case.

17 Q We'll get to your common sense about the special
18 exceptions too.

19 You talked about property values and the impact on
20 property values. Isn't that an economic consideration
21 taken into account by the City when they're drafting
22 zoning ordinances?

23 A Well, in the comp plan itself says that you want
24 healthy, vibrant communities, and one component of having
25 a health, vibrant community is having a healthy, vibrant

1 economy. So that always is in sort of the background in
2 forming policy decisions.

3 Q So I could -- I mean, can we agree that the comp
4 plan does take into account the economic considerations
5 and the economic welfare of the City?

6 A Yes.

7 Q We can agree with that?

8 A Yes.

9 Q Going back real quick to the intensity issue, the
10 difference in intensity can also be remedied by
11 operational limits on the number of people that use a
12 certain project or property; right?

13 A They could hypothetically, yes.

14 Q And, again, that intensity difference, as you
15 testified earlier, was that has an impact on property
16 values?

17 A It can.

18 MR. TAMASITIS: If we can pull up Exhibit 35. And
19 we'll keep working through 23-22 for a little bit.

20 BY MR. TAMASITIS:

21 Q So the other provision in Section 23-2 that's at
22 issue in this case, that a cabana house must be owned by a
23 homeowners association; right?

24 A Yes.

25 Q And it's your belief that a homeowners association

1 is more responsible and accountable than a depersonalized
2 corporate entity, and it's easier for the City to get
3 problems associated with a cabana house resolved by
4 working with the homeowners association; correct?

5 A Yes.

6 Q Homeowners associations are not-for-profit corporate
7 entities; right?

8 A That is correct.

9 Q They charge dues and fees?

10 A Yes.

11 Q They own common property?

12 A Yes.

13 Q They enter into contracts, spend funds, hire
14 third-party vendors to do landscaping?

15 A Yes.

16 Q And that's done to protect property values by the
17 enforcement of their conditions and CCNRs?

18 A Yes.

19 Q But for this zoning ordinance and this section, the
20 City's argument is that the homeowners association is an
21 accountability and responsiveness issue; right?

22 A Yeah, I believe it is our belief -- the City's
23 belief that homeowners associations are more accountable
24 and responsible than -- in the context of this ordinance.

25 Q But neither your office nor the City at-large has

1 done any comprehensive studies regarding that
2 responsiveness data, have they?

3 A No, it's anecdotal evidence from our experiences.

4 Q Now, condo projects would be considered a project
5 under Sections 23-2 and 23-22; right?

6 A Yes.

7 Q But condos don't normally organize HOAs; correct?
8 They're normally horizontal property regimes?

9 A I don't know that I have the good answer to that. I
10 know of condo projects that have HOAs. I'm not personally
11 aware of any that don't.

12 Q Do you know if Barefoot's condo project that's in
13 there, BRA, is that a horizontal property regime or a
14 homeowners association?

15 A Well, I mean, I think they're participating members
16 in them -- in the homeowners association.

17 Q And do you know if they have access to their cabana
18 house?

19 A I don't know the answer to that.

20 Q Do you know if timeshare communities can form HOAs?

21 A I'm not aware.

22 Q Are you aware that Links Golf and Racket Club is a
23 timeshare community?

24 A If you're representing that it is, I'll take your
25 word for it.

1 Q In 1995, when the concept of the cabana house
2 special exception in the R-4 district was first suggested,
3 it was to accommodate the request by Tidewater. You
4 already talked about that; right?

5 A Yes.

6 Q And Tidewater is a large -- I mean, significant-size
7 development in North Myrtle Beach; right?

8 A It is.

9 Q And the cabana house with a private beach access,
10 private bathrooms, air conditioning, etc., is a valuable
11 amenity to any project that size?

12 A I would say that's a fair statement.

13 Q And it also probably helps market lots and rentals
14 and folks coming to Tidewater and other large-type
15 entities that would have access to a cabana house; right?

16 A Common sense would say so.

17 Q And like any amenity to real estate on rental
18 projects, the cost of the amenity can be passed on to the
19 folks that are operating the homeowners association or
20 owning property within those residential developments;
21 right?

22 A Yes.

23 MR. TAMASITIS: Can we go to Exhibit 36?

24 Defendant's Exhibit 36. Thank you.

25 BY MR. TAMASITIS:

1 Q Can you read for the Court -- actually, I think you
2 have already done this. You have already read the
3 purpose?

4 A Yes.

5 Q So according to your assessment, this district is
6 somewhat similar to the resort commercial district --

7 A Well, it was.

8 Q -- where it was -- let me finish my question --
9 where it was intended for properties located on or near
10 the ocean where you can resort-style development,
11 including single-family and multi-family resort
12 accommodations; is that right?

13 A In that continuum of intensity, it is a step below
14 resort commercial.

15 Q Yeah, I heard you testify about that. That was
16 interesting. And I didn't ever think about this like
17 this. So R-1 would be the lowest form of intensity, and
18 then R-2, R-3, R-4, and then resort commercial is next?

19 A Yes.

20 Q And what's above resort commercial?

21 A Then I think you get into the more commercial zoning
22 districts that don't necessarily have a residential
23 component.

24 Q So is resort residential and resort commercial,
25 they're the two mixed-use districts for the City?

1 A Well, what do you mean by "mixed use"?

2 Q Let me ask you, what is mixed use? You're the one
3 with the AICP and all the education. What's a mixed use?

4 A Well, my reading of this -- and, again, I wasn't
5 here when the City adopted that -- but my reading of this,
6 when they say "mixed use," I think they primarily meant a
7 mixture of different housing types: Condos, townhouses,
8 single-family, multi-family, and with very limited -- for
9 the R-4, with very limited allowance for commercial.

10 MR. TAMASITIS: Can you pull up Exhibit -- let me
11 see my list. This might be able to help us out a little
12 bit. Can you pull up Exhibit No. 49?

13 BY MR. TAMASITIS:

14 Q Are you familiar with this photograph?

15 A I think so.

16 Q Yeah, that's the cabana house in the foreground?

17 A Oh, yes, yes, yes.

18 Q And what's across the street?

19 A Appears to be a condominium project.

20 Q And that's the Tilghman Ocean -- Tilghman Beach and
21 Golf Resort?

22 A That sounds right.

23 Q And you said that's a condominium project? Are you
24 sure of that?

25 A I'm not entirely sure, no.

1 Q But your testimony was that the R-4 -- the way you
2 look at mixed use in the R-4 would be different levels of
3 residential structures, and then would be, in resort
4 commercial, different levels of commercial? Or does mixed
5 use mean a mix of residential and commercial?

6 A It can mean that, yes.

7 Q Okay. And there are properties in the R-4 resort
8 residential district that are owned by persons who do not
9 reside in North Myrtle Beach; right?

10 A Sure.

11 Q And there are properties that are probably used as
12 second homes, investment properties, and short-term
13 rentals?

14 A Yes.

15 Q Now, in your 15-1/2 years as a Director of Planning
16 and Development for the City, you're not aware of any
17 other situations where the City has -- as it has in this
18 case -- demanded that an entity or person or relinquish
19 its ownership of property in the City because of a zoning
20 ordinance violation; right?

21 A Well, I would answer that by saying I'm not
22 convinced that we are demanding that you relinquish the
23 property.

24 Q Okay.

25 A But no, the answer to that question is no. But,

1 again, there are alternatives to relinquishment of the
2 property.

3 Q And let's -- and the reason why that this case is
4 here now isn't because of the noise complaints, and it's
5 not because of the weddings and stuff. It's really
6 because of the thing that can't be cured is the ownership
7 of the homeowners association for a project in North
8 Myrtle Beach; right?

9 A As a cabana house.

10 Q Right. That's the reason why we're here right now
11 is because of that restriction.

12 A Yes.

13 Q Would you agree with me -- so we have gone through
14 23-2 and 23-22. Would you agree with me that the zoning
15 ordinance for the cabana house, that special exception,
16 basically regulates two aspects of the cabana house? It
17 regulates the use considerations -- substantial harmony,
18 not injurious to properties -- and then it regulates the
19 ownership of a cabana house. There's two separate
20 regulations there. It's how it's owned and then how it's
21 used. Would you agree with me on that?

22 A Yes.

23 Q And what has come through in your testimony and the
24 testimony from others from the City is that the cabana
25 house -- the intent was it would not have commercial use;

1 is that correct?

2 A Yes.

3 Q And you testified in the deposition -- we talked
4 about it earlier today -- that there is no expressed
5 exclusion of commercial ownership and not commercial
6 projects; right?

7 A Not expressed in that language, no. But, you know,
8 a commercial entity is not a homeowners association, so...

9 Q Okay. And do you know what the requirements are for
10 where a homeowners association has to -- its governing
11 documents need to be recorded in order for it to be
12 effective?

13 A My understanding is that it would have to be
14 recorded in the county in which they were promulgated at
15 the courthouse.

16 Q And where the property is located; correct?

17 A I don't understand the question.

18 Q The governing documents need to be recorded in the
19 county where the property that it owns is located?

20 A Yes.

21 MR. TAMASITIS: We can go to Exhibit No. 33, please.

22 BY MR. TAMASITIS:

23 Q Okay. There's an Exhibit 33 in that notebook up
24 there. This might be an easier way to do this.

25 A Okay.

1 Q Or I can put it up on the screen? How do you want
2 to do it?

3 A Let's try the screen first.

4 Q If we can go to Interrogatory No. 18. Do you see
5 that? Here's what we're going to do for this: I'll read
6 the question and then you read the answer. Okay?

7 A Okay.

8 Q So, 18: "Please explain how the zoning ordinance's
9 limitation of the use of properties zoned as cabana
10 houses, exclusively to projects in North Myrtle Beach,
11 furthers the general purpose of guiding development in
12 accordance with existing and future needs in promoting the
13 public health, safety, morals, convenience, order,
14 appearance, property, and general welfare for the City of
15 North Myrtle Beach."

16 A Okay.

17 Q Your turn.

18 A And you need me to read the answer?

19 Q Please, sir.

20 A "Plaintiff herein incorporates by reference its
21 answer to Interrogatory No. 17 and supplements with the
22 following: The requirement operates to encourage and
23 support local private developments and their corresponding
24 homeowners associations as opposed to nonlocal corporate
25 enterprises by providing them with a private beach club

1 and access point to the beach. It also encourages
2 investment in the City rather than in projects outside of
3 the City. Ultimately, this requirement is reasonable and
4 has a tendency to promote the general welfare of the
5 adjoining properties in the R-4 residential district,
6 specifically in the City generally."

7 Q We're going to do the same thing for 19. Okay?

8 So, 19 is: "Please explain how the zoning
9 ordinance's requirement that a cabana house shall be owned
10 and maintained by a homeowners association with a
11 maintenance agreement submitted and approved by the
12 Planning Department furthers the general purpose of
13 guiding development in accordance with existing and future
14 needs in promoting the public health, safety, morals,
15 convenience, order, appearance, property, and general
16 welfare for the City of North Myrtle Beach."

17 A "Plaintiff herein incorporates by reference its
18 answers to Interrogatory No. 17 and 18 and supplements
19 with the following: This requirement supports the
20 esthetics of the residential district because it
21 encourages the upkeep and slight" -- I think slightly?

22 Q I think it should be "slightly"?

23 A "Slightly landscaping that is reasonable and has a
24 tendency to promote the general welfare of the adjoining
25 properties in the R-4 residential districts specify and

1 the City generally."

2 Q And you did not draft these responses; correct?

3 A I did not.

4 Q But you do agree with them; right?

5 A Well, in context with -- not in isolation. I would
6 certainly say as a package with Interrogatory No. 17,
7 which was not shown to me.

8 Q You would agree with them then?

9 A Yes.

10 Q And you also agree with me that the intent behind
11 the restrictions we have been discussing are designed to
12 encourage or protect economic considerations within the
13 City; right?

14 A That is a factor.

15 Q And they are also designed to encourage investment
16 in the City by even projects outside of the City; right?

17 A A factor in conjunction with the others.

18 Q The City markets its tourism through the collection
19 of accommodation taxes through the State; correct?

20 A Yes.

21 Q And an accommodation tax is levied on overnight
22 accommodations for things such as hotels, motels, and
23 rentals; correct?

24 A Yes.

25 Q And the amount remitted to the City from the State

1 is based upon the business or activity happening in the
2 City; is that right?

3 A I believe that's correct.

4 Q And the portion of the accommodation taxes remitted
5 back to the City from the State would increase if the RV
6 resort at issue here was located in the City; correct?

7 A Yes.

8 Q I want to talk about the legitimate municipal
9 interest the City has articulated in this case as the
10 reasons for the residency requirement. The City has
11 indicated it has three municipal interests so far that are
12 furthered by the residency requirement. Those are
13 responsiveness, quality of life, and preservation of
14 property values; is that correct?

15 A I believe that's right.

16 Q And the City has not commissioned any studies with
17 respect to any of these interests; correct?

18 A Not formal studies, no.

19 Q And with regards to responsiveness, that's only
20 directed at limiting the ownership of cabana houses to
21 homeowners associations; right?

22 A I'm not sure I understand the question.

23 Q So the responsiveness, municipal interest, that's
24 only directed at the requirement that the property be
25 owned by a homeowners association; right?

1 A I believe that to be the case.

2 Q It has nothing to do with the project outside of
3 North Myrtle Beach?

4 A Right.

5 Q And as to quality of life, the City believes that
6 the geographic project restriction advances the quality of
7 life for the community by directing growth into areas
8 where the City thinks it's appropriate; correct?

9 A Yeah, in the sense that, you know, if the -- a
10 community has an opportunity to have access to the beach
11 through a cabana, then they are less likely to try to
12 purchase land on the oceanfront and possibly overdevelop
13 it.

14 Q Or purchase land outside the City, go somewhere else
15 and try to find that land?

16 A I can't speak to that motivation.

17 Q As you said before, it's common sense; right? You
18 want to keep it in North Myrtle Beach if you can.

19 A Keep what in North Myrtle Beach?

20 Q Keep the business, keep the development, keep the
21 investment in North Myrtle Beach.

22 A Well, that's not our primary motivation for anything
23 that we do, keeping it inside the City. We --

24 Q Well --

25 A I'm not sure what you're getting at.

1 Q And I'm not taking issue with the City here. As a
2 matter of fact, the quality of life issues, we fully
3 understand and we can appreciate. I think when we had our
4 first deposition, we talked about how the general idea of
5 the cabana house was to keep high-rises off the beach;
6 right?

7 A Yes.

8 Q It was so it wouldn't turn into Miami; correct?

9 A Yes.

10 Q So it would allow projects off the beachfront to
11 have a private beach access without cluttering the
12 beachfront; right?

13 A Yes.

14 Q And that makes complete sense. And so the RV
15 resort, had it been located in North Myrtle Beach, would
16 actually satisfy that purpose or the intent behind the
17 cabana house perfectly; right?

18 A If it also had a homeowners association, yes.

19 Q Right. Okay. But if it was located in North Myrtle
20 Beach, it falls in line with what the overall intent of
21 the zoning ordinance is?

22 A Yes.

23 Q So -- and the City doesn't want that to move outside
24 the City. They want to be able to keep it within the City
25 because they want to develop that economic base, that tax

1 base within the City. I mean, there's nothing wrong with
2 that; right?

3 A Well, we always -- again, any time we promulgate an
4 ordinance, one of the very many factors that we have in
5 mind is promoting a healthy city economic. But it's
6 not -- you know, we don't do an economic impact analysis
7 of every one of our land uses in the city to say, "Oh, my
8 gosh, is this going to increase tax rolls?" We never
9 engage in that kind of analysis.

10 Q And there were some discussion about discrimination,
11 and Mr. Ricard asked you questions. The zoning ordinance
12 doesn't discriminate against a class of persons; right?

13 A Correct.

14 Q But it does discriminate against -- between users in
15 a residence or projects in the City and those from outside
16 the City; right?

17 A Well, what do you mean by "discriminate"?

18 Q Okay. Let's use the word "exclude." It excludes.

19 A The ordinance does not exclude ownership of
20 beachfront property by anyone inside or outside the City.
21 It excludes people that live outside the City from owning
22 and operating a cabana house.

23 Q That was not my question.

24 A It's a very limited thing. But you can own property
25 for any purpose.

1 Q Okay. So I'll make my question more specific. The
2 zoning ordinance and the sections at issues with regard to
3 special exceptions for cabana houses excludes ownership
4 between projects in the City and projects outside the
5 City?

6 A On its face, yes.

7 Q On its face.

8 And requiring ownership by an HOA for a project in
9 North Myrtle Beach, against all other types of entities
10 that are not HOAs in North Myrtle Beach, is exclusionary
11 on its face as well; is it not?

12 A Well, it's a requirement. I don't know if I'm going
13 to characterize it as exclusionary. I mean, it is simply
14 a requirement for applying for that use.

15 Q If the ownership and use restrictions for the cabana
16 house are declared to be enforceable, as unconstitutional,
17 will the entire land use plan of the City be undermined or
18 set aside?

19 A No.

20 Q Your understanding is that Sun is only challenging
21 two aspects of the zoning ordinances it acknowledges it
22 can comply with: that Sun isn't an HOA and it's an RV park
23 that isn't in North Myrtle Beach; right?

24 A Yes.

25 Q Finally, I wanted to refer to -- we were

1 discussing -- you said that you don't believe in this
2 lawsuit that the City is seeking the Sun defendants from
3 giving up or divesting themselves of ownership of the
4 property.

5 Are you aware that, in the complaint and the prayer
6 for relief, it says that "The City of North Myrtle Beach,
7 having made this complaint as to defendant, prays that
8 this Honorable Court issue its order finding and holding
9 that ownership and use of the cabana house located upon
10 the property as currently exercised by the defendants is
11 in violation of the applicable zoning ordinances and that
12 such ownership and use must immediately cease and desist"?

13 A I'll take your word for it that it says that.

14 Q And you're not aware of the City ever going down
15 that avenue of having ownership of the private property
16 cease and desist because of a violation of the zoning
17 ordinance, are you?

18 A In my opinion, there are alternatives to having the
19 ownership cease. It's the very narrow context of owning
20 and operating a cabana house that is incurable by, you
21 know, enforcing a zoning ordinance. But there are many
22 alternatives that exist such as Sun can continue ownership
23 of the property and put it to a permitted use in the R-4
24 zoning district.

25 It could seek land within the City and develop a

1 project within the City and then reapply for a special
2 exception for that cabana house to be in the City.

3 So there are alternatives -- legitimate
4 alternatives. They could also have sought an ordinance
5 amendment to change the requirement for the ownership.
6 None of those remedies were ever pursued, to my knowledge.

7 So those are viable alternatives that would fall
8 short of relinquishing ownership.

9 Q And you just said that the -- to your knowledge,
10 there was -- Sun never sought a tax amendment or a
11 variance to the ordinance?

12 A That's correct.

13 Q And you just brought something up, and I wanted to
14 touch on it real quick, the special exception and it not
15 running with the land and variances running with the land.

16 You would agree with me, after what we've talked
17 about with the homeowners association and the ownership
18 requirement that we have been discussing for cabana
19 houses, that it's unique in the zoning ordinance, that
20 ownership requirement as being part of the special
21 exception; right?

22 A Other than the aforementioned ones about
23 amenities -- residential amenities.

24 Q And then there's five cabana houses, and I don't
25 know how many more of those other things in R-1, but it's

1 a small number.

2 A Small number, yes.

3 Q So a small number of special exceptions subject to
4 an ownership type of requirement. And so shouldn't this
5 be in the ordinance if the City doesn't check on those
6 zoning letters and property transfers on a routine basis
7 because --

8 A Shouldn't what be in the ordinance?

9 Q That a special exception needs to be applied for by
10 a new owner.

11 A Ideally, it would probably -- it should contain
12 language to make that more clear.

13 Q Yeah. And if it was in the ordinance for this case,
14 we probably wouldn't even be here?

15 A Well, I don't know about that, that I would agree
16 with that, because I mean, it's -- the ordinance language
17 is very clear, and it's unfathomable to me that a
18 multi-national, multi-million-dollar corporation wouldn't
19 avail themselves of the opportunity to download the
20 ordinance from a website and read what it says.

21 Q And if they read it, it would have said nowhere in
22 the ordinance that they had to apply for a special
23 exception.

24 A Well, it doesn't state that, but again --

25 Q Okay.

1 A -- if -- you know, if -- any common sense reading of
2 the ordinance would indicate to them that they were not a
3 qualifying entity to own and operate a cabana house.

4 Q And so I guess -- you say "common sense," but I
5 guess it wasn't common sense, then, to all the previous
6 owners from 2007 on because none of them reapplied for a
7 special exception; right?

8 A Well, I can't speak to what due diligence they did
9 or did not do.

10 Q Thank you. No further questions.

11 MR. RICARD: May I have one moment, Your Honor?

12 CROSS-EXAMINATION

13 BY MR. RICARD:

14 Q Okay. Mr. Wood, y'all covered a good bit of ground,
15 so I'm going to do my best to make this as concise as
16 possible, but forgive me because we're probably going to
17 switch gears a good bit.

18 You were asked some questions about Mr. Blust's
19 zoning letter, so I just want to pull that up and
20 highlight the last portion here.

21 "There are no known zoning violations on the
22 property." Was that the City's understanding at the time,
23 that there were no known zoning violations on the
24 property?

25 A Yes.

1 Q Okay. So the City believes that Mr. Blust was
2 accurate there?

3 A To the best of his knowledge, yes.

4 Q You were also asked some questions about whether the
5 ordinance -- the project requirements specifically
6 requires it to be exclusively a project inside the City.

7 If it were allowed for a project inside the City to
8 partner or have some affiliation with a project outside
9 the City, could that lead to a circumvention of the
10 ordinance in and of itself?

11 A Certainly. The intensity of use would very likely
12 increase quite dramatically.

13 Q You were asked some questions about the project and
14 whether the project could be a commercial project or
15 whether it could be a noncommercial project. Do you
16 recall that line of questioning?

17 A Yes.

18 Q All right. Is it the City's understanding that the
19 projects inside the City, those developments, they may
20 start commercial but, generally speaking, are they turned
21 over to homeowners associations?

22 A Yes. What typically happens is a developer will
23 come in and start developing the property, and when they
24 get to a certain point in their progress of their
25 development, then and only then do they turn over

1 ownership to the homeowners association. So it's quite
2 common that it could be months, it could be years before
3 that transfer to an actual homeowners association is
4 actually done.

5 Q Okay.

6 A And it is our expectation that that is done in most
7 cases, and I'm personally not aware of any case where that
8 was not done.

9 Q You were asked some questions about enticement for
10 developers to stay inside the City and that sort of thing.
11 Is an enticement the same -- is the ordinance as written,
12 is it enticement to stay in the City or is it enticement
13 to move off development from the beachfront?

14 A I'm sorry? With respect to...

15 Q Developing projects. So projects can be developed
16 either on the beachfront or more inland. Would you agree
17 with that?

18 A Mm-hmm, yes.

19 Q Okay. So the allowance for a cabana house, is that
20 an enticement for projects to be developed inside the City
21 or is it enticement for projects to move more inland and
22 off the beachfront?

23 A Move more inland and off the beachfront.

24 Q You were also asked some questions about who this
25 ordinance was written for. Originally, Tidewater was the

1 requesting party for this ordinance. Would you agree with
2 that?

3 A Yes.

4 Q Was there also an existing beach club of sorts that
5 another project had at that time?

6 A Yes. I believe there was one called The Links that
7 had a beach cabana, and that predated our ordinances, so
8 they would be grandfathered from any new requirements that
9 were promulgated with the ordinance.

10 Q Okay. So The Links was grandfathered. Tidewater
11 was approved as a special exception. So there were two
12 projects at that time.

13 I'm sorry; is that a yes?

14 A Yes. Sorry.

15 Q And then, eventually, other projects were approved
16 as well?

17 A Yes.

18 Q So it wasn't just something designed just for
19 Tidewater?

20 A No.

21 Q It was written in a way -- the ordinances were
22 written in a way to allow for others to apply and be
23 approved?

24 A Absolutely, as we do with all text amendments. We
25 try to consider the needs of the original requestor while

1 also bearing in mind that it has implications to other --
2 you know, citywide and that it has to be written in such a
3 way that both can be accommodated.

4 Q You were also asked some questions on cross
5 regarding can't the intensity of use be regulated by
6 occupancy limits and that sort of thing. How often does
7 the City take enforcement action or actively hunt for
8 occupancy limit violations?

9 A The only instance where that authority is exercised,
10 to my knowledge, is when our City Fire Marshal becomes
11 aware of an occupancy violation for things like bars and
12 restaurants when they have too many people in them.

13 Q Is it safe to say that the City doesn't want to have
14 to go out to the same location day after day regarding
15 occupancy limits when there's perhaps more serious issues
16 that are going on in the City, such as Mr. Mahaney talking
17 about police officers getting shot or killed and that sort
18 of thing?

19 A Yes. We have very limited resources and limited
20 ability to prosecute things, and we have to triage them
21 carefully to make sure that, you know, we don't get
22 overwhelmed.

23 Q You were also asked some questions about condo
24 projects not normally being homeowners associations. I
25 believe you testified that you really weren't tracking

1 whether that was true or not. Is that --

2 A That's correct. I don't claim any special knowledge
3 about how condos organize themselves.

4 Q Okay. In this particular case, Sea Cloisters I and
5 Sea Cloisters II, you know that they happen to be
6 homeowners associations.

7 A Yes.

8 Q Okay. And those are condominium projects?

9 A Yes.

10 Q You were asked some questions about some discovery
11 responses that were submitted very early in this case,
12 March 24th of 2022, so a few months after the lawsuit was
13 instituted. And you were asked to read some responses to
14 Interrogatories 18 and 19 that were propounded by
15 Defendants.

16 And you read off some lines here that the plaintiff,
17 the City, incorporated by reference answer to
18 Interrogatory 17; correct?

19 A Yes.

20 Q And you didn't have the opportunity to actually read
21 that answer off to the Court, did you?

22 A That's correct.

23 Q Well, let's do that now. Mr. Wood, I'm going to
24 read the interrogatory, and if you don't mind, if you can
25 read the answer back.

1 "Please explain how the zoning ordinances
2 restricting ownership or property zoned as cabana houses
3 exclusively to homeowners associations furthers the
4 general purpose of guiding development in accordance with
5 existing and future needs and promoting the public health,
6 safety, morals, convenience, order, appearance, property,
7 and general welfare for the City of North Myrtle Beach."

8 A "This requirement supports the homogeneous and
9 harmonious uses of the property alongside adjacent
10 properties, all of which are, after all, located within a
11 residential district, specifically the restriction
12 supports the homogeneous and harmonious use because the
13 subject property is located between adjoining beachfront
14 condominium projects with their own respective homeowners
15 associations. These adjoining properties share the same
16 name, Sea Cloisters I and Sea Cloisters II. They are
17 essentially mirror images in their design and layout, and
18 the two homeowners associations coordinate with and
19 mutually support each other."

20 I lost my place. Hang on.

21 Q Sorry. I scrolled down too soon. My fault.

22 So the very last line, "Requiring there..."

23 A "Requiring there to be a stretch of three homeowners
24 associations rather than allowing for a commercial
25 enterprise engaging in nonresidential commercial uses of

1 the property, at best, or creating a nuisance, at worst,
2 between such close homeowners associations. It is
3 reasonable and has a tendency to promote the general
4 welfare of the adjoining properties and the R-4
5 residential districts specifically in the City generally."

6 Q And these answers, were these submitted before the
7 City had obtained, produced, and reviewed all the
8 legislative history and legislative records in this case?

9 A I believe that's true.

10 Q You were also asked some questions about the three
11 alleged reasons -- alleged interest of the City:
12 Responsiveness, quality of life, and property values. Do
13 you recall those?

14 A Yes.

15 Q Would you agree quality of life encompasses a whole
16 host of different factors?

17 A Absolutely.

18 Q And they would include intensity of use, the
19 density, overcrowding issues, traffic congestion, health,
20 safety, noise, light, and the reduction in competition in
21 parking?

22 A Yes.

23 Q There's -- that spectrum that y'all spoke about as
24 well on cross-examination from the residential to
25 commercial, is it fair to say that the City is trying to

1 strike a balance between those two types of uses and along
2 this spectrum?

3 A Absolutely. I mean, the entire theory behind
4 creating zoning districts within a City is to establish
5 districts where different levels of uses, intensity, and
6 character, such as residential versus commercial, high
7 intensity versus low intensity, high density versus low
8 density.

9 The point of zoning is to establish districts where
10 it is deemed by the governing authority that those uses
11 can best exist and without being in such close proximity
12 that they harm adjoining uses.

13 Q And switching topics again, Mr. Wood. You were also
14 questioned about there being two general requirements to
15 these ordinances. There's an ownership requirement and a
16 use requirement. Do you remember that questioning?

17 A Yes.

18 Q Would you agree that the ownership requirement --
19 out of those two, the ownership requirement versus the
20 use, the ownership can be broken down a little bit
21 further. Would you agree with that?

22 A Yes.

23 Q Okay. What would the two requirements be under the
24 ownership piece?

25 A I'm sorry?

1 Q It would be HOA requirement and the project
2 requirement; correct?

3 A Yes, yes.

4 Q Okay. And the City does not require the homeowners
5 association to be one within the City of North Myrtle
6 Beach, does it?

7 A Not in specific language, no.

8 Q The only limitations for the project is to be within
9 the City of North Myrtle Beach; correct?

10 A Yes.

11 Q So would you agree that those two requirements can
12 be split out?

13 A Yes.

14 Q Lastly, Mr. Wood, you were asked some questions
15 about excluding. Again, is the City excluding the
16 defendants or the RV resort guests from accessing and
17 shopping and dining or otherwise enjoying the benefits
18 that are provided by North Myrtle Beach?

19 A No. It would be silly to do something like that.
20 We welcome their presence within the city.

21 Q And the City is not isolating itself from outside
22 folks that want to come in and visit and expend resources
23 here?

24 A No, of course not.

25 Q Thank you, Mr. Wood. I don't have any further

1 questions for you.

2 A Thank you.

3 MR. TAMASITIS: Yes, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. TAMASITIS:

6 Q Well, this changes the game.

7 A I'm sorry?

8 Q Briefly, I want to talk about zoning letters. I
9 don't want to beat this dead horse, one that's already
10 been beaten, but are zoning letters limited to the best of
11 an individual's personal knowledge for the Zoning
12 Administrator, or does he have an obligation to go out and
13 find the correct answers?

14 A I think it depends on what's being asked.

15 Q And doesn't -- don't the zoning letters require the
16 City Zoning personnel responding to go be as accurate as
17 possible?

18 A That would be the expectation. You would not want
19 them to take it haphazardly.

20 Q And you're credited with the AICP and you're
21 knowledgeable about the standards. Those require the
22 accurateness, timeliness, and thoroughness to a response?

23 A Yes.

24 Q Not just what someone might know personally as far
25 as in their -- you know, based on what they just know?

1 They have to actually go out and look and find the answer?

2 A Again, that's contextual. I mean, I can envision
3 scenarios like if some project were freshly approved and
4 it was freshly in somebody's mind, then there would be no
5 need to do exhaustive analysis to uncover things that, you
6 know, they know were not issues because it was recently
7 approved.

8 Q Let me ask you something more concrete then. Are
9 you, as Mr. Blust's former supervisor, proud of the effort
10 undertaken to answer this zoning letter requested in this
11 case?

12 A Yes.

13 Q And could he have done more than just visited the
14 location and looked around? Could he have looked at the
15 title records, property records?

16 A Hypothetically, yes, and I'll explain why I think it
17 probably wasn't necessary in this case. To the best of
18 Mr. Blust's knowledge, he understood that the property was
19 no longer being used. And if a property is not in use, it
20 cannot be in violation of a use ordinance.

21 Q Okay. So just because it's a cabana house special
22 exception that's not being used as a cabana house, then
23 it's not in violation of zoning ordinance?

24 A I'm sorry? Repeat.

25 Q So if it's not being used as a cabana house, it's

1 not being used under that special exception, then it's not
2 in violation.

3 A If it's no longer being used as a cabana house, then
4 it can't be in violation of that section.

5 Q And you were here when Mr. Blust testified. It was
6 his testimony that Mr. Blust [sic] was not operating a
7 private beach club at the time?

8 A I'm sorry?

9 Q Mr. Blust was not operating a private beach club at
10 the time --

11 MR. WILLIS: Watts.

12 A Mr. Blust operating?

13 BY MR. TAMASITIS:

14 Q Or sorry. Thank you.

15 That Mr. Watts wasn't.

16 A I think Paul said he -- I believe Mr. Blust stated
17 he was not aware of that.

18 Q Now, you were asked a question that the zoning
19 ordinance in Section 23-2 -- can we pull that up? I think
20 it's Exhibit 35, the cabana house definition.

21 Okay. It says that the project doesn't have to be
22 in North Myrtle Beach -- or it has to be in North Myrtle
23 Beach, but the homeowners association doesn't have to be
24 in North Myrtle Beach? Is that the City's interpretation
25 now of the zoning ordinance?

1 **A** I'm trying to imagine a scenario where a homeowners
2 association could be based outside the City. And, again,
3 I don't know the specifics of the nuances of homeowners
4 association formation and their law. I don't know if
5 there's a requirement in those statutes that states it has
6 to be within the same project or jurisdiction. I think
7 it's hypothetically possible that a homeowners association
8 could not be within the City.

9 **Q** Okay. Could we go to Exhibit No. 36? If we could
10 zoom in on 4(d)(1). "That a homeowners association shall
11 have been established for the project." So we're talking
12 about two homeowners associations now?

13 **A** No.

14 **Q** So if the homeowners association has to be
15 established for the project and the homeowners association
16 has to own the property, and the project has to be in
17 North Myrtle Beach and the property has to be in North
18 Myrtle Beach, then the homeowners association has to be in
19 North Myrtle Beach; right?

20 **A** I don't know. What I'm saying is that I don't know
21 if there's something in the enabling laws or the law that
22 govern the formation of homeowners associations, whether
23 an agency outside of the project can be the homeowners
24 association for the project. I don't know the answer to
25 that.

1 Q This is the City zoning ordinance; right?

2 A Yes.

3 Q You're the City's designee?

4 A Yes.

5 Q What's the City's take on this?

6 A I believe, you know, when the ordinance was crafted,
7 I think it was probably an assumption that the homeowners
8 association would be within the City in addition to the
9 project, but I don't see any specific language that states
10 that it must be.

11 Q No further questions.

12 THE COURT: All right. You done?

13 MR. RICARD: No further questions, Your Honor.

14 Thank you.

15 THE COURT: Time for a Willis break or...

16 MR. WILLIS: Well, yes. I'll take it on behalf of
17 my colleagues, Your Honor.

18 (A recess was taken from 4:02 p.m. to 4:16 p.m.)

19 THE COURT: All right. Is the next witness going to
20 be your witness?

21 MR. WILLIS: Yes, Your Honor. We're taking a
22 witness out of order.

23 MR. RICARD: Well --

24 MR. WILLIS: Oh, no. I think the City is done with
25 their case.

1 MR. RICARD: Yes. Just to be clear, Your Honor, so
2 we understand that our motion for in camera review has
3 been denied; correct?

4 THE COURT: Yes.

5 MR. RICARD: Okay. And we also understand that our
6 Exhibits 1 through 95 -- and 95 was our opening slides --
7 we understand that those have been admitted as well?

8 THE COURT: That's my understanding.

9 MR. RICARD: Okay. In that case, Your Honor, we
10 have no further testimony, and we formally close our
11 case-in-chief. Thank you.

12 THE COURT: All right. Do we need to take up
13 motions or is everybody okay?

14 MR. WILLIS: We were just discussing that, Your
15 Honor. In a nonjury trial -- and I haven't done that many
16 of them, but I have done a few -- I have never moved for
17 judgment as a matter of law or moved for directed verdict
18 because there was no need to take the issue away from the
19 jury.

20 THE COURT: Right.

21 MR. WILLIS: Because there isn't a jury. So the
22 issue is up to you. And Mr. Tamasitis and I were both
23 talking about it. I, frankly, think that -- I mean, we
24 have talked about this before. This isn't a threat or
25 anything, but I think both parties feel strongly enough

1 about this case that it may be taken up to the Court of
2 Appeals regardless of how the Court rules and possibly on
3 to the South Carolina Supreme Court and even to the U.S.
4 Supreme Court, given this issue. And I think it would be
5 better for everyone to do that on a complete record.

6 THE COURT: Okay.

7 MR. WILLIS: So, based on that, I think we are not
8 going to move for directed verdict at this stage of the
9 case, and we would like the Court to hear our evidence as
10 well before the Court makes an informed decision.

11 THE COURT: That sounds good.

12 All right. If you'll call your witness.

13 MR. TAMASITIS: Yes, Your Honor. The defendant
14 calls Sharon Kilday.

15 THE CLERK: If you'll raise your right hand and
16 place your left hand on the Bible.

17 SHARON KILDAY,

18 after having been duly sworn, was examined and
19 testified to as follows:

20 THE CLERK: You may be seated. And will you state
21 your name for the Court, please.

22 THE WITNESS: Hello. My name is Sharon Kilday.

23 DIRECT EXAMINATION

24 BY MR. WILLIS:

25 Q Hi, Ms. Kilday. Can you please spell your name --

1 or spell your last name for the record.

2 A K-i-l-d-a-y.

3 Q Thank you.

4 Ms. Kilday, my name is John Tamasitis. We've met
5 before. I represent the defendants in this case.

6 Where do you currently reside?

7 A Little River.

8 Q And what is your current occupation?

9 A I am the president and CEO of the North Myrtle Beach
10 Chamber of Commerce Convention and Visitors Bureau.

11 Q And how long have you been the president and CEO for
12 that company?

13 A I just finished five years.

14 Q And I have heard the organization that you worked
15 for also known as the Destination North Myrtle Beach; is
16 that right?

17 A Yes, doing business as Destination North Myrtle
18 Beach.

19 Q Would it be okay if we just refer to it as
20 Destination North Myrtle Beach for this testimony?

21 A Yes.

22 Q Did you have any experience with other chambers of
23 commerce before coming to North Myrtle Beach?

24 A I have.

25 Q Can you explain that?

1 **A** So I have been on boards of directors. I'm very
2 involved with other chambers of commerce. I have not
3 worked for one before coming to North Myrtle Beach.

4 **Q** What is the mission of Destination North Myrtle
5 Beach?

6 **A** The mission of Destination North Myrtle Beach is
7 advancing the prosperity of North Myrtle Beach.

8 **Q** And how does Destination North Myrtle Beach
9 accomplish its mission?

10 **A** We work in a few different areas, but one is
11 community, economic, tourism, development, promotion. We
12 promote business-to-business, business-to-residents,
13 business-to-visitors. We advocate on a business-friendly
14 environment and work with legislative issues at the local,
15 state, and federal -- sometimes regional -- levels and try
16 to make sure that businesses can prosper.

17 We work with a variety of organizations to provide
18 networking opportunity and business promotion, and we
19 spend really a huge amount of our time on tourism
20 promotion and really representing what we refer to as the
21 community brand, that destination appeal that helps with
22 economic development and community development as well.

23 **Q** How is Destination North Myrtle Beach structured
24 from a corporate perspective?

25 **A** We're a 501(c)(6) organization with a -- I like to

1 describe us as membership-based and customer-driven. We
2 have a membership base of about 730 members currently, and
3 we have a variety of committees, but we have a board of
4 directors that's elected by -- our board actually elects
5 them, but the nominating committee process includes an
6 opportunity for members to chime in. And so it is a
7 self-governing organization.

8 We also have a North Myrtle Beach chamber foundation
9 that is a supporting foundation, and so some of our
10 programs and initiatives are actually operated through the
11 foundation in order to provide some greater community
12 benefit to the people participating.

13 Sponsorship is easier when it goes to a charity and
14 grants are given to youth and that sort of thing. So
15 those are programs that we offer through the foundation.

16 Q What are your day-to-day responsibilities as the
17 president and CEO of Destination North Myrtle Beach?

18 A I spend a good portion of my time on forward
19 momentum of activities, programs, initiatives that we may
20 be having to, you know, thinking further down the road,
21 not just working on things today. I typically am working,
22 you know, on initiatives that would be launched and
23 considered for the future.

24 So our strategic planning, our visioning, our
25 program oversight, board governance. I spend a lot of my

1 time directly, though, in the tourism aspects as well.

2 And, you know, being out in the community and visible and
3 supporting business to make sure that they know that we
4 understand what their issues are.

5 Q How does Destination North Myrtle Beach partner with
6 the City of North Myrtle Beach?

7 A We have a pretty good, solid relationship in a lot
8 of areas. So we work with Parks and Recreation directly
9 on a number of initiatives. We work with Council on
10 policy discussions, various staff. We have members of our
11 team participate with Planning Commission meetings, and
12 we're there to help with any sort of perspective,
13 sometimes from the business community as well as be a
14 resource of market intelligence if it's relevant to some
15 of the stuff that may be discussed. We help as a convener
16 sometimes to talk about various issues. And we -- trying
17 to think what else. We do a lot but those are just some
18 of the highlights.

19 Q And what is Destination North Myrtle Beach's
20 business development program?

21 A So our business development program is also a
22 membership program, would be another way to refer to that.
23 But we work with the programming that we're offering to
24 the business community. And we sell sponsorships, we have
25 membership, we have a variety of aspects where people pay

1 participation fees that helps cover the implementation of
2 those programming, educational programs, promotional
3 programs that promote businesses to businesses and to
4 residents and visitors to North Myrtle Beach.

5 Q Do you know whether the Carolina Pines RV resort is
6 a member of the program?

7 A They are a member.

8 Q Do you know how long they have been a member?

9 A I think since they opened. We were involved in
10 their ribbon cutting, as I recall.

11 Q What are the benefits of being a member?

12 A The membership benefits really start with that
13 investment in the community. We are, you know, that voice
14 of business. So investing in the chamber is really an
15 investment in the community. And then -- because we have,
16 you know, a really solid advocacy program, so we're there
17 to look at those promotional and community development
18 activities.

19 There's also benefits for being able to serve on
20 committees and, you know, promote your business to another
21 business directly through awareness through our various
22 opportunities to become visible. It's access to
23 visibility, access to opportunities to work
24 business-to-business to advance the prosperity of our
25 mission.

1 Q Do you have to be a resident of North Myrtle Beach
2 to become a member of Destination North Myrtle Beach?

3 A No.

4 Q What would you consider, in your position as the
5 president and CEO of Destination North Myrtle Beach, to be
6 the largest economic drive in the City?

7 A Tourism. Visitor spending.

8 Q How does the Destination North Myrtle Beach partner
9 with the Myrtle Beach Area Chamber of Commerce?

10 A The Myrtle Beach Area Chamber of Commerce is a
11 regional destination organization. They're called
12 destination marketing or designation management
13 organizations, DMOs. And they're the recognized regional
14 organization for Horry County. And there are multiple
15 chambers in Horry County, and we meet collectively from
16 time to time about various advocacy-related things. We
17 also talk about how the Myrtle Beach area is promoting
18 tourism. They are also a resource sometimes when we need
19 things that we don't have on our own.

20 So, as an example, we're an accredited organization
21 through Destinations International, and we don't have the
22 sales program that they have, and we were able to
23 demonstrate that we work with them on some of those
24 activities. So they actually helped us demonstrate that
25 we work together so that we can earn our accreditation.

1 Q And what is Destination North Myrtle Beach's
2 geographic I guess you would call it boundary?

3 A For our members? The only boundaries that we really
4 have that are stated are for accommodations, because
5 accommodations outside our corporate limits don't collect
6 accommodations taxes. So we only go down south to
7 Arrowhead Road, and we go into Little River, but
8 otherwise, we don't really go beyond our boundaries of
9 North Myrtle Beach for accommodations.

10 Major attractions, if there is some reason that our
11 visitors or our businesses do business with other people
12 in the region -- or sometimes even out of state -- then
13 there are also other times when people are members that
14 the borders don't really matter for that.

15 Q Ms. Kilday, are you familiar with the publications
16 that Destination North Myrtle Beach creates and regularly
17 maintains?

18 A Yes.

19 Q And, in particular, are you familiar with how your
20 company creates and maintains a publication called the
21 Destination North Myrtle Beach Annual Program Report?

22 A Yes.

23 MR. TAMASITIS: Could we pull up Exhibit No. 26?
24 You'll see it on your -- Defendant's Exhibit No. 26.

25 BY MR. TAMASITIS:

1 Q Ms. Kilday, is this one of Destination North Myrtle
2 Beach's annual program reports?

3 A Yes.

4 Q And for what year is it?

5 A 2022.

6 Q And how is this report created by Destination North
7 Myrtle Beach?

8 A So we compile the programs that we did in a year and
9 look at program results, and then we report out on that.
10 That's what the annual report really covers.

11 Q And why is it created?

12 A It's created for accountability. It's created as a
13 communications tool to show value to the programs, that
14 we're not just doing things sort of for our own enjoyment
15 but that there's a purpose and that there's an outcome and
16 that we can demonstrate that.

17 Q And is it created on an annual basis?

18 A It is created on an annual basis.

19 Q Did you have to approve this report before it was
20 published?

21 A Yes.

22 Q Where can someone gain access to this report?

23 A You can download it from our website. You can send
24 a request for it, and sometimes -- well -- and we give it
25 out of our chairs' luncheon each year in January.

1 Q Now, there are some statistics that we're going to
2 be discussing regarding web traffic listed in these
3 reports; right?

4 A Mm-hmm.

5 Q I need you to --

6 A Oh, yes. Yes.

7 Q And these statistics are based on data pulled from
8 Destination North Myrtle Beach's website; is that right?

9 A Yes, Explore North Myrtle Beach.

10 Q And does Destination North Myrtle Beach hire a
11 third-party aggregator to collect the data from your
12 website and provide it to the company for this report?

13 A We hire a third-party company to analyze and work
14 with the data. The data is from our web site, but yes, we
15 work with Google and Simple View to get those reports and
16 analysis.

17 Q If we could turn to page 3 of this report that says,
18 "Year in Review." What do these statistics generally
19 discuss on this page?

20 A So it's really talking about our website
21 performance, and one of the things that we look at, that,
22 you know, you see the arrows and things at the top, we're
23 really looking at did we see an increase in our program?
24 Was there a decrease in some areas? Sometimes you want a
25 decrease; like the 5 percent decline in the bounce rate is

1 a good thing. So we talk about that.

2 We have benchmarks that we also really try to make
3 sure that we're putting things in context, so you'll see
4 some of these have benchmarks. The analytics are there on
5 this page just to really kind of give a snapshot, so we
6 have the website and our digital advertising and our
7 business development activities with how many new partners
8 and that sort of thing and website traffic.

9 Q And what are the top ten states that generate
10 traffic to Destination North Myrtle Beach's website?

11 A Do you want me to list the ten? Is that what you're
12 asking?

13 Q Sure, yeah.

14 A Okay. So, in 2022, the top ten points of origin for
15 people that used our website were North Carolina, South
16 Carolina, Georgia, New York, Pennsylvania, Ohio, Virginia,
17 Michigan, Tennessee, and Illinois.

18 Q And does Destination North Myrtle Beach track how
19 many visitors come to the city each year?

20 A Not exactly.

21 Q Okay.

22 A We -- we track our influence in bringing people into
23 North Myrtle Beach, and that's not everybody. There's
24 other marketers, other entities that promote the area as
25 well, and so there's a bigger number than what we may

1 touch directly.

2 Q How many people does Destination North Myrtle Beach
3 estimate visit the city each year?

4 A So there's about 20 -- 18, 20 million that come to
5 the region each year, and we estimate that between 3 to
6 5 million probably are in North Myrtle Beach for at least
7 part of that time.

8 Q How does Destination North Myrtle Beach generate
9 revenue?

10 A Revenue for ourselves, for operating?

11 Q Yes, ma'am.

12 A Okay. So we have membership, we have sponsorship,
13 participation fees. We have a state code in South
14 Carolina where an organization like us gets 30 percent of
15 the accommodations tax allocation each year from the City,
16 so that comes to us for tourism promotion.

17 And then we also apply for funding from a grant with
18 the South Carolina Parks, Recreation, and Tourism. We
19 have to match that with private dollars, so we have a
20 co-op where we have accommodations that voluntarily
21 contribute one dollar per room night sold to be that
22 match. We have to match it 2:1.

23 And then we have -- we also apply for a grant from
24 the City's accommodations tax grant applications.

25 Q And you kind of touched on this; I just want to

1 break it out a little bit more. Can you explain to me
2 specifically the public aspect of Destination North Myrtle
3 Beach's revenue?

4 A Yes. So we have, by state code, 30 percent of the
5 accommodations taxes that are for North Myrtle Beach.
6 They're collected and come to us. And then the 65 percent
7 from an application for a grant. And then the South
8 Carolina Parks, Recreation, and Tourism has an emerging
9 destination grant that we also receive. Those are public
10 monies.

11 And I forgot; we have the -- the county has some
12 money that comes to us through the Myrtle Beach regional
13 chamber of commerce. The money from those funds are
14 earmarked for event promotion.

15 Q And, if you know, what is the accommodation tax a
16 tax on?

17 A Overnight stays.

18 Q And is there a geographical restriction to what is
19 taxed?

20 A The geographical restriction in North Myrtle Beach
21 is the corporate limits.

22 Q So, for example, what if accommodation dollars were
23 spent in Conway? Would those monies be -- not be part of
24 your funding?

25 A They would go to Conway. Or -- yeah, similarly.

1 Q Would you agree that Destination North Myrtle Beach
2 is publicly funded by the tourism that it's promoting for
3 North Myrtle Beach?

4 A Yes.

5 Q Real quick on lodging in the city. Do you know how
6 many hotels are located in North Myrtle Beach?

7 A There aren't very many hotels but they're -- from a
8 hotel/condo-tel type of thing, there's about 87 that are
9 listed, and there's a few that have come down recently. I
10 would estimate it to be closer to about 75ish.

11 Q And do you know how many room units are associated
12 with hotels that are located in North Myrtle Beach?

13 A About 3,000. 3,200 was the prior number, but I
14 think, with some of the ones that have closed or been torn
15 down recently for redevelopment, it's about 3,000.

16 Q And I have heard this term before but what does
17 Destination North Myrtle Beach consider a peak season?

18 A I think a lot of people consider it Labor Day to
19 Memorial Day because that's really when, you know, our
20 leisure season is, but July is really, like, the highest
21 peak of the season, and the 4th of July really culminates
22 in that. So a week or two before and after the 4th of
23 July are really the highest peak.

24 Q Does Destination North Myrtle Beach track rental
25 units in the City?

1 A We do our best to track -- you're talking about
2 vacation rentals?

3 Q Yes, ma'am.

4 A Yes.

5 Q Do you know what the occupancy rates are for rental
6 units during peak season?

7 A They're estimated to be about 82 percent or higher
8 during peak season. Sometimes they are greater than that.
9 It varies from year to year because there are some that
10 are second homeowners. And so, depending on if they're
11 available or not. So that number fluctuates, but there
12 are times during the year when we have a limited capacity
13 on the beach. Getting further inland, it might have a
14 lower occupancy that brings that down to more of an
15 88-something percent. But the first few rows, so to
16 speak, of the beaches would be at near 100 percent most of
17 that time.

18 Q And I know this a hard target to hit, but do you
19 know how many rental units are in the city during the peak
20 season?

21 A Between 8- and possibly 11,000, depending on the
22 year and how many second homeowners are in those during
23 peak versus making them available for rentals.

24 Q What kind of occupancy makes up the majority of room
25 rentals in North Myrtle Beach during the peak season? Is

1 it hotels? Condos? Short-term rentals?

2 A We're a vacation rental community just about any day
3 of the year.

4 Q And who you would you consider the largest
5 participates in the North Myrtle Beach tourism market?

6 A I think about some of the larger accommodation
7 organizations would be, like, Elliott Beach Rentals and
8 Condo World. Boulineau's is actually pretty sizable
9 because of what they do with a lot of their visitor
10 traffic. Thomas Beach Vacations. And those are the
11 larger accommodation partners.

12 And then there's some of the large restaurants.
13 Alabama Theater, Barefoot Landing, some of the restaurant
14 groups that have multiple restaurants in North Myrtle
15 Beach.

16 And then it takes more of them, but I would say that
17 fishing and recreation are also really big. We have got a
18 lot of kayak and deep-sea fishing and other water
19 experiences.

20 Q And of all those -- obviously, restaurants are not
21 one of these -- but how many of those participants are
22 involved in short-term rentals?

23 A Of our -- the ones that are biggest ones?

24 Q Yes.

25 A You know, vacation rentals are a big part of our

1 tourism industry.

2 Q No further questions. Please answer any questions
3 they may have.

4 THE COURT: All right. Cross?

5 MS. SHOUN: If please the Court, Your Honor?

6 CROSS-EXAMINATION

7 BY MS. SHOUN:

8 Q Ms. Kilday, good afternoon.

9 A Hi.

10 Q My name is Cheryl Shoun, so it's good to meet
11 another Cheryl. I don't think we've had this opportunity.

12 Ms. Kilday, based on the information gathered by
13 Destination Myrtle Beach [sic], can you tell us, in 2020,
14 how many individuals who visited the property known as the
15 cabana house in North Myrtle Beach actually visited other
16 businesses within the City of North Myrtle Beach?

17 A No, we don't track it that way.

18 Q Okay. So if you don't track it that way, would it
19 be fair to assume that you, therefore, cannot tell us the
20 number of dollars spent by individuals who visited the
21 cabana house within the City of North Myrtle Beach?

22 A Correct. For 2020, we wouldn't be able to do that
23 at all.

24 Q Okay. Well, in 2021, can you tell me how many
25 individuals who visited the cabana house in North Myrtle

1 Beach then visited other commercial entities within the
2 City of North Myrtle Beach?

3 A Yeah, we don't set it up that way. So an
4 accommodation or an attraction are both points of
5 interest, and so we cannot -- the way we have it set up --
6 say somebody stayed at Property X and they did these 20
7 things. So we can't track it for any of the
8 accommodations or any of the -- it's like where do people
9 go when they were here, and that's how we do it.

10 Q Any -- I'm sorry; I did not mean to cut you off.

11 A I was just going to say, that's the standard
12 practice, is to do it the way that we do it. The company
13 that provides that is -- they track it with phones and
14 that sort of thing and it's just complicated.

15 Q And not being able to do that, then, you cannot tell
16 me numbers of dollars spent by individuals who visited the
17 cabana house in 2021 --

18 A No.

19 Q -- and the number of dollars they spent within the
20 City of North Myrtle Beach?

21 A No.

22 Q And not knowing that, then you could not tell me the
23 delta. You could not tell me the difference between
24 dollars spent by those individuals in 2021 and those
25 numbers of dollars spent by those individuals in 2022?

1 A Correct, we could not.

2 Q Okay. Is the City of North Myrtle Beach a member?

3 A We don't actually charge them membership dues, but
4 yes, we consider them a member.

5 Q Well, as their attorney, thank you.

6 A Thank you.

7 THE COURT: Any further questions?

8 MR. WILLIS: No, Your Honor.

9 THE COURT: You may step down. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Any other witnesses for today?

12 MR. TAMASITIS: Yeah, Your Honor. Mr. Willis and I
13 were just talking about that. We have a -- we can put in
14 another witness through designation. It would be the
15 Myrtle Beach Area of Chamber of Commerce, or we could
16 break for the day. It's up to you.

17 THE COURT: How long do you think he'd take?

18 MR. TAMASITIS: I don't think it will take more
19 than --

20 MR. WILLIS: Just reading a deposition, Your Honor.

21 THE COURT: 20 minutes? 30 minutes?

22 MR. TAMASITIS: Yeah, I don't think it will take
23 much more than that.

24 THE COURT: Why don't we go ahead and do it.

25 MR. WILLIS: Your Honor, we'd just like to note for

1 the record that using Ms. Tyer as a witness is no
2 reflection on Ms. Barker's skill as an actress.

3 MS. TYER: I will defer that, if you want to.

4 THE COURT: Duly noted.

5 THE CLERK: Please raise your right hand and place
6 your left on the Bible.

7 SARA TYER,

8 was duly sworn to accurately read the designated
9 deposition of KAREN RIORDAN (by Deposition), designee for
10 The Myrtle Beach Area Convention & Visitors Bureau, in
11 this matter as follows:

12 THE CLERK: State your name for the Court, please.

13 THE WITNESS: Sara Tyer. T-y-e-r. I'm ready.

14 DIRECT EXAMINATION

15 BY MR. WILLIS:

16 Q Good morning, Ms. Riordan. My name is John
17 Tamasitis. We have spoken a couple of times before.
18 Please state your full name for the record, spelling your
19 last.

20 A Karen Riordan. R-i-o-r-d-a-n.

21 Q Before we get started, can you explain to me the
22 difference between Myrtle Beach Area Convention and
23 Visitors Bureau, the Chamber of Commerce, and any other
24 related entities?

25 A Yes. All of that information is actually on our

1 website. So there's a Myrtle Beach Area Chamber of
2 Commerce dot-com website that represents everything that
3 we do as a chamber of commerce. We're incorporated as a
4 501(c)(3) chamber of commerce. The other website is
5 VisitMrytleBeach.com, which covers everything we do as a
6 convention and visitors bureau.

7 Q So what are the responsibilities of a convention and
8 visitors bureau as opposed to the Chamber of Commerce?

9 A The Convention & Visitor's Bureau is the designated
10 marketing organization for the Grand Strand.

11 Q Are you the president and CEO for both companies?

12 A Yes.

13 Q What are your roles and responsibilities as the
14 president of the Convention & Visitor's Bureau?

15 A As the president and CEO of the organization,
16 ultimately, I'm responsible for all decisions in regard to
17 the marketing that we do to potential visitors to attract
18 them to Horry County in the Myrtle Beach area.

19 Q Are your roles and responsibilities as the president
20 and CEO of the chamber any different?

21 A Yes.

22 Q How are they different?

23 A The Chamber of Commerce is designed to support the
24 existing businesses that are already here in Horry County
25 and to help them flourish and prosper.

1 Q What is the mission of the Myrtle Beach Area --
2 we'll call it the CVB. That makes it easier.

3 A The mission of the CVB is on
4 VisitorMyrtleBeach.com's website, publicly available for
5 everyone to see.

6 Q Okay. And what is it?

7 A To promote the area, to bring visitors to Horry, to
8 create positive economic impact.

9 Q Does it partner with the City of Myrtle Beach in its
10 mission?

11 A Yes.

12 Q How so?

13 A It serves as the designated marketing organization
14 for the City of Myrtle Beach.

15 Q Does it also partner with Horry County?

16 A Yes.

17 Q How so?

18 A It serves as the designated marketing organization
19 for Horry County.

20 Q Okay. So the CVB is the marketing organization for
21 tourism for both Horry County and the City of Myrtle
22 Beach?

23 A Yes.

24 Q What other cities or areas does it cover?

25 A Surfside Beach. We are the designated marketing

1 organization for Surfside Beach.

2 Q Is that it?

3 A Yes.

4 Q Does it cover North Myrtle Beach?

5 A The area -- the area is the entire Horry County, so
6 it includes North Myrtle Beach.

7 Q Let's go to Exhibit No. 2, Ms. Riordan. Do you
8 recognize this document we're marking as Exhibit No. 2?

9 A Yes.

10 MR. TAMASITIS: And that is -- Defendant's Exhibit
11 27.

12 BY MR. TAMASITIS:

13 Q What is it?

14 A It is the 2022 Annual Report for the Convention &
15 Visitors Bureau.

16 Q And who created it?

17 A The marketing team here at Visit Myrtle Beach.

18 Q Does this appear to be a fair and accurate copy of
19 the Myrtle Beach CVB Annual Program Report for 2022?

20 A Yes.

21 Q Why is this report created?

22 A To share information for all of our stakeholders in
23 Horry County and the public at large.

24 Q If you will turn to page 6 and 7, which page 6 has
25 data and insights, and it lists a bunch of what I would

1 call statistics on here, where is this data developed
2 from?

3 A This data is pulled from various data resources that
4 we commission.

5 Q And what are these stats focused on?

6 A These stats, again, are to demonstrate fast facts
7 about tourism for stakeholders that are interested in this
8 kind of information.

9 Q Okay. And if you turn to the next page, page 7,
10 it's titled, "City, County, and State Taxes Continue to be
11 Strong."

12 On page 7, this appears to be statistics for tax
13 revenue for Horry County. Where do you guys get this
14 information from?

15 A The source is listed right there: The South
16 Carolina Department of Revenue.

17 Q So this is actually pulled from the State?

18 A Yes.

19 Q That was a yes?

20 A Yes.

21 Q Okay. And then let's go to page 10. It talks about
22 demographics. It says here's there's a "Top Origin
23 Markets" and a "Top Spending Markets." Can you explain to
24 me the difference between those two?

25 A Again, the source of this is MMGY Travel

1 Intelligence. And this company reports out of the top
2 markets that are where people are coming from. So the
3 highest amount of visitors are coming from Charlotte,
4 North Carolina, according to this report, flowing down
5 from Philadelphia, Pennsylvania, at No. 10.

6 The top spending markets are just that; they are
7 different. That means there may not be as many people
8 coming from Charlotte, Concord, Gastonia, but the people
9 that are coming from that market are identified by the
10 source as spending the most when they are here in Horry
11 County.

12 Q Why is it important for the CVB to track this
13 information?

14 A We track this information so that we can continue to
15 refine and perfect our own marketing; so that we can know
16 where we would be fishing for fish, where we should maybe
17 stop efforts if they're not successful.

18 Q So does CVB, as part of its mission, reach out to
19 these markets to advertise the Myrtle Beach area?

20 A We are advertising in all of those origin markets,
21 yes.

22 Q And down here, it says who has visited in the past
23 three years. Can you explain to me this statistical
24 representation?

25 A From MMGY Travel Intelligence, this data source is

1 indicating the demographic specific to household income,
2 indicating the range of income as some of the key
3 markers -- 50 to 75, 75 to 100, 100 to 150, 150 plus --
4 and then the appropriate portion of the marketplace.

5 The chart to the right is then identifying
6 demographics based on the right -- based on the age of the
7 visitor and putting them in commonly accepted categories
8 such Baby Boomers, Gen-Xers, Millenials, and Gen-Zs.

9 Q Okay. And just so we're clear, these statistics are
10 for Horry County and Surfside; right?

11 A All of Horry County and the Grand Strand. That
12 includes part of Georgetown as well. Murrells Inlet,
13 Garden City, all the way to Pawleys is our trading area.

14 Q Okay. So CVB does not just cover Horry County and
15 Surfside but also some parts of Georgetown?

16 A Yes.

17 Q Okay. And you colloquial used the term "Grand
18 Strand"?

19 A Correct, yes.

20 Q And you said the source here is MMGY Travel
21 Intelligence. Does the CVB partner with this company?

22 A The CVB commissions its research from this company.

23 Q And is that data on a yearly basis?

24 A I don't know the frequency of the data.

25 Q Let's go back to page 7 real quick. Can you explain

1 to me how the CVB is funded by the accommodations tax?

2 Strike that. Let's do this.

3 What is the accommodations tax?

4 A Accommodations tax is also called bed tax by some
5 cities and counties. Essentially, it is a tax on any room
6 that is rented in the Grand Strand. And so a tax is
7 charged to the visitor, and it shows on their bill in
8 addition to any other state taxes, etc.

9 And a portion of that, all that's collected, goes to
10 the South Carolina Department of Revenue, and then is
11 distributed back to the county or city or town in which
12 the accommodation tax was generated.

13 Q How about the tourism and development fee? What is
14 that?

15 A The tourism and development fee is a state statute
16 that is between the City of Myrtle Beach and the Myrtle
17 Beach Convention & Visitors Bureau. And a 1 percent tax
18 is levied on accommodations, restaurants, and attractions,
19 and that 1 percent, again, is collected, goes through the
20 South Carolina Department of Revenue, and is then remitted
21 back to the City of Myrtle Beach. And then a portion of
22 that is given to the CBV for us to use to market and
23 advertise tourism for Myrtle Beach.

24 Q And one of the questions I have was, how is the CVB
25 funded? Because you said it's a 501(c)(3). So how is it

1 funded?

2 A It's funded through various funding sources. Some
3 of them are the accommodation tax, the TDF. We also apply
4 for the SCPRT state grants, which have requirements to
5 gain the match.

6 We also -- we raise our own dollars through
7 sponsorship, and then we also have marketing programs that
8 our Chamber and CVB members can voluntarily join into,
9 commonly known as co-op kinds of programs. So we derive
10 revenue from all of those sources.

11 Q So is it fair to say that the CBV is partially
12 publicly funded and partially privately funded?

13 A Yes.

14 Q If you go back to page 6, I'm going to ask some
15 questions based on page 6 and the data that's provided on
16 there.

17 A Mm-hmm.

18 Q Does the CBV track the average number of visitors to
19 the Grand Strand each year?

20 A Yes.

21 Q And how many are those?

22 A The number varies every year. So for the full year
23 2022, we reported 17.2 through the third-party company
24 that gathered this data, but that -- that does change
25 every year.

1 Q Is this number, 17.2 million, was it higher in 2022
2 than it was in '21? Lower? Do you know?

3 A I don't know off the top of my head. I know it was
4 higher than 2020.

5 Q Do you track -- and by "you," I mean the CBV -- does
6 it track how many folks come from out of state that make
7 up the 17.2 million number?

8 A Yes.

9 Q And do you know how many that is?

10 A I don't.

11 Q Do you know -- is there a percentage?

12 A I don't, but again, some of the reporting and some
13 of the research reports that tie to the 17.2 million stat
14 are on the website MyrtleBeachAreaCBV.com. And that's
15 where this whole study is found.

16 Q Okay. So there is a study that's tied to this
17 number, and from that study, I can find out how many
18 people from out of state make up that 17.2 million?

19 A Yes.

20 Q Going back to page 7 for the tax revenue, it says
21 that, for 2022, there was 32.26 million received. Is that
22 by the CBV for accommodation tax, or is that from Horry
23 County?

24 A Are you looking at the stat right here? Tax
25 revenue?

1 Q Yes, ma'am.

2 A For Horry County? I'm sorry; could you repeat the
3 question?

4 Q Is that just the general overall tax revenue for
5 Horry County or is that what the CBV received?

6 A That is the total amount for Horry County.

7 Q I just want to make sure I was clear on that. So
8 money that is spent that would fall under the
9 accommodations tax, that money goes back to the State and
10 then it comes back to Horry County; is that correct?

11 A Yes.

12 Q Okay. And then Horry County then provides some of
13 it to the CBV to --

14 A Yes.

15 Q -- market tourism for Horry County?

16 A Yes.

17 Q So, in part, the Chamber is publicly funded -- or,
18 sorry, the CBV is publicly funded by tourism it is
19 promoting for the Grand Strand.

20 A Yes.

21 Q Does the CBV track how many hotels are located in
22 North Myrtle Beach -- or, sorry, in the Grand Strand?

23 A In the entire Grand Strand? Yes.

24 Q Do you know how many hotels there? And if you need
25 to, refer to page 7 or 6.

1 A Page 6 indicates 425 hotels and resorts across the
2 Grand Strand.

3 Q And what's the difference between a hotel and a
4 resort?

5 A I couldn't tell you the technical difference between
6 them.

7 Q Do you know how many room units there are in the
8 Grand Strand?

9 A Yes. Our report indicates, here on page 6, 159,000
10 room units across the Grand Strand.

11 Q And do you know the lodging metric for the
12 short-term rentals in the Grand Strand?

13 A I don't know them off the top of my head, but again,
14 the lodging metrics report -- the lodging metrics report
15 dashboard gives two datasets every week on Friday morning.
16 One is hotel and resorts that are tracked through the
17 company, Smith Travel Research, and all vacations rentals
18 are tracked through a separate company that's called Key
19 Data. So those are the two data sources that would be
20 commissioned to collect that information.

21 Q Why are those datasets important to the CVB?

22 A Ultimately, our job is to make the Grand Strand
23 prosperous. So we're trying to make sure that we are
24 constantly bringing enough visitors to fill as many of
25 those rooms, whether they're short-term vacation or hotel

1 rooms, as possible 365 nights a year.

2 Q Does the CBV track the annual economic impact of
3 tourism to the Grand Strand?

4 A Yes.

5 Q Okay. And how is that impact calculated?

6 A I can't tell you the details of that, but again, I
7 believe this annual report mentions there is a steady --
8 that is on the visit -- I'm sorry, MyrtleBeachAreaCBV.com
9 that provides the entire economic impact study.

10 Q If you go to page 8 of the annual report, Exhibit
11 No. 2 on the top, it says, "Accommodations." It talks
12 about the lodging industry, and it looks like there are
13 some metrics for the lodging industry. Are these stats
14 that are tracked by the CBV?

15 A Yes.

16 Q Are these annual stats or are these weekly like the
17 weekly reports that we were talking about earlier?

18 A I don't know. These are the two sources I already
19 told you about: Smith Travel Research and Key Data. But
20 I can't tell you whether this is for the year or for the
21 week or for the month.

22 Q And so STR, Smith Travel Research, what do they
23 track again?

24 A They track hotels and resorts.

25 Q Okay. So that line there, 60 percent occupancy up

1 5 percent year over year, it appears to be that is hotels
2 and resorts that are tracked?

3 A Yes.

4 Q And then Key Data tracks short-term rentals?

5 A Yes.

6 Q And so the average occupancy of 58 percent, up
7 2 percent year over year, that's for short-term rentals?

8 A Yes.

9 Q And down there, it says, "Total revenue: 1
10 billion." Is that total revenue for both hotels and
11 resorts and short-term rentals?

12 A No, I don't believe so. If you look at the note
13 with the annual report, it says both total revenue and
14 total demand are based on Smith Travel.

15 Q Okay. So this is just for hotels and resorts?

16 A Yes, I think, but I'm not sure.

17 Q What is the largest economic drive for the Grand
18 Strand?

19 MR. TAMASITIS: This was third-party counsel saying,
20 "Object to the form. You can answer."

21 A Tourism overall is the biggest economic driver as
22 far as I understand for the economy.

23 MR. TAMASITIS: Thank you, Ms. Tyer.

24 THE COURT: Is there any cross to that or is that
25 it?

1 All right. Thank you. See you in the morning at
2 9:30.

3 MR. WILLIS: Your Honor, we have one issue we wanted
4 to raise with the Court before we break. So we're
5 discussing, because of the sort of unusual nature of our
6 proceeding here, nonjury, the issue of closing arguments.
7 And we were going to discuss this with Mr. Ricard and
8 Ms. Shoun; we haven't had a chance to yet. But it may be
9 more helpful to the Court to hear closing argument after
10 the submittal of proposed findings of fact and conclusions
11 of law from both parties.

12 So, typically, in my experience, in a nonjury case,
13 once it's over, both sides submit thoughtful proposed
14 findings of fact and conclusions of law based on the
15 record, often with the help of a rough transcript, to the
16 Court.

17 And then the cases I have tried that have gone more
18 smoothly are where the Court would then bring us back in
19 to hear closing argument or to hear argument on those
20 proposed findings of fact and conclusions of law. That
21 would give Your Honor a chance to read them, to ask any
22 questions that you might have, clear up any
23 misunderstandings. I think it would make for a more --
24 less error-prone result in the case, regardless of which
25 side the Court rules.

1 We're certainly prepared to do a closing argument on
2 Friday afternoon. I think we're going to end our case by
3 that time. We have told opposing counsel this -- I don't
4 think we have told the Court this, but our expert
5 appraiser, Ms. Debra Tripp, who is an MAI appraiser --
6 she's going to talk about sort of -- we're not going to
7 talk about the value of the property because that part of
8 the case, we haven't -- that's been bifurcated. But she's
9 going to talk about the effect of the zoning ordinance on
10 the market and sort of the economic principles that would
11 apply in order to tie this to a substantial effect on
12 interstate commerce.

13 She has COVID. And so we have arranged for her to
14 testify -- she believes she'll feel up to on Friday -- by
15 video, the same as we did with the other witness for the
16 City by Zoom.

17 And that would probably end our case, I would think.
18 There may be some additional depositions. But we think
19 we'll be done by mid-morning on Friday.

20 I don't know whether the City is going to have any
21 rebuttal witnesses. I doubt it. If they do, I don't
22 think they'll take much time. And then we could close
23 then.

24 But our suggestion would be to adjourn and then
25 submit proposed findings of fact and conclusions of law,

1 both sides to the Court, and then schedule an argument. I
2 think live would be preferable to Your Honor's virtual
3 courtroom, and then expect a ruling from the Court.

4 So that's just my suggestion, Your Honor, and we're
5 certainly willing to be guided by you, as well as to
6 consult with our colleagues on the other side of this case
7 to see if we could reach an agreement as to how it would
8 be for both sides.

9 THE COURT: I would prefer to hear it all this week.
10 I have learned that, once I leave a week and I go into
11 another week, it just gets worse and worse and worse. And
12 I do think I have somewhat of an idea as to what's going
13 on here.

14 MR. WILLIS: Well, we certainly agree, Your Honor.
15 And if that's Your Honor's preference, then that would be
16 fine with us.

17 THE COURT: Let's do that. That way, the machine
18 will be rolling on until the end.

19 MR. WILLIS: Well, then we'll end -- probably do
20 closings on Friday afternoon.

21 THE COURT: That would be perfect.

22 All right. See you in the morning.

23 (At 5:00 p.m., the trial adjourned until Thursday,
24 November 2, 2023. See Court Reporter Julie Kevish's trial
25 transcript for the remainder of this trial.)

1 CERTIFICATE OF COURT REPORTER

2 CASE NAME/NUMBER: City of NMB v. Sun TRS

3 2021-CP-26-7489

4 DATE OF HEARING: October 31, 2023

5 *****

6 I, Bobbi Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 entirety of the trial; and that I am neither counsel for,
9 related to, nor employed by any of the parties to this
10 case, and I have no interest, financial or otherwise, in
11 its outcome.

12
13 14 /s/ Bobbi Fisher

15 Bobbi Fisher, RPR and Certified Transcriber

16 Date Submitted: December 3, 2023

17
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1 City of North Myrtle Beach,) Court of Common Pleas
2 Plaintiff,) Fifteenth Judicial Circuit
3 vs.) Case No. 2021-CP-26-07489
4 Sun TRS Ocean Club LLC,)
5 Sun TRS Carolina Pines LLC,
6 and Sun TRS Carolina Pines RV LLC,) Transcript of Record
7 Defendants.

7 -----

8 November 2 & 3, 2023
9 Horry County, South Carolina

10 **B E F O R E:**

11 The Honorable, Presiding Judge, William Seals

12 -----

13 **APPEARANCES:**

14 For the Plaintiff, Rhett D. Ricard, Esquire
15 Cheryl Shoun, Esquire

16 For the Defendant, John G. Tamasitis, Esquire
17 Richard H. Willis, Esquire
18 Brian H. Gibbs, Esquire

18

19 Julie A. Kevish
20 Official Court Reporter

20

21

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23

24

25

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P-R-O-C-E-E-D-I-N-G-S

3

(Whereupon proceedings reconvened Thursday, November 2,

4

2023)

5

RICHARD MACE WATTS, JR. WAS DULY SWORN AT THIS TIME

6

AND TESTIFIED AS FOLLOWS:

7

THE CLERK: Can you state your name for the Court,

8

please?

9

THE WITNESS: Richard Mace Watts, Jr.

10

DIRECT EXAMINATION

11

BY MR. TAMASITIS:

12

Q. Good morning, Mr. Watts. My name is John Tamasitis and

13

I represent the defendants in this case. Can you please,

14

again, state your full name for the record and spell your last

15

name?

16

A. Sure. Richard Mace Watts, Jr. W-a-t-t-s. Can I say

17

one thing before we start? I'm deaf so I would like for

18

everybody to speak up a little bit. I'm sixty percent deaf in

19

both ears, so I won't think you're yelling at me if you talk a

20

little louder.

21

Q. Where do you currently reside?

22

A. I live in Little River, South Carolina.

23

Q. What is your current occupation?

24

A. I'm into real estate sales, new home construction, real

25

estate developer.

1 Q. And how long have you been a developer?

2 A. A developer since the early 2000's, and the real estate
3 business since 1993.

4 Q. And what primarily is the geographic region where you
5 operate?

6 A. Little River, North Myrtle Beach, Longs, everywhere,
7 basically, from 501 to the state line.

8 Q. And how many properties have you been involved with as
9 either a buyer or seller?

10 A. I've sold over 5,500 individual single-family lots, from
11 a sales standpoint, and I've bought 30 to 40 properties.

12 Q. How many entities have you created or to either own or
13 develop real property in South Carolina?

14 A. Probably seven to eight.

15 Q. How are you familiar with the property that is the
16 subject of this lawsuit?

17 A. So I'm born and raised in North Myrtle Beach, very
18 familiar with the city, locations and different various
19 developments within the city limits in the county and I
20 followed Seabrook Plantation and I was aware that this property
21 was associated with Seabrook Plantation.

22 Q. And do you know who the original developer of the
23 property was?

24 A. From my understanding it was Ben Powell (phonetic) and
25 Craig Howell (phonetic).

1 Q. And did you have any ownership interests in an entity
2 known as NMBOC Holding Company, LLC when it owned the property?

3 A. No, sir.

4 Q. Do you know who the principal member was of NMBOC
5 Holding Company?

6 A. I can't state for sure, but I believe it was Ben Powell
7 (phonetic.)

8 Q. And was that when Powell owned the Beach Club at 1814
9 North Ocean Boulevard?

10 A. Yes, sir.

11 Q. What was the property being used for immediately before
12 you purchased it?

13 A. To the best of my understanding, Ben and his partner
14 were real estate developers in the North Myrtle Beach and Horry
15 County jurisdictions, and they were using this property as an
16 amenity for some of their developments, mainly Seabrook
17 Plantation.

18 Q. How were you involved in Sapphire, LLC when it owned the
19 property briefly in 2017?

20 A. So there was a couple of LLC's that were involved in the
21 purchase, and this particular LLC was one that wasn't utilized.
22 I had two partners, one on the front, one on the back, and
23 this, to the best of my understanding on that.

24 Q. When you say, one on the front, one on the back, what do
25 you mean by that?

1 A. So I had a money investigator on the front end and a
2 lending investigator on the back end.

3 Q. What was your role in NMB Ocean Club Partners, LLC?

4 A. I was the managing member.

5 Q. When did NMB Ocean Club Partners purchase the property?

6 A. I don't have any notes with me, but I believe it was
7 August of 2017, but --

8 Q. Would August 30th of 2017 sound right?

9 A. That sounds accurate.

10 Q. And how much did you purchase the property for?

11 A. 1.8 million.

12 Q. Why did you, and when I say "you," I mean NMB Ocean Club
13 Partners, since you were the managing member, why did you
14 purchase the property?

15 A. So my partner and I purchased the property because we
16 were looking at some real estate developments in the area, some
17 in North Myrtle Beach, some in the county, we had our eyes on
18 some, and I felt like the asset was undervalued at the time.
19 We had heard that the original owner was in some financial
20 difficulties and we felt like it would be a great amenity
21 towards some of our developments. My previous experience, I
22 was involved in Tidewater Golf Club Plantation and I was in
23 real estate sales there in 1996 through '99, and that was a
24 really good amenity and a really good sales incentive for
25 people to purchase within Tidewater Golf Club to have the Ocean

1 Club.

2 Q. And what properties or developments did you have going
3 on at the time that you thought the property could be used for
4 as an amenity?

5 A. So we were building spec houses, some in Seabrook
6 Plantation, some in a community called Cedar Creek, located in
7 Little River, shortly -- I can't remember if it was the same
8 time or shortly thereafter, some homes in Wild Wing Plantation,
9 also, some on the intercoastal waterway in Little River called
10 Serenity Point.

11 Q. And what were your initial plans to use the property
12 for?

13 A. So we had anticipated purchasing some other developments
14 and combining the Beach Club with other developments along with
15 the new homes that we were constructing at the time.

16 Q. And when did you start marketing the club?

17 A. Within a couple weeks of purchasing it. So I believe
18 some time in September of 2017.

19 Q. Who did you contact in order to market it?

20 A. So we had an advertising agency out of Wilmington. The
21 company was called Maximum Designs, and they did websites and
22 Google AdWords and various collateral marketing material.

23 Q. When you say, Wilmington, do you mean Wilmington, North
24 Carolina?

25 A. Yes, sir.

1 Q. So there was a website for this property that you
2 created?

3 A. There was.

4 Q. And were you aware of the deed restriction on the
5 property before purchasing it?

6 A. We became aware of the deed restrictions at closing. If
7 I recall, it was a one-page agreement that was signed back in
8 the 60's, 70's, 80's by the Tilghman family and some other
9 associates regarding the purchase.

10 Q. And what effect did that deed restriction have on how
11 you wanted to use the property?

12 A. It didn't affect us because we were going use the
13 property as an amenity for our property owners and for our new
14 home buyers.

15 Q. And when you were marketing the property were you
16 marketing it to other developments?

17 A. Yes, sir, we were. When we purchased the development it
18 came with a certain number of memberships from Seabrook
19 Plantation, and there was a community, I think there was one in
20 Surf Estates and then one in a community between Surf Estates
21 and Seabrook that initially came with those memberships.

22 Q. Where is Surf Estates located?

23 A. Surf Estates is located in the city limits in North
24 Myrtle Beach.

25 Q. Now, there's been some testimony in this case that the

1 property was in pretty rough shape when you bought it. What
2 actions did you take to try to develop and clean up the
3 property?

4 A. So when we purchased it the elevator wasn't in working
5 order, the pool needed replastering, the furniture was in
6 disarray, there was some improvements that needed to be made on
7 the inside, just general cleanup. I believe when the other
8 owner was in financial disarray it was becoming rundown a
9 little bit.

10 Q. How much, approximately, did you put into cleaning up
11 the property?

12 A. Just a guesstimate, somewhere between \$250 and \$300,000.

13 Q. Now, when we were talking about your marketing the
14 property, was there at any point you started to negotiate the
15 sale of club memberships with any large regional developers?

16 A. Yes, sir. Sometime in 2017, our attorney, Shep Guyton
17 and I engaged in negotiations with H&H Homes. H&H Homes is a
18 large regional builder in the North and South Carolina, and we
19 had sold them a number of positions in the River, North Myrtle
20 Beach, Horry County markets. They felt like individual
21 memberships to be conveyed to their new home buyers would be a
22 good sales incentive. We got close in those negotiations, but
23 they died out some time in 2018.

24 Q. Did you have any discussions with the neighboring HOA's
25 at Sea Cloisters regarding the development of the property with

1 this amenity site?

2 A. Yes. I see Jim sitting out there. We had a really
3 friendly relationship, my partner and I, with Jim, we respected
4 him and his opinions with Sea Cloisters, and we bounced some
5 ideas off of them during the time we owned club.

6 Q. What kind of ideas?

7 A. Different things, what we could do there. We had talked
8 about, you know, if the deed restriction could ever be lifted
9 where we could do something different, enhance the club, you
10 know, make it larger, tear it down, maybe even combine it for
11 an amenity for them, just various ideas, friendly talks, we
12 never came up with any formal discussions.

13 Q. And based on those discussions, what was Mr. Shortle and
14 Sea Cloisters biggest concerns with regards to the use of the
15 property?

16 A. You know, they owned the HOA on both sides of us and
17 they were mainly concerned because parking was limited for this
18 facility, I think we had nine parking spots and a handicapped
19 spot. They didn't want a lot of traffic over running on their
20 two sides on their HOA, so occasionally someone would park over
21 there and Jim would come over and kindly tell us, you know,
22 that that was private parking on that side. He also didn't
23 want a lot of traffic over running, walking traffic coming on
24 both sides, rightfully so, for liability purposes, and things
25 of that nature.

1 Q. Did you have any discussions with anyone at the city
2 regarding your desire to develop the property?

3 A. Yes. We talked to Paul Blust who was the only
4 administrator at the time. We talked to -- I know a few of the
5 guys over at the city from being in the area and we bounced
6 ideas off of them for plans such as a restaurant and a bar.
7 You know, we were looking for different exit strategies after
8 we purchased the property and so we explored some of those with
9 the city.

10 Q. Why were you looking for exit strategies?

11 A. The cash flow, the number of memberships it came with
12 and the number of memberships we could sell with the parking
13 situation really hindered the ability to run the facility like
14 it should be run on an every day basis, and so we started
15 seeking out people that would be able to use this for a master
16 amenity similar to what they did at Tidewater and Barefoot
17 Resort and just turned over the facility to them.

18 Q. Now, I want to go back to when you first purchased the
19 property, were there members to the club when you first
20 purchased it?

21 A. Yes, sir, there was.

22 Q. How many?

23 A. To the best of my memory, somewhere between 12 and 14.

24 Q. And when you sold the property to the defendants, how
25 many members were part of the club at that point?

1 A. Again, to the best of my memory, somewhere between 30
2 and 40.

3 Q. Did you ever obtain a business license for the property?

4 A. Yes, sir, we did.

5 Q. When was the first time you got a business license?

6 A. Shortly after we bought the club in August, I want to
7 say some time in -- again, I don't have a -- I didn't bring any
8 documents, but some time in September.

9 Q. So September of 2017?

10 A. That sounds correct.

11 Q. Did you ever obtain another business license?

12 A. Yes, sir, every year we were in existence we had a
13 business license.

14 Q. And I believe the last one you received was on
15 January 31st of 2019?

16 A. Yes, sir, that sounds accurate.

17 Q. And what was the basis for you getting that license?
18 What did you explain to the city?

19 A. So the revenue department and the city mandated that we
20 had a business license to sell memberships, and so we had to
21 guesstimate or estimate how many memberships and on how many
22 dollar volume of memberships we would sell, and since we were
23 in business, obviously, you had to have a business license.

24 Q. And you had a conversation with someone this morning
25 from the city about this?

1 A. Yes. I didn't want to get up here and say something
2 that I found, you know, to be contrary to what may have
3 happened, because it's been four or five years now, but I spoke
4 to Will Lynch from the City of North Myrtle Beach this morning
5 just to verify that I did, in fact, have a business license,
6 because I have other companies, and he gave me those dates and
7 the name of the business that I had the business license under.

8 Q. Did NMB Ocean Club Partners, LLC ever develop an HOA to
9 own a property?

10 A. No, sir.

11 Q. What was the name of the club while it was owned by the
12 NMB Ocean Club Partners, LLC?

13 A. After we purchased the club we renamed the facility The
14 Ocean Club at Tilghman Beach.

15 Q. Did you create a sign for that?

16 A. Yes, sir.

17 Q. And where was the sign placed on the property?

18 A. Right out front on Ocean Boulevard.

19 Q. Now, do you recall what the annual dues were for
20 membership at the beach club?

21 A. I'm going to guesstimate, but somewhere around a
22 thousand a year, \$900, \$1,000 a year.

23 Q. And was there a buy-in or initiation fee?

24 A. Yes, sir. It was somewhere between \$4,500 and \$5,000
25 initiation fee.

1 Q. So how long did you operate the property as a private
2 beach club?

3 A. From shortly after the time we purchased it until right
4 up to the time Sun Communities purchased it.

5 Q. Was there ever any interruption in operation during that
6 time?

7 A. No, sir.

8 Q. Did the beach club host any events, like membership
9 drives or get togethers?

10 A. We did. Shortly after we purchased it we went to the
11 Seabrook Community and hosted a couple of membership drives.
12 The reason why we did that is, one of the reasons why we
13 purchased Seabrook was the market had deteriorated back in
14 2008, 2009, and Mr. Powell, from our understanding, had
15 intended to use this facility at Seabrook and San-a-Bel and
16 Sunset Harbor in a couple of these communities. Well, when the
17 market deteriorated those lots that he had developed in those
18 communities ended up getting sold to companies like D.R.
19 Horton, and those people didn't have the opportunity to join
20 the club, and so shortly after we purchased it we opened it up
21 to membership to those people and others.

22 Q. Now, I want to go back to what we were talking, you had
23 a talk to the city about an exit strategy. Was that after the
24 deal fell through with H&H Homes?

25 A. Yes, sir, it was. I think it was in, I'm guessing

1 again, so May of 2018, maybe, June of 2018.

2 Q. And so you contacted the city in May of 2018 to discuss
3 an exit strategy?

4 A. Yes. So after the deal fell apart we had different
5 investors coming to us wanting to buy as a restaurant or a bar,
6 different things, and so we explored options as to what we
7 could do different than just a beach club or an amenity center.

8 Q. Who did you contact at the city?

9 A. Paul, Mr. Blust, the only administrator, and he also
10 talked to a gentlemen named Ben Caldwell, Aaron Rucker, a
11 couple of those, but mainly Paul was our contact over there.

12 Q. If we could flip to Defendant's Exhibit Number 32, and
13 Mr. Watt's, that's going to be up on the screen for you.

14 A. Okay.

15 Q. Mr. Watts, do you recall attending a technical review
16 committee meeting on May 17th of 2018?

17 A. I don't recall the date, but that sounds accurate, but
18 yes, my partner and I went to a TRC meeting at the city.

19 Q. What is a TRC meeting?

20 A. It's a technical review committee. It's similar to a
21 preliminary meeting before you have an official meeting of some
22 sort.

23 Q. Did you attend this meeting after your initial
24 discussions with the city about looking for an exit strategy?

25 A. Yes.

1 MR. TAMASITIS: If we could scroll down to the second
2 page.

3 Q. Now, Mr. Watts, it says up here on the top of the second
4 page: Ocean Club at Tilghman Beach, 1814 North Ocean Boulevard
5 first pre-application. Do you see that?

6 A. Yes, sir.

7 Q. And just so we're clear for the record, the Ocean Club
8 at Tilghman Beach was the name of the beach club?

9 A. Yes, sir.

10 Q. And 1814 North Ocean Boulevard was the address?

11 A. Yes, sir.

12 Q. What does a first pre-application mean?

13 A. Just that it's a preliminary discussion, one where you
14 come in and you bounce ideas off of individuals to see what you
15 maybe can and can't do or what would be next steps to pursue
16 certain opportunities.

17 Q. And it says: Attending customer representatives, it's
18 got Ben Oates and Mace Watts as club representatives, right?

19 A. Yes, sir.

20 Q. So you do recall attending this meeting?

21 A. Yes, sir.

22 Q. And Ben Oates was your partner?

23 A. Yes, he was.

24 Q. What was the purpose of you attending this meeting?

25 A. So at this point in time this is when we wanted to

1 pursue the opportunity of maybe having a bar or a restaurant,
2 you know, being that the club was on the oceanfront we wanted
3 to see what opportunities would be available to us and what we
4 would need to do to act upon those opportunities.

5 Q. And if you go to the second block there that says
6 "zoning," and it's private beach club use not allowed in R-4.
7 To come into compliance must convert to a restaurant with sixty
8 percent food sales. Do you see that?

9 A. Yes, sir.

10 Q. Have you ever seen this document?

11 A. No, sir.

12 Q. Were you ever provided after the technical review
13 committee meeting?

14 A. Uh-uh, no, sir.

15 Q. At any time during the technical review committee
16 meeting did the city ever tell you that a private beach club
17 use was not allowed in R-4?

18 A. No, sir.

19 Q. Have you ever been told by the city while you owned the
20 property that you couldn't operate it as a private beach club?

21 A. No, sir.

22 Q. Now, was Mr. Blust or Mr. Caldwell in attendance at this
23 meeting?

24 A. I can't recall, to be honest, but I know that we -- I
25 don't want to speculate, so, no, I don't know the answer.

1 Q. Do you recall what discussions you had with the
2 committee during this meeting?

3 A. I do. The committee -- prior to this time the committee
4 had asked me to bring floor plans of the ocean club, ideas of
5 what we had, so we did that. We discussed, you know, the size
6 of the building, the number of parking spaces, what we wanted
7 to do there, how we wanted to do it, those kind of things.

8 Q. It states that a walk-through was scheduled for Monday,
9 May 21st at 10 a.m. Did that walk-through ever occur?

10 A. I believe it did. I don't believe I was present for
11 that walk-through, I think it was Ben that was present. He was
12 there on a daily basis, but I believe after the walk-through
13 occurred the fire martial came, different people came to
14 inspect the facility. The conclusion was, from my
15 understanding, that there wasn't enough parking to consider a
16 restaurant or a bar on the site. We looked at purchasing the
17 parking that was adjacent to, I think it was called the
18 Tilghman Beach Resort to the right, and that wasn't affordable,
19 financially feasible, so we moved on.

20 Q. After this technical review committee meeting did any of
21 the Ocean Club Partners, LLC continue to operate the beach
22 club?

23 A. We did.

24 Q. Did you ever receive a citation or a cease and desist
25 letter from the City while you owned it regarding the use of

1 the property as a private beach club?

2 A. No, sir.

3 Q. I'm going to turn our attention to the sale of the
4 property to Sun TRS Ocean Club, LLC. Did you approach Sun to
5 purchase the property, or was it the other way around?

6 A. No, sir, I approached Sun. I found -- Sun Communities
7 was developing a property out on Highway 90 at the time, a
8 large-scale property, and I found Sun Communities and a
9 gentleman named John Colman, and I began discussions him, but
10 it was initiated by me.

11 Q. And that large development, did that become Carolina
12 Pines RV Resort?

13 A. I believe so.

14 Q. And how did you know who to reach out to at Sun, how did
15 you make contact with them?

16 A. A contact of mine was doing some development work for
17 Carolina Pines, and they had told me about Sun, and I looked
18 Sun up through their website and John, I can't remember his
19 title, but I believe he was the president or general, some
20 higher up in that chain, and I reached out to him and set up
21 the meeting.

22 Q. And so do you recall, roughly, when the meeting
23 occurred?

24 A. I really don't.

25 Q. Was the meeting just between you and John, or were there

1 other folks there?

2 A. Initial conversations were between John and I, and then
3 it became on-site visit with John and two or three others.

4 Q. When do you recall, or if you recall when those site
5 visits occurred?

6 A. I really don't recall exactly when they occurred, but it
7 would have been some time before we went under the contract
8 with Sun to purchase the facility.

9 Q. Okay. So it was before the purchase agreement?

10 A. Yes, sir.

11 Q. And when the site visit happened was there discussions
12 about the membership at the beach club?

13 A. Yes. So when the contract happened there was a due
14 diligence period in the contract, and there was discussions
15 with Sun's counsel at the time about the memberships and
16 everything that we knew as property owners at that point.

17 Q. What was the initial offer to sell the property?

18 A. I want to say it was 2.5. I don't have the purchase
19 agreement in front of me, but 2.5, I believe.

20 Q. And then negotiations proceeded from there?

21 A. Yes, sir.

22 Q. And what was the plan or the discussions between you and
23 Sun regarding how to handle the current membership of the
24 property?

25 A. So that was really important to Sun. John and his staff

1 wanted to purchase all the members that were coming with the
2 property, and they made arrangements through their counsel to
3 write up a document that Ben and I took back to the members
4 electing to purchase them out at full purchase price, plus, I
5 want to say, plus some sort of interest, and those who decided
6 to stay were welcome to stay, but they had to know that Sun
7 Communities was becoming involved in the purchase of the club.

8 Q. Now, I want to start talking about the purchase
9 agreement, but want to go back a little bit in some of your
10 testimony. There were some discussions of Cedar Creek, and I
11 think it was Wild Wing, is that it?

12 A. Yes. At least Cedar Creek. Those were new homes I was
13 building in at the time, Serenity Point, Cedar Creek, I want to
14 say Wild Wing was one of them, as well.

15 Q. And where are those projects or properties located?

16 A. Cedar Creek's in Little River, South Carolina, Serenity
17 Point is in Little River on the waterway in South Carolina, and
18 Wild Wing is in Conway, South Carolina.

19 Q. Were there any discussions from folks at the city that
20 they advised or told you that you couldn't use those projects
21 or properties for use at the beach club?

22 A. No, sir.

23 Q. The deed restriction that we were talking about earlier
24 limits the use of the property for a structure to a clubhouse
25 for recreational purposes. Why would that not interfere with

1 the beach club operation?

2 A. Ask that question one more time?

3 Q. You operated it as a private club membership, right?

4 A. Right.

5 Q. How did the deed restriction not impact that?

6 A. It was our understanding that we could operate it just
7 as that because the previous owner had sold memberships at the
8 time, and we inherited his rights to do what he was doing, so
9 we continued his process.

10 Q. If we could go to Defendant's Exhibit Number 9. That's
11 going to pop up on that screen, too. Mr. Watts, do you
12 recognize this document?

13 A. Yes. This looks like the purchase agreement we had
14 between the club and Sun.

15 Q. And it's dated February 15, 2019, right?

16 A. Yes, sir.

17 MR. TAMASITIS: And if we scroll down to page 16 on
18 the document.

19 Q. Is that your signature there?

20 A. It is.

21 Q. And what ended up being the agreed upon purchase price?

22 A. Can you scroll back? I think it was 2.5, but
23 it's been awhile, yes, 2.5.

24 MR. TAMASITIS: Now, if we could turn to page five,
25 section 8.1.

1 Q. I'm going to be focused on Subsection C, but Section 8
2 is the seller's warranties, do you see that?

3 A. Yes, sir.

4 Q. And Section 8.1 states: Seller represents and warrants
5 to the purchaser as of the effective date and as of the closing
6 date the following with the understanding that each of the
7 representations and warranties are material and have been
8 relied on by purchaser in connection herewith. Did I read that
9 right?

10 A. Yes, sir.

11 Q. Let's focus in on Subsection C. Mr. Watts, the first
12 sentence states: To the best of the seller's knowledge, the
13 assets and operation of the beach club comply in all respects
14 with all permitted exceptions and all applicable laws,
15 ordinances, codes, rules, and regulations. Do you see that?

16 A. Yes, sir.

17 Q. Including those pertaining to zoning, and we'll just do
18 a dot, dot, dot from there. Did I read that correctly?

19 A. Yes.

20 Q. Was that statement true when you entered into the
21 purchase agreement?

22 A. To the best of my knowledge it was. I believe that's
23 what the last sentence says, to the best of my knowledge, and
24 that was our knowledge at the time.

25 Q. Why was it to the best of your knowledge at the time?

1 A. I was represented by counsel, Shep Guyton, and Shep has
2 a, from my understanding, a really good relationship with the
3 city, and all this was told to us when we purchased the club
4 that we could do this. A membership document was drawn up by
5 Shep, and so I had no reason to believe with the business
6 license and the membership agreement and the meetings that I
7 had had that there was anything that would keep another
8 purchaser from doing the same thing we were doing.

9 Q. And you got two business licenses for the properties to
10 operate as a private beach club from the city, right?

11 A. I did.

12 Q. And on both of those business licenses you had to show
13 there was membership and it was an ongoing concern, correct?

14 A. I did, yes, sir.

15 Q. And I'm assuming there were fire inspections and things
16 like that where the city came out and checked on the property?

17 A. Yes, sir. So we were treated just like any other
18 business at the time. The fire marshal came out, he inspected
19 the equipment, he inspected -- we had elevator inspections, we
20 had DHEC come out and inspect the pools, various, you know,
21 government agencies came out and inspected to make sure we were
22 in compliance.

23 Q. And you went to the technical review committee meeting
24 after a discussion with the city and informed them of what you
25 were using the property for, is that not right?

1 A. I did.

2 Q. Let's discuss the due diligence or the investigation
3 period, if we can back out of this, the investigation period
4 under the agreement. What all were you required as the seller
5 to provide during that investigation period?

6 A. We provided a lot of things. My provided the membership
7 documents, we provided contacts with the city, we provided --
8 and when I say, "we," my attorney did most of the providing,
9 but we provided our cost and fees and business license and
10 phone accounts and electrical accounts and utilities and
11 maintenance agreements, and all those kinds of things.

12 Q. Yeah, in a commercial property transaction, it's pretty
13 much, give us everything so we can, you know, look under the
14 covers and make sure that there's nothing there we need to be
15 concerned with, right, and that's normal?

16 A. Yes, sir.

17 Q. Based on your experience as a developer in this area how
18 would you classify Sun's conduct during this investigation or
19 due diligence period?

20 A. In my opinion, they were very thorough. They were given
21 a long window of time of due diligence, so this wasn't a quick
22 transaction. If I recall, without reading that, I believe we
23 gave Sun four months, plus 30 days to close thereafter. They
24 had an independent -- or they had counsel, I believe his name
25 was Ken, and I talked to him several times, as I know Shep

1 talked to him several times, so it was very thorough, is what I
2 would say.

3 Q. Real quick, before I forget, were there beach club
4 members prior to the closing of the sale who did not reside in
5 Seabrook?

6 A. I believe there was. Without seeing the list I can't
7 say for sure, and I don't have a copy of that, but I believe
8 there may have been some outside of the city.

9 MR. TAMASITIS: Beg the Court's indulgence. If we
10 could pull the purchase and sale agreement, Exhibit 9 back up.
11 And if we can go to the page that's been Bate's labeled: Sun
12 underscore 02137 and 8.

13 Q. Mr. Watts, I represent to you that this is the member
14 list that's affixed to the purchase agreement. Do you
15 recognize this list?

16 A. Yes, sir.

17 Q. And what is this a list of?

18 A. It's a list of the members at the time that you guys
19 went under contract with us.

20 Q. And so the first person listed, Stan Ashley, that person
21 appears to be, resides in Cornelius, North Carolina?

22 A. Yes.

23 Q. So there were members at the beach club at the time of
24 the sale that didn't even reside in South Carolina, right?

25 A. Yes, sir.

1 Q. If we could turn to Defendant's Exhibit Number 8. Mr.
2 Watts, do you recognize this e-mail?

3 A. I do.

4 Q. And it appears to be an e-mail from Paul Blust to you.
5 Is that your e-mail address, Mace Watts at Yahoo dot com?

6 A. Yes, sir.

7 Q. So it's an e-mail from Mr. Blust to you dated January
8 31, 2019; is that right?

9 A. Yes, sir.

10 Q. And it says: Subject artful regulations and I'll
11 represent to you that what's attached or what's copied into
12 this e-mail is the full copy of the artful regulations. Do you
13 recall why you received this e-mail?

14 A. Can you scroll down? I just see, attached. Is this
15 during the time we were under contract with Sun, or previous to
16 the time we were under contract with Sun?

17 Q. I believe it was previous to.

18 A. Okay. That's the same date that I got the business
19 license.

20 Q. I was going to ask you that. So January 31, 2019 was
21 the same date you got your second business license for the
22 property, right?

23 A. Yes, sir.

24 Q. Do you recall why you got this e-mail?

25 A. I don't.

1 Q. You don't? Mr. Watts, during the time NMB Ocean Club
2 Partners, LLC owned the property, did you understand that the
3 company's ownership at the beach club was a violation of the
4 zoning ordinance?

5 A. No, sir.

6 Q. Did you understand that the company's use of the beach
7 club as a private membership club was according to the city's
8 interpretation in violation of the zoning ordinance?

9 A. No, sir.

10 Q. If you knew that those two statements were true, that
11 the ownership and use of the beach club was, according to the
12 city's interpretation, in violation of the zoning ordinance,
13 you would have told Sun before selling that property, right?

14 A. Absolutely.

15 MR. TAMASITIS: No further questions, Your Honor.

16 THE COURT: Cross?

17 MS. SHOUN: May it please the Court?

18 **CROSS-EXAMINATION**

19 BY MS. SHOUN:

20 Q. Good morning, Mr. Watts.

21 A. Good morning.

22 Q. My name is Cheryl Shoun and I have the honor of
23 representing the City of North Myrtle Beach here. If I move
24 this way a little bit, does that help?

25 A. Yes, ma'am.

1 Q. I'm not particularly soft spoken, but I want to make
2 sure that you can hear me.

3 A. Thank you.

4 Q. Now, I think you indicated in the response to Mr.
5 Tamasitis' questions a number of things about your background.
6 I'm going to make sure that I understand those. You sold some
7 55,000 properties?

8 A. 5,500.

9 Q. 5,500 properties. That's personally?

10 A. That is me as a collective whole as an individual that
11 oversaw different communities that I was involved with.

12 Q. Okay. I wanted to make sure that was not as your -- you
13 weren't referring to that as your realtor self, but as --

14 A. No, no, no.

15 Q. -- but as you the purchaser/buyer?

16 A. Yes, ma'am. I was a VP of sales and marketing for a
17 company for eight years that we did a lot of the developments
18 on the waterway down in the Horry County markets, along with
19 some other places, but, no, not me, I want to make sure I don't
20 misrepresent that. I haven't personally sold 5,500 --

21 Q. Got it.

22 A. -- but I've overseen 5,500.

23 Q. And I wanted to make sure that you were not the realtor
24 or the broker in that but you somehow either individually or as
25 a member of a limited liability company or as a shareholder of

1 a corporation?

2 A. I was the broker in charge.

3 Q. And you say you've bought some 30 to 40 properties?

4 A. Yes, ma'am.

5 Q. Okay. Well, to have sold some, been involved in the
6 sales of 5,500, those were you, right?

7 A. Rephrase your question, I just want to make sure I
8 understand.

9 Q. I'm still not sure I understand. The 5,500 properties
10 that you've sold --

11 A. Yes, ma'am.

12 Q. That's you?

13 A. That was under my supervision, yes, ma'am.

14 Q. You did not own part of those?

15 A. Oh, no, ma'am.

16 Q. Okay, that's what I wanted to make sure.

17 A. No, ma'am.

18 Q. That's what I was wondering.

19 A. No, ma'am.

20 Q. But you have been involved in at least 30 or 40
21 properties yourself --

22 A. Yes, ma'am.

23 Q. Let me finish, please -- either individually as a member
24 of a limited liability company or as a shareholder of a
25 corporation or other corporate entity?

1 A. Yes, ma'am.

2 Q. Okay. Thank you. I just wanted to make sure I got
3 that. In fact, a number of those have been in Horry County,
4 right?

5 A. Yes, ma'am.

6 Q. And would it surprise you to know that if I looked at
7 the public records under either your name individually or the
8 names of limited liability companies in which you were the
9 registered agent of service, I find at least 47 properties in
10 Horry County alone?

11 A. If that's what you found. I don't know the exact
12 number.

13 Q. Okay. And what professional licenses do you hold?

14 A. I'm a real estate broker in charge in South Carolina.

15 Q. And let's go back to property holdings, either
16 individually or as a member or shareholder in some corporate
17 entity. One of those entities would be Level 10 Homes, is that
18 true?

19 A. Yes, ma'am.

20 Q. And specifically in Horry County, that entity has
21 involved in over 60 properties. Would it surprise you if the
22 public record makes that reflection?

23 A. How many?

24 Q. Sixty.

25 A. I don't believe that's accurate, but it could be, but I

1 don't believe that's accurate.

2 Q. And unfortunately, a number of those properties have
3 ended up in litigation, correct?

4 A. Can we go back to your question you just asked me? Are
5 you saying buy and sell? So I think that might be what you're
6 alluding to. When you see 60 transactions, I bought, then I
7 sold, so that may be 30 times two, is that what you're saying?

8 Q. Level 10 Homes has been involved in at least 60
9 transactions reflected in the Register of Deeds --

10 A. Okay. Yes, ma'am, that could be accurate.

11 Q. That would be right?

12 A. Yes, ma'am.

13 Q. Or it could be?

14 A. Yes, ma'am.

15 Q. And several of those properties, unfortunately, which
16 you have been involved either personally or as a member or
17 shareholder in some corporate entity have ended up in
18 litigation?

19 A. Some of those properties.

20 Q. And you've had properties in North Carolina, you've been
21 involved in properties in North Carolina, as well?

22 A. I've been a partner in properties in North Carolina.

23 Q. Such as Summerhouse?

24 A. No, ma'am. I was not a partner in Summerhouse. That
25 was the former person that I used to work for.

1 Q. What about Cannonsgate?

2 A. No, ma'am. That was a former person I used to work for.

3 Q. Craven's Grant?

4 A. Former person I used to work for.

5 Q. And what about Waterfront Communities?

6 A. Former person I used to work for.

7 Q. You had no --

8 A. No ownership, ma'am.

9 Q. And what about Southeastern Waterfront Marketing?

10 A. No ownership.

11 Q. Well, what was your role with Waterfront Communities?

12 A. I was a VP of sales and marketing.

13 Q. What about Southeastern Waterfront Marketing?

14 A. I don't think that I was involved. I think it was
15 Southeastern Waterfront Sales. There was two different
16 companies, but it could be.

17 Q. Well, what was your role in Southeast Waterfront Sales?

18 A. The companies you're referring to are owned by Gary
19 Allen, or they were owned by Gary Allen, and I was a VP of sale
20 and marketing that worked for him at the time.

21 Q. No ownership interest?

22 A. No ownership.

23 Q. Okay. All said and done, you've been in real estate in
24 one form or shape of another for decades?

25 A. Yes, ma'am, unfortunately, I'm old.

1 Q. And many people can't say they have after decades.

2 A. Okay.

3 Q. So you understand the necessities of real estate
4 transactions, correct?

5 A. For the most part, yes, ma'am, I would say I do.

6 Q. And you have a general understanding of the legal
7 requirements of real estate transactions, correct?

8 A. Yes, ma'am.

9 Q. Would it be fair to say you also understand the nuances
10 of real estate transactions?

11 A. Very much so.

12 Q. There's a lot of that, right?

13 A. Yes, ma'am, there is.

14 Q. Okay. Now, let's talk a little bit about the nuances.
15 You purchased, and when I say, "you," I mean, NMB Ocean Club
16 Partners, LLC.

17 A. Yes, ma'am.

18 Q. You purchased that roughly in 2017, correct?

19 A. Yes, ma'am.

20 Q. And I think we said it was August 30, 2017?

21 A. That sounds right.

22 Q. Alright. And you've already told us you recognized Jim
23 Shortle sitting back there in the courtroom?

24 A. I do, he's a very nice guy.

25 Q. He is a very nice guy, thank you. And then in March,

1 2018 is when you approached Mr. Shortle as the president of Sea
2 Cloisters I and his counter-partner, Sea Cloisters II, about
3 removing the restrictive covenants that were agreed to by the
4 Tilghman family some years prior, correct?

5 A. That could be accurate. I don't remember the exact
6 date, but we've had discussions about this.

7 Q. March 2018 could be right?

8 A. It could be wrong, too, but I'm just saying, it sounds,
9 I did have discussions with him, I just don't remember the
10 dates.

11 Q. And at that time was it made clear to you how
12 significant those restrictions are to the Sea Cloisters owners?

13 A. Mr. Shortle did not want, he went back, I think, based
14 on our conversations, he went back and talked to Sea Cloisters
15 I and Sea Cloisters II to see if they would be willing to do
16 anything different than what was already in the deed
17 restrictions, and they didn't want to do that.

18 Q. Had they already been through the litigation of somebody
19 trying to remove those restrictions?

20 A. I don't know, not through me. I've never had any
21 litigation with Sea Cloisters I or Sea Cloisters II.

22 Q. Would you have looked at that litigation before you
23 purchased the property?

24 A. No, ma'am, I would have relied on my attorney's advice
25 when I closed on the property to make sure that I had clear

1 title to get title insurance, that it was in compliance, but I
2 don't recall there be being any other litigation before we
3 bought.

4 Q. So in your decades of being involved with real estate
5 either buying, selling personally or in some other professional
6 role --

7 A. Yes, ma'am.

8 Q. -- has it become very apparent to you the necessity of
9 relying on your counsel to look at the property records and
10 then inform you of what's on there?

11 A. Most definitely.

12 Q. Okay. And when they looked at those property records
13 and they discern what affects the property, is it critical to
14 you as a purchaser to know what those restrictions may be, if
15 any there are?

16 A. Yes, ma'am.

17 Q. Would that include easements?

18 A. Yes, ma'am.

19 Q. Would that include restrictive covenants, such as the
20 property could only be used as sort of a clubhouse for
21 recreational purposes?

22 A. Yes, ma'am.

23 Q. And would it include applicable zoning ordinances?

24 A. Very much so.

25 Q. Because those would be critical to operation of a

1 property, particularly if it's other than a single-family
2 residence, would that be correct?

3 A. Yes, ma'am, that's an accurate statement.

4 Q. You would agree with that?

5 A. Yes, ma'am.

6 Q. Okay. Now, let's take a quick look at the TRC meeting
7 notes that Mr. Tamasitis asked you about.

8 A. Okay.

9 MS. SHOUN: They'll pull that up for you, because as
10 I've indicated in the courtroom, I'm old and I don't do
11 technology.

12 THE WITNESS: That's okay, we're alike.

13 Q. Okay. And we're going to scroll down to where we get to
14 the entry that Mr. Tamasitis showed you: Ocean Club at
15 Tilghman Beach, 1814 North Ocean Boulevard. Do you see that?

16 A. Yes, ma'am.

17 Q. And that is, indeed, the Cabana house about which we're
18 here today?

19 A. I'm sorry, say it one more time.

20 Q. That is the cabana house, that is the location of the
21 cabana house?

22 A. It was the location of the Ocean Club, yes.

23 Q. Which is referred to as the cabana house in the zoning
24 ordinance, do you agree?

25 A. Ma'am, yes, it could be, and based on this it could be

1 considered the cabana house, but to us it was the Ocean Club at
2 Tilghman Beach.

3 Q. Did you ever look at the zoning ordinance?

4 A. We -- my attorney closed this transaction and he advised
5 me that we were within our rights to do what we were doing.

6 Q. Yes, sir, my question is did you ever look at the --

7 A. Did I personally --

8 Q. I'm sorry --

9 A. -- look at the zoning ordinance, did I personally --

10 Q. Yes, sir.

11 A. -- look at it? No, I talked to the people at the city,
12 Paul Blust, and verified it, but me personally, I never saw
13 this.

14 Q. You never saw this?

15 A. I never saw this, minutes of the TRC. I don't know if
16 this is a public document, if they put it out or if they
17 e-mailed it, but this has not been e-mailed to me unless
18 somebody can show me where this has been e-mailed to me.

19 Q. Okay. Did you ever -- you don't know if this is a
20 public document?

21 A. You're asking me the question, ma'am. I don't know -- I
22 never received this document. If I had received it I would
23 have said, whatever your name is, yes, ma'am, I received this
24 document, but I haven't received this document until today.

25 Q. Yes, sir. My question is, you don't have any idea

1 whether these notes from the TRC meeting are public?

2 A. I've never seen this document so I can't speculate if
3 this is a public document or a private document or if the way
4 that this document is published is on a website or e-mailed or
5 if you have to go in and get it. I'm not trying to be
6 confrontational, I just don't know, I'm answering your
7 question, I don't know.

8 Q. How many properties in which you've been involved in the
9 City of North Myrtle Beach have had any involvement with TRC?

10 A. That I personally have been involved with?

11 Q. Either you personally or you in a professional capacity?

12 A. Okay. In the professional capacity I've been involved,
13 me personally buying properties, I bought two properties at
14 Seabrook Plantation and I purchased this in the city limits,
15 but everything else I've been a sales person or in management
16 on the things that's been sold within the city.

17 Q. How many?

18 A. Well, Tidewater Golf Club, I was in sales and it was a
19 lot --

20 Q. Ballpark?

21 A. Four or five hundred, oh, yeah.

22 Q. Okay.

23 A. But I didn't -- one of my requirements wasn't to go to a
24 TRC meeting or to review TRC documents. I was just asked to
25 sell the property.

1 Q. Yes, sir.

2 A. Okay.

3 Q. And you've been involved in real estate for decades,
4 correct?

5 A. 1993.

6 Q. Okay. And you cannot tell this Court whether you're
7 aware, whether a document such as this, not asking about this
8 particular document, but a document such as this, you're not
9 aware whether it's publicly accessible?

10 THE WITNESS: Your Honor, I don't know how this
11 document is accessed. I don't know if it's publically
12 accessible, e-mailed, published, so I'm trying to answer her
13 question and very nice about it, and I don't want to be
14 confrontational, but I don't know how those things work.

15 THE COURT: Just answer it the best you can.

16 THE WITNESS: Okay.

17 A. I'm sorry, but I really don't. I might be ignorant in
18 this fact, but I really don't know how this document's put out.

19 Q. Okay. Let's look at the document there, and it says on
20 there, and Mr. Tamasitis directed your attention to zoning
21 where it says: Private beach club use not allowed in R-4, do
22 you see that?

23 A. Yes, ma'am.

24 Q. You're not suggesting that the City of North Myrtle
25 Beach just made up that comment, are you?

1 A. No, ma'am, I'm not accusing the City of any wrong-doing
2 or making up any stories, but what I can tell you is I have two
3 business licenses, I've been selling memberships there, the
4 city knew I was selling memberships there, and the city is even
5 saying in this document that I've never seen before how the
6 private beach club is not allowed but a restaurant is. Well,
7 we know that based on deed restrictions that a restaurant is
8 not, right, so to answer your question, I don't really know
9 what the city was thinking, but the city has never communicated
10 to me, Mace Watts, that I can't operate a beach club on the
11 property that I bought, and I provided everyone's name and
12 number, Paul Blust, Aaron Rucker, Ben Caldwell, everyone to the
13 property, to the people that bought the property. I'm not
14 trying to be confrontational, I'm just telling you what I know.

15 Q. I understand, I understand that.

16 A. Okay. Alright.

17 Q. And when you provided everything to the Sun entities,
18 whether it be their attorney or with whomever you were dealing,
19 did you also turn over those business licenses that you refer
20 to?

21 A. Yes, ma'am.

22 Q. Do you know Sun's acquired a business license?

23 A. No idea. After I sold them the property, I think I've
24 been to the Ocean Club one time since then, maybe twice, so I
25 don't know if they obtained business license, I don't know what

1 their counsel instructed them to do, I just know that me as a
2 beach club owner got two business licenses and paid those fees
3 to get those.

4 Q. So let's talk a little bit more about, not necessarily
5 the TRC meeting, but let's talk about what happened at the TRC
6 meeting. You indicated that shortly after that, in fact, you
7 think that the walk-through that's referenced in here as being
8 scheduled on May 21st, you indicate that you believe that did
9 go through, correct?

10 A. So based on my partners being there, I believe that they
11 did have a walk-through. I wasn't personally there for that
12 walk-through.

13 Q. And it was shortly after you realized you can't do the
14 private membership there because that was indicated in the TRC
15 meeting, that was brought to your attention, and it was shortly
16 after you realized the restaurant wasn't going to work for a
17 number of reasons, including parking, that I think you then
18 executed what you refer to as your exit strategy?

19 A. No, ma'am, that's not correct. Let me restate what I
20 said again. I had talked to Robbers Roost, to H&H Homes prior
21 to this TRC meeting, way prior to this TRC meeting in December
22 and January, December of 2017, January of 2018, the TRC meeting
23 was nothing more than to see if we could do a restaurant or a
24 bar because we had someone come to us on the purchase of the
25 facility for that purpose. It wasn't that we discovered at

1 this TRC meeting that we were operating out of compliance and
2 were also going to sell this facility to someone else and let
3 them have troubles, it was never communicated, I want to repeat
4 this. It was never communicated by the City of North Myrtle
5 Beach to me or my partner that we were in violation and that we
6 couldn't operate a beach club. They, in fact, knew that we
7 were operating a beach club and they knew we were selling
8 memberships and we never received one violation or one
9 cease-and-desist order. We never had anyone come to the
10 property and say, sir, you can't do this. I know the people at
11 the city very well, they're very nice people. I don't want to
12 be at odds with the city, in fact, I don't even want to be here
13 today, to be honest, but I'm here because I was subpoenaed, but
14 I'm not going to tell something that's not true, and that is,
15 we were not told this, so I hope that was clear, and I don't
16 mean to be confrontational.

17 Q. Who approached you to purchase the property?

18 A. I think I approached the person to purchase the
19 property, but I don't recall that, to be honest.

20 Q. I think that you indicated in the information that you
21 just gave me that somebody had approached you to purchase the
22 property?

23 A. No, ma'am, I don't think I said that. If I did -- I
24 don't think I said that. Oh, I'm sorry, are you talking about
25 the restaurant?

1 Q. Yes, sir.

2 A. Okay, I'm sorry, I thought you meant to purchase the
3 Ocean Club when we originally purchased it. No, there was a
4 restaurant, there was a guy that owned a restaurant down on
5 restaurant row, two people, actually, one that owned the
6 restaurant on restaurant row and one that owned a bar on 501,
7 and that's what instigated us to go do that.

8 Q. And they wanted to purchase this property?

9 A. The wanted to purchase the Ocean Club as if it could be
10 a bar or a restaurant. That's what instigated Ben and I to go
11 to the TRC meeting. We found out after that that there wasn't
12 enough parking spaces to do that. In fact, based on what this
13 reads, they're trying to get it to convert more food sales to
14 be able to do it as a restaurant, not that I've had this
15 document previously, because I haven't.

16 Q. And you made a couple of references to Robbers Roost,
17 right?

18 A. Yes, ma'am.

19 Q. And that's located within the city limits?

20 A. Yes, ma'am, it is, very nice development.

21 Q. And just to be clear, Seabrook is, likewise, in the city
22 limits of North Myrtle Beach; isn't that right?

23 A. Yes, ma'am, nice development.

24 Q. So was it after you realized you were not going to be
25 able to make a deal with H&H that you began your exit strategy?

1 A. No, ma'am. H&H was one of the exit strategies. We
2 bought this as an investment and then we were looking to team
3 up with some people. With H&H we weren't going to sell the
4 club, we were just going to sell the memberships.

5 Q. And that just did not work out either?

6 A. No, ma'am, it didn't work out.

7 Q. And pretty closely I'm learning that it didn't work out
8 with H&H is when you approached the Sun entity, right?

9 A. A year later.

10 Q. It was a year?

11 A. Yes, ma'am, or almost a year later. We purchased the
12 community August 30, 2017. We went to Shep in December, I want
13 to say it was December 18th of 2017. We wrote up an agreement,
14 Shep was out of town. We didn't get back to H&H until January
15 of 2018, and H&H ran it through their powers to be and based on
16 the way we were structuring it they didn't feel like they could
17 do it because it would be considered, as far as loans it would
18 have to be subtracted from their purchase price and they didn't
19 want to do anything that would slow down, it was supposed to be
20 an enhancement, not something to slow sales down.

21 Q. So H&H came and went before the attempted restaurant
22 conversion?

23 A. Much before.

24 Q. Got it.

25 A. Robbers Roost also did before.

1 Q. So then after the restaurant conversion was when you
2 were further implementing --

3 A. Some communities -- go ahead, I'm sorry, I don't mean to
4 interrupt.

5 Q. So it was after the failed restaurant conversion that
6 you continued to try to implement your exit strategy?

7 A. Just to be clear, during the time and after the time we
8 were selling memberships, it wasn't until after, much after, we
9 were continuing to sell memberships that this wasn't working
10 out that we went to other people like Sun Communities. We also
11 went to other people. Sun wasn't the only person we went to.
12 We went to other developers in the area, big developers that
13 were going the try to use us as an amenity for their
14 communities, so it wasn't a one and done with Sun, they just
15 happened to be one that we thought would work out. The reason
16 why -- can I -- do you want me to keep talking? Okay.

17 Q. I would actually like for you to -- and you can
18 absolutely explain your answer, but my question, and I probably
19 wasn't clear --

20 A. Okay.

21 Q. -- as I understand now, and if we can just refer to as
22 the H&H deal or perspective deals --

23 A. Yes, ma'am.

24 Q. -- H&H didn't work out?

25 A. No, ma'am.

1 Q. Followed by the failed attempt for the restaurant
2 conversion, the restaurant deal, if we can call it that --

3 A. Yes, ma'am, but --

4 Q. -- if you'll just let me finish, and I then I promise
5 you can explain.

6 A. Okay.

7 Q. That was in May 2018, that being the restaurant deal,
8 correct?

9 A. Yes, ma'am, but --

10 Q. Okay. Yes, now, thank you.

11 A. I don't want to classify it as a failed conversion,
12 because it didn't fail from the city's perspective, it failed
13 because we didn't pursue it based on some of the things we
14 would have had to do to the club to make this a successful
15 venture, so what I'm trying to say is that the city didn't say
16 you cannot do a restaurant there. The city did not say you
17 cannot do a bar there. In fact, if you read this, they're
18 trying to figure out a way to get it to where if you do
19 60 percent food sales and this, that and the other, we couldn't
20 do it because of a parking situation, and to be fair to Jim and
21 his two HOA's, and we talked with Jim about all of our
22 different exit strategies, but to be fair to them, because of
23 the parking arrangement, they only had nine parking spots, so
24 we would have been parking up and down the road, that would
25 have been a complaint, people would have been filtering over to

1 Jim's properties on Sea Cloisters I and II, therefore, we went
2 to other HOA's that would consider, like, shuttling people in,
3 not just Sun. We went to Robbers Roost, we went to some other
4 ones, we were working with Waterbridge in Carolina Forest, I
5 mean, there was several other places that we worked with, but
6 go ahead, I'm sorry.

7 Q. That's okay. So after the restaurant deal did not
8 work --

9 A. Yes, ma'am.

10 Q. -- in May of 2018, you shortly, thereafter, approached
11 Sun, correct?

12 A. I think it was in January, I believe, I don't have the
13 dates, but based on the contract, that contract's in February,
14 so probably some time in December or January, six months later,
15 maybe, maybe sooner.

16 Q. And in fact, it was in January of 2019 that Mr. Blust on
17 behalf of the City of North Myrtle Beach sent to you a copy of
18 the R-4 residential district standards out of the zoning
19 ordinance, correct?

20 A. Yes, ma'am.

21 Q. Did you read this, Mr. Watts?

22 A. Yes, ma'am, I read this.

23 Q. Are you aware whether your lawyer read this?

24 A. I know my attorney was in touch with the city, but not
25 specifically regarding this e-mail, but this was right at the

1 time that Sun was negotiating with us and the city and the
2 attorneys.

3 Q. Let's take a look at the contract again, the purchasing
4 sale agreement that you entered into with Sun.

5 A. Okay.

6 Q. So if I'm reading this correctly, Mr. Watts, it's dated
7 February 15th, I believe, of 2019?

8 A. Yes, ma'am.

9 Q. The handwritten date's a little tough, I'm not sure it's
10 the 13th, I think it's the 15th.

11 A. It's either the 13th or the 15th, it looks like.

12 Q. Okay. So we know in May, it looks like by your
13 testimony it would be late May of 2018, we know the
14 restaurant's not going to work for various reasons, correct?

15 A. Yes, ma'am.

16 Q. And we know that you've gotten a copy of the zoning
17 ordinance relative to the R-4 district in January of 2019,
18 correct?

19 A. Yes, ma'am.

20 Q. Would it be safe to assume that Mr. Blust didn't just
21 randomly send that to you?

22 A. I'm not sure why Mr. Blust sent that to me, but I had
23 talked to Mr. Blust several times prior to that e-mail taking
24 place. I can't -- I don't know if this was the final attempt
25 on the contract, or normally when you do a contract there's a

1 couple of different drafts that circulate, I don't know if he
2 was in touch with the city or the purchaser or if this contract
3 started on January 1st or December 14th, I don't know, but
4 based on this, if this is the final contract, certainly, there
5 was some kind of buildup prior to that contract, so I don't
6 know if I'm answering your question, I'm just speculating, I
7 guess.

8 Q. You would agree with me that it's not likely Mr. Blust
9 just went into his office one day in January of 2019 and
10 decided to send you a copy of the R-4 ordinance?

11 A. I would agree with that.

12 Q. And then shortly after that on February 15th of 2019 you
13 enter into the agreement with Sun?

14 A. (No audible response.)

15 Q. Okay. Now, between receiving that R-4 zoning ordinance
16 in January from Mr. Blust, the end of January, the last day of
17 January, as I recall, from Mr. Blust, and entering into this
18 contract on February 15th of that same year, I'm going to
19 spitball this, but I'm going to say it's about two weeks
20 later --

21 A. Okay.

22 Q. -- did you forward a copy of that R-4 ordinance onto
23 anybody at Sun Properties?

24 A. I don't know. I don't have any e-mails with me or any
25 documents. I only have what you guys are showing me so I can't

1 say if I forwarded that to someone or forwarded it to someone I
2 was talking to, or if I even received it. I don't know if it's
3 read by me, I don't remember that document coming across my
4 desk, but that's not to say I didn't receive it.

5 Q. Is that your e-mail address?

6 A. Yes, ma'am.

7 Q. Alright. Let's look at section 3.1 of this purchase and
8 sale agreement, if you will. And that talks about permitted
9 exceptions, do you see that?

10 A. Yes, ma'am.

11 Q. And if you look at "A" it talks about easements and
12 covenants and other matters on schedules to be provided,
13 essentially, and I'm paraphrasing that, and you please correct
14 me if you don't agree with that's what it says.

15 A. What paragraph?

16 Q. That the easements and covenants and other matters that
17 forth schedule due to the commitment to be delivered pursuant
18 to section 4.1, which purchaser does not designate as title
19 defects.

20 A. Yes, ma'am.

21 Q. Were all those documents turned over by you as the
22 seller of the property? And again, by you, I mean NMB Ocean
23 Club?

24 A. Everything that we had, ma'am, we turned over to Sun,
25 and everything that the attorney had he turned over to Sun that

1 I'm aware of.

2 Q. Mr. Watts, in your decades involving real estate is it
3 fair to say that you are aware of ordinances, correct?

4 A. Yes, ma'am.

5 Q. And zoning ordinances?

6 A. Yes, ma'am.

7 Q. And I think we already talked about it briefly, you're
8 aware of the effect that it can have on the potential use of
9 property?

10 A. Yes, ma'am.

11 Q. Let's look at Section 8.1, if I can read my writing, 8.1
12 (c), and I think you went over that with Mr. Tamasitis.

13 A. Yes, ma'am.

14 Q. And that is, to the best of your knowledge the assets
15 and the operation of the beach club complied all aspects with
16 all permitted exceptions and all applicable laws, ordinances,
17 codes, rules and regulations. Now, would that include the
18 ordinance that Mr. Blust sent to you on January 31, 2019?

19 A. Yes, ma'am. That would include anything to the best of
20 our knowledge.

21 Q. And you would have had knowledge of the zoning
22 ordinance, correct, at that time?

23 A. And we had been operating as a beach club for two years
24 by that period of time. We had two business licenses showing
25 that we were operating as a beach club. There is no doubt that

1 everyone knew that we were operating as a beach club. Now, as
2 far as this e-mail that you're telling me about Mr. Blust, I
3 don't know if you've ever had this problem, but I'm going to
4 convey a problem I've had, e-mails come and go, sometimes they
5 go to junk mail, sometimes they come to your e-mail, sometimes
6 they don't arrive. If you're telling this one e-mail overrides
7 you guys issuing me two business licenses, accepting my money
8 as a beach club sales and operation, inspecting my property,
9 then I'm going tell you that I don't feel like that's very good
10 judgment. I'm not being confrontational, but I told everybody
11 and my counsel I felt told everybody to the best of their
12 knowledge what they knew about this facility. That's all I
13 know, I really don't know anymore than what I can tell you.

14 Q. Mr. Watts, my question is --

15 A. Okay, sorry.

16 Q. Your representation in 8.1 --

17 A. Yes, ma'am.

18 Q. -- where you say that it complies with all applicable
19 ordinances, would it include the ordinance that affects the R-4
20 district in which the cabana house is located; is that correct?

21 A. It would include everything, yes, ma'am.

22 Q. Okay. Now, you've already testified, I believe, that is
23 being involved real estate for decades --

24 A. Yes, ma'am.

25 Q. -- that you were aware that the City of North Myrtle

1 Beach, and frankly, probably every jurisdiction in which you've
2 been involved in real estate --

3 A. Yes, ma'am.

4 Q. -- has zoning ordinances. Fair?

5 A. No question, they do.

6 Q. Okay. Now, you said you never had any discussions
7 directly with the Sun entities about that, right?

8 A. About what?

9 Q. About the zoning ordinance.

10 A. I had discussions with them about everything. I
11 provided them every bit of information, our business license,
12 my insurance, my property taxes, the name of the company,
13 everything, inspections on the property by the City. I
14 provided everything that we knew, and I say "I," my attorney
15 provided in addition to what I provided, so I provided
16 everything I knew.

17 Q. You even provided the list of those members, didn't you?

18 A. Everything I knew. I don't know how to say it anymore
19 clear, I provided everything I knew, right down to the members,
20 addresses, phone numbers. I had nothing --

21 Q. Okay.

22 A. Okay.

23 Q. Looking at that membership list, and maybe Mr. Tamasitis
24 can put that back up, we don't have that.

25 A. Okay.

1 Q. Looking at that membership list, Mr. Watts, can you tell
2 us which of those individuals shown on that membership list
3 that have an address outside of North Myrtle Beach may own
4 property in North Myrtle Beach in a project in North Myrtle
5 Beach?

6 A. That's a fair assessment, and probably, I can't tell you
7 that from that, but I would say the majority of them do own
8 property in North Myrtle Beach, but I can't say for sure.
9 Actually, yes, I can say for sure. So do you want me to keep
10 talking? Kathy and Hubert Willard (phonetic), I built a house
11 for them in Little River. They bought a new construction house
12 from me, they had a membership.

13 Q. Do you know if they also own property in North Myrtle
14 Beach?

15 A. I don't know that.

16 Q. Okay. My question is --

17 A. Yes, ma'am?

18 Q. -- can you point to the members on that list that you
19 will testify under oath did not at the relevant time own in a
20 project in North Myrtle Beach?

21 A. Meaning, that in addition to what they may have bought
22 from me that they could --

23 Q. Absolutely.

24 A. I can't say for sure.

25 Q. Okay. Okay. Alright. Now, you've mentioned Mr.

1 Guyton a number of times. Tell us who that is. He's your
2 lawyer, right?

3 A. Yes, ma'am. He was the attorney that handled the
4 closing for us, between Sun and us. He also helped with the
5 purchase or the initial closing when we bought the property.

6 Q. So he represented in the Ocean Club Partners when you
7 purchased the cabana house and when you sold it, correct?

8 A. Yes.

9 Q. Are you aware if he then had any relationship with the
10 Sun entities?

11 A. I wasn't aware.

12 MS. SHOUN: Beg the Court's indulgence. One moment,
13 Your Honor.

14 BY MS. SHOUN:

15 Q. Let's look real quick at Section 15 of the purchase
16 agreement. Do you see that, Mr. Watts?

17 A. Yes, ma'am.

18 Q. And "you," and by "you," NMB Ocean Club are the seller
19 pursuant to this agreement, just for clarity purposes, right?

20 A. Yes, ma'am.

21 Q. And it says there that seller agrees to indemnify defend
22 and hold harmless purchaser, and that's the Sun entity that
23 ultimately purchased, correct?

24 A. Yes, ma'am.

25 Q. From and against any and all claims, penalties, damages

1 liabilities, actions, causes of actions, costs and expenses
2 including attorneys fees, as a result or a consequence of the
3 occurrence of any event or condition arising under that
4 contract. And again, I'm paraphrasing that, but feel free to
5 go ahead to read the remainder of that contract.

6 A. Are you talking about one, two and three and four?

7 Q. Yes, sir.

8 A. Okay, yes, ma'am.

9 Q. Has Sun put you on notice?

10 A. No, ma'am.

11 Q. Did it have it identified as a result of this
12 transaction?

13 A. No, ma'am.

14 MS. SHOUN: I don't have anything else.

15 THE COURT: Cross?

16 A. No further questions, Your Honor. We request a short
17 recess.

18 (Recess taken.)

19 **JONATHAN COLMAN WAS DULY SWORN AT THIS TIME AND**
20 **TESTIFIED AS FOLLOWS:**

21 THE CLERK: Will you state your name for the Court,
22 please.

23 THE WITNESS: Jonathan Colman.

24

25

DIRECT EXAMINATION

1

2 BY MR. WILLIS:

3 Q. Mr. Colman, would you spell your last name for the court
4 reporter, please.

5 A. C-o-l-m-a-n.

6 Q. And John is J-o-n, I believe, or J-o-h-n?

7 A. Correct, Jonathan or John, either way.

8 Q. Where are you from, sir?

9 A. I currently have a residence in Bonita Springs, Florida.

10 Q. Do you reside elsewhere? Are you still in the Michigan
11 area, as well?

12 A. Yes. We have our home also in Commerce, Michigan.

13 Q. Where are you currently employed?

14 A. Sun Communities.

15 Q. And in what capacity?

16 A. At the present time I'm a part-time employee assisting
17 with sourcing acquisitions.

18 Q. And what do you mean by "sourcing acquisitions," if you
19 could explain that to Judge Seals?

20 A. Sure. So when I was originally hired into Sun which was
21 in 1993 I was the executive Vice President of acquisitions,
22 held that title, ran the entire acquisition team for 25 years.
23 I chose to go to semi-retirement beginning in 2019 and my role
24 at that point changed to a part-time role where I would just
25 source deals through contacts I had made over my career and

1 through relationships that I had started, because people would
2 contact me who were owners of the properties, or brokers who I
3 had worked with, they're the ones that knew me and they didn't
4 necessarily know the folks that were being groomed to take over
5 my position at the company, so it was very important to have
6 this smooth transition for the company, as well as for myself.

7 Q. Can you take a minute and explain the importance of the
8 acquisitions role for a company like Sun. You haven't been
9 here the whole trial. Judge Seals knows what Sun is, but if
10 you could explain sort of to him how the acquisitions role
11 works within the organization?

12 A. Sure. So Sun Communities is a real estate investment
13 trust, New York Stock Exchange company. When we started the
14 company there were 25 properties that came in at the time of
15 the IPO and we required additional properties up to 31 total at
16 the time of the IPO because we acquired some properties at the
17 time of the IPO and the role of the acquisitions department is
18 to provide the external growth for the company through
19 utilizing funds that are raised through stock issuances and
20 raising also certain amount of leverage on the debt side to buy
21 more properties for the company, to bring them in based upon
22 the criteria that we established. When I say, "properties,"
23 I'm referring to manufactured housing communities and RV
24 Resorts at the time, and then we turn them over to our
25 operations group who would manage them. So we self manage our

1 own properties and we work directly with the operations group
2 ahead of time to make sure we're identifying properties that
3 they wish to operate so that we're tuned into their concerns
4 during the due diligence process and through the negotiation of
5 the price, terms, et cetera.

6 Q. So sun acquires, develops, owns and manages manufactured
7 housing projects, parks, I guess is how we would say it?

8 A. Correct.

9 Q. RV parks?

10 A. Yes.

11 Q. I gather sometimes there's a combination of RV and
12 manufactured housing like we at Carolina Pines?

13 A. Well, Carolina Pines is strictly RV, but yes, we
14 sometimes have properties that have both, what I'll call, MH
15 and RV components to them, and I'll also add that since 2018,
16 since I left my full-time position at Sun, Sun has also entered
17 into the marina business, but I had no involvement in that and
18 that's being run by another group on the acquisition side.

19 Q. If you could just take a moment and go back to sort of
20 what your career was before you began with Sun, tell us where
21 you went to college and sort of track your career up until the
22 point where you joined the Sun Communities.

23 A. So I joined Sun in '93, so going back from there. I
24 graduated from the University of Michigan Business School in
25 1977 and majored in accounting, and then sat for the CPA exam

1 at that time and passed the exam and did my certification to be
2 certified in the State of Michigan. I had to put in, I think,
3 two or three years experience at the time.

4 Q. Do you have an MBA?

5 A. I do not have an MBA, I have a DBA degree from Michigan,
6 and so, I was in the accounting world, I was with a large
7 accounting firm both in Chicago and in Detroit, Tushwash
8 (phonetic) was the name of the firm, one of the eight largest
9 firms at the time, I worked for them for four years, and then
10 worked for the Bendix Corporation, which is an automotive
11 supply company as the financial analyst for two years, and then
12 in 1983 I joined a company by the name of Uniprop, which is
13 located in Birmingham, Michigan.

14 Q. What did they do?

15 A. They were in the manufactured housing community
16 business, that's what they did, and I was hired in to be their
17 financial VP controller, and I worked on that as well as
18 refinancing projects and we were growing the company to, you
19 know, I think we grew the company from 20 properties to 40
20 properties over the five-year period that I was with them from
21 '93 to -- I'm sorry, '83 to '88.

22 Q. In your role with that company would you have been part
23 of an acquisition team from time to time?

24 A. No. I was not part of the acquisitions group at the
25 time. We had somebody else in the company that was doing that.

1 Q. So your role was primarily finance, fair to say?

2 A. Yeah, it was like being the controller, the finance and
3 accounting functions of the company would have been my role.

4 Q. After that company, is that when you joined Sun?

5 A. No. There was, I didn't join Sun until '93, this takes
6 us up until '88. So in '88 I went out with one of the former
7 partners of Uniprop and the two of us formed an entity to go
8 out and buy manufactured housing communities as a separate
9 entity. I left my employment at Uniprop. We worked on that
10 for a couple of years, I think until 1990, at which time we
11 were not successful in buying enough properties to make a go of
12 it so I needed to do some additional work to supplement my
13 income and so I consulted on the side for real estate companies
14 assisting them with various accounting and financial needs, and
15 I obtained a few different outside clients that I could use
16 that we agreed to supplement my income, and I did that for the
17 next two years, and it was during that time that I was
18 approached by Gary Shiffman of Sun Communities to see if I
19 would be interested in helping to consult with them because I
20 was actually available to give them some time. He was
21 considering to take the company public. It was a private
22 company until December of '93 and so I joined them as a
23 consultant in May of 1993.

24 Q. So you joined them before they went public with the IPO,
25 correct?

1 A. Correct, I did, and then after being a consultant with
2 them from to May until December, I became an employee once the
3 public company was -- the IPO occurred and I was hired in as an
4 employee. Prior to that time I was paid as an outside
5 consultant.

6 Q. So when you were hired in as an employee of the new
7 company, the new public company, what was your title?

8 A. I think it was vice president, I think it was vice
9 president, comma, acquisition, something like that.

10 Q. Would you have been part of what I might consider or
11 what people might consider as sort of the senior management
12 team for the company?

13 A. Yes, I would say so. We had only a dozen or so
14 employees at that time and I was one of the senior members of
15 the team at the time, yes.

16 Q. Can you explain to the Court how the company grew?

17 A. Yes. So we had 31 properties at the time of the IPO,
18 about 6,000 space sites, if you will, and most of the
19 properties were in the Midwest, being a Michigan-based company
20 they were Indiana and Ohio, Michigan, and with the IPO we
21 branched out in Florida, that was a new state for us in '93,
22 that was the first acquisition we did in Florida. So we had,
23 like I said, the 31 properties, and we were charged with
24 acquiring properties that were accretive to our shareholders,
25 meaning that it would increase our earnings per share, and of

1 course the ideas to get the stock price as high as you can and
2 get the cash flow as high as you can to reward the investors
3 for their investments, so our focus was to search for
4 properties that met our acquisition criteria and to buy
5 existing properties, and at that time it was concentrated in
6 the manufactured housing community sector only. In 1996 we
7 acquired our first RV property, and it was the kind of property
8 that we had, like, down in Florida where it's more of a
9 retirement-type community and has a lot of features that are
10 very similar to the manufactured housing, in that, there's a
11 lot of permanent residency as opposed to transient residency,
12 so we acquired our first property as part of a larger portfolio
13 in 1996, and then we expanded into more of the, I'll call it
14 the family RV business, in roughly 2011, 2012 time period, and
15 I was involved in a number of transactions, and by the time I
16 left my position, my full-time position at the end of 2018 we
17 had 370 properties. So we'd gone from 31 properties to 370
18 properties, and we also in my last few years at Sun started
19 developing from the ground up, which is one of the reasons why
20 we did the property here in Myrtle Beach, or in Conway.

21 Q. So you talked about acquisition criteria, and I guess
22 I'd like you to explain this to the Court in the context of
23 explaining, sort of, how is Sun's acquisition strategy
24 different from, maybe, a company that buys and invests in real
25 estate and holds it for investment purposes?

1 A. Well, we are buying and investing it and holding it for
2 investment purposes, but as a real estate investment company,
3 as a public company we're focused on adding cash flow as
4 opposed to speculating in real estate, we're not a speculative
5 company, we are one that has to be buy, acquire property,
6 existing property or if I buy a development that we feel we
7 want to lease up at a rapid rate because our shareholders are
8 relying on that dividend, and we can't have a lot of money --
9 we have money that we can't just sit in land or sit in some
10 with speculative type of real estate, we have to have real
11 estate that's income producing, if that's answering your
12 question.

13 Q. It does. And so what kind of niche would you say the
14 Sun Communities business sort of operates in the global, or the
15 national housing market?

16 A. So Sun is in the communities that we own here where we
17 meet the affordable housing needs and the affordable vacation
18 needs on the RV side for people that aren't in a position to be
19 able to buy a home that's more expensive than site built. We
20 look at ourselves as more of an alternative that's kind of in
21 between an apartment where you don't have the privacy
22 necessarily that you do in a manufactured home, where you have
23 the separate home as opposed to being a part of an apartment
24 building. So there's ownership in the home by the resident and
25 we own the land, so it's kind of a hybrid in that respect.

1 It's different than an apartment, it's not the same as being a
2 fee simple owner of lot and a, home and so we provide, we
3 believe, a niche for people to get into our product that meets
4 that need. Now, on the RV side it's also a way for people as a
5 family to vacation or to retire, if you will, into a sunny area
6 of the company, sunny part of the country like Florida,
7 Arizona, California, where we have most of our RV resorts in
8 those areas, so they can scale down, sell their home up north,
9 move into something like that, so that's the idea.

10 Q. Does Sun own or operate any other properties in South
11 Carolina other than the Carolina Pines RV Park that we've
12 talked about?

13 A. Yes, we do.

14 Q. Can you describe that briefly for the Court?

15 A. So one that comes to mind that I know is called
16 Lakeside, it's in, I think it's a Myrtle Beach address, it's a
17 700-site manufactured housing community, 55 and older. We
18 acquired that, I think in 2013, '14, and through there, and
19 then in 2019, we also acquired some other properties that used
20 to be called the Jensen Communities that are also in the Myrtle
21 Beach market, as well.

22 Q. Now, it's my understanding that Carolina Pines has
23 recently changed its name to Sun Outdoors Myrtle Beach; is that
24 correct?

25 A. Yes.

1 Q. Why did that name change take place? Is it anything
2 more than just a title, or does it describe a focus?

3 A. So our marketing group, let's start with, again, the
4 genesis of this. So when we were acquiring RV resorts we
5 target a large scale over the last 10 to 15 years, we would
6 keep the name of the resort because that's the name that the
7 guests knew it as. So if it was Carolina Pines, that's why it
8 had that name, but existing properties, like in Cape May we own
9 a number, ones called Driftwood, one's call Seashore, one's
10 called Big Timber Lake. Well, these are properties where
11 people from Philadelphia go on the weekends and some people go
12 to the Driftwood because it has this particular reputation and
13 the types of people, so everybody has their name, so we didn't
14 want to tinker with the names of the properties, unless of
15 course there was some sort of negative connotation from the
16 past, but typically we would keep the names of the property as
17 is for the continuity, then as we reached a point where we had
18 100-plus properties in the RV space we looked at ourselves and
19 said we should probably, we should brand our product, we should
20 do what a KOA or what Jellystone does, where there's a certain
21 type of features that you would expect, certain kind of quality
22 and service, amenities, cleanliness, et cetera, that you come
23 to go in and if you've got a property that has the KOA name
24 that's in Ohio and you look at one in Florida you know what
25 you're going to get, but we wanted to do the same thing with

1 our properties, so we spent a lot of time and money, of course,
2 researching that, and we determined at that point we should
3 brand the Sun Community. We came up with the word Sun Outdoors
4 as opposed to Sun Communities because it gives the connotation
5 of being an outdoor campground or RV resort, something other
6 than housing, so that was the genesis of that, and then at this
7 point I believe we've converted all of our former named
8 properties, like in Carolina Pines, they all have the Sun
9 Outdoors Myrtle Beach, the Sun Outdoors Cape May, or whatever
10 the case may be, attached to their name.

11 Q. Now, let's talk about, sort of, Sun's history and your
12 history with the Myrtle Beach area. How long had Sun been
13 looking to acquire property in Myrtle Beach?

14 A. I would say, probably since about 2011, 2012, is when I
15 started focusing on it.

16 Q. And I guess I should say the Grand Strand area and not
17 just the City of Myrtle Beach.

18 A. Sure. I mean, we looked early on to see if we could
19 find any manufactured housing communities in this part of the
20 world, but we weren't in South Carolina at that time, and
21 frankly the quality of the manufactured housing communities in
22 and around this area were not to our liking, so --

23 Q. About what time, what year was this?

24 A. Well, I mean, any time between 1993 and 2010, we were
25 looking for manufactured housing, and then we had a push to get

1 into the RV business around 2010, 2011, is when we started
2 buying, what I'll call more of a family-oriented RV properties
3 as opposed to the Sunbelt retiree-type properties like we have
4 in Florida, or had in Florida, and so at that time Myrtle Beach
5 was one of many markets that I focused on and my team focused
6 on to see if this is an area that would make sense, and I spent
7 days down here driving the area and I tried to look at the
8 existing properties and familiarize myself, much more hands-on
9 probably than people do today, because everything wasn't done
10 on computers back then, and I also believe you go out and
11 actually touch and feel the property and meet the owners, so I
12 would go out and actually drive around and drive through them,
13 take pictures. I could meet the manager or an owner or
14 somebody I wanted to start to talk to them, started letting
15 real estate brokers know that we were interested in properties
16 in this area, so that's how I came to this area, and I did look
17 at Ocean Lakes and Lakewood and PirateLand, and Myrtle Beach
18 Trailer Park, those are the four that I remember that were on
19 the beachfront here.

20 Q. Why were you interested in beachfront property?

21 A. Well, it could be beachfront, it could be off the
22 beachfront, but here the attraction is the beach and all the
23 amenities that are on this strand, I guess they call it, so,
24 you know, whether it's Ripley's Believe It or Not, or a mini
25 golf, or restaurants, or whatever people come in the summer

1 here, there's a huge market in Myrtle Beach that comes from all
2 over the eastern seaboard to go to the beach for the summer,
3 and these properties were clearly very successful and you could
4 see by the number of units that they had in their properties,
5 you could see that they were storing units across the road on
6 the other side and bringing people back and forth as they
7 needed their units, and we started learning about this market
8 and said it would be great to pick up one of those existing
9 properties, because at that time we weren't developers, we were
10 looking just to buy something existing.

11 Q. Is there a difference between buying an existing a going
12 concern, or developing something from, I guess, the ground up,
13 or sort of green space development?

14 A. Yes, there's a difference. When you're buying going
15 concern, an existing property, you can see it, it's already
16 there, there's people living in it. You can look at the
17 housing stock, you can look at the amenities, and it's up and
18 running, you can obviously see that they're licensed to
19 operate 300-site community, or whatever the case may be, that
20 you have certainty that what you have is there. You can look
21 at cash flows and rep roles and say, you know, there's going to
22 be \$100,000.00 in revenue coming in every month, you can look
23 at bank statements. On a development you have a raw piece of
24 ground and you have a concept, an idea of what you can make of
25 it, and you have to go through a much longer period of time to

1 make a decision because you need to make sure the properties
2 are the property that's going to be in line with, you know, the
3 zoning side, it has to be, you know, the use has to be looked
4 into. If not you go discuss it with the folks in the town to
5 see if you can put in the property that you want to put in
6 there, you have meetings with them, et cetera, and then if you
7 determine this is the site you want then you, you know, go
8 under contract and you get a much more extensive due diligence,
9 an inspection period to kick all the tires, so to speak, before
10 you would take on something like that.

11 Q. Why was Sun Communities -- well, I guess maybe the
12 better way to answer this is, why did you and your acquisition
13 team stop looking at existing operations and for the Carolina
14 Pines project go to something ground up?

15 A. Well, we never really stopped looking. We realized that
16 these properties were family owned, there was
17 multi-generational people getting mailbox money, if you will,
18 and they really weren't interested or in selling to anybody,
19 and there were only a select number of properties like that,
20 but we knew the market was strong, so if I were to get a call
21 from somebody today and say we're interested in selling, we
22 would be interested. However, we didn't think that would ever
23 happen, at least it wasn't going to happen in the near term, so
24 we started looking at markets around the country on a national
25 basis to identify, where should we develop properties? We want

1 to have some fresh product. This isn't just RV, this is also
2 manufactured housing communities I'm talking about. We
3 identified certain high-growth markets that had an RV side, a
4 lot of destination traffic, and we felt was underserved that we
5 felt, that's where we really need to build. We don't want to
6 build in an area that's not popular, we want to build in an
7 area that is popular that's underserved, and Myrtle Beach with
8 the number of tourists that were coming here, I don't know, at
9 the time it was probably over ten million, today I know it's
10 even higher, but this was, you know, ten-plus years ago, it was
11 identified as a market that we should seriously look at because
12 we felt it that it was underserved. We worked then with a
13 local engineer here to locate tracts of land that we felt were
14 desirable for this and I came down and went on a trip around
15 with him to look at the sites and we then selected the site in
16 Conway where we ended up buying the land for Carolina Pines and
17 developed it.

18 Q. And what was it about that site that made it attractive
19 to Sun, the one in Conway?

20 A. Well, the fact that it was developable from a land
21 standpoint. You know, we look at like whether or not it's wet,
22 whether it's got an issue with flooding.

23 Q. Do you recall how many acres you guys purchased?

24 A. It was a couple of hundred, I would say, maybe 200. I
25 will say we were both looking to buy an RV site and an MH site

1 adjacent to it at the time. We decided not to pursue the MH
2 site at the time.

3 Q. How come?

4 A. Well, we met with the town, the City of Conway, maybe in
5 this building, one of these buildings, and we also met with
6 residence groups and we had resistance to building the MH
7 property, whereas we didn't really have the resistance with the
8 RV, so they were concerned, you know, about the type of
9 neighbors there would be there and that there would be
10 permanent and they might not be the right kind of people, or
11 whatever their concerns were, and so we realized that we were
12 fighting an uphill battle, and so we had to go back and
13 renegotiate the contract with the seller to drop the MH
14 property and change the pricing to just be for the RV Carolina
15 Pines site, and then we decided to proceed just upon that, but
16 you asked me to finish my answer on the question about this
17 location. We picked this site because it, obviously, we felt
18 that it could be a property that could be developed at a
19 relatively easy way in terms of tree clearing, and that type of
20 thing, the terrain was good for it, but we also, of course,
21 looked at the location of the property, that it was just off
22 the -- just short of the exit there where you can take a
23 straight shot about 10, 15 minutes and you can get to the
24 beach, because we saw the success of the beachfront RV resorts,
25 the Lakewoods of the world, and saw that that was a big

1 attraction, so our approach here was, let's build something
2 that's not on the beach but it's close enough to the beach
3 where we can have a shuttle van and take people to public
4 access points along the way, Myrtle Beach, North Myrtle Beach,
5 or wherever they might be, and that would be a neat amenity to
6 be able to have the shuttle to take people back and forth.

7 Q. It may be obvious to South Carolinians as to why being
8 close to the beach would be important, but just for the record,
9 why was that an important amenity or an important feature for
10 the Carolina Pines development?

11 A. Well, we felt that it would increase our occupancy rates
12 and obviously our cash flow by offering an amenity in addition
13 to what we planned to do with the resort itself, and that would
14 distinguish us from another development that was off the beach
15 for someone to want to go to and spend time.

16 Q. Once you identified the Carolina Pines project, what was
17 sort of the next step in the acquisition process?

18 A. Once we identified the property we then, obviously, we
19 negotiated a purchase agreement, as I described, for both
20 properties, and then to just do the one, and then once the
21 contract was signed we pursued getting all of our approvals to
22 build, and any sort of permits that we needed to construct, and
23 before we would close on the property we made sure we did,
24 obviously, a phase one environmental, and we also did some soil
25 testing and things like that to make sure that the soils would

1 handle it and came up with the site plan based upon that,
2 preliminary site plan to see how many sites we could put on the
3 property, I believe we ended up with 840, something like that.
4 So we looked at how we were going to phase it in, you know,
5 developed our plan on what we were going to do, and then so the
6 whole process between the time we signed the contract and the
7 time we might close on it might be a years time or might be a
8 year and a half depending on how difficult those kinds of
9 things are to get and then we would close on the land once we
10 knew that the property was suitable for our needs, and we had
11 made sure that we had the approvals, the governmental approvals
12 that we needed in order to proceed, so that's what we did.

13 Q. In terms of, sort of the pre-acquisition due diligence
14 that you do before you buy a property, is there a difference
15 between buying the going concern and doing a ground-up
16 development?

17 A. Yes.

18 Q. Can you explain to the Court what the differences are?

19 A. In an existing property if it's a going concern
20 property, yes, you do check zoning and you do check
21 environmental and you check physical needs, but you also very
22 much focus on the financial side of the operation and whether
23 they are collecting the rent and how much rent they're
24 collecting and what are the expenses. You know, you make sure
25 that, you know, that you're catching -- you're catching the

1 property and its completeness and making a projection, and we,
2 obviously, have the physical inspection by our operations team
3 where they'll actually put boots on the ground and they'll go
4 through the property and spend a day or two, you know, to try
5 to see if there is any reason way we shouldn't buy the property
6 or support the acquisition, if you will, if they feel that this
7 property would fit in well with our operation side of the
8 business, because they are actually going to be the ones in
9 charge of running it. So that's what we do when we're buying
10 an existing property. When you're buying a development you're
11 concerned about, of course, whether the financial projections
12 will some day work, but there's a lot of space to go between
13 there and where you're starting. You need to make sure you
14 will be able to develop what you dream of developing and so you
15 need to have a lot more contact with governmental agencies and
16 with engineers and planners, et cetera, when you're doing the
17 up-front work to make sure it's a wise investment to start
18 doing that, and obviously the construction costs need to be
19 looked at. You need to get estimates on construction costs and
20 take all of that into our pro forma for the property.

21 Q. Is it fair to say that doing a ground-up development is
22 a longer runway, a longer time frame?

23 A. Absolutely, yes.

24 Q. Now, when did Sun Communities break ground on the
25 Carolina Pines location in Conway?

1 A. It was in 2018, I would say, in the spring of 2018,
2 April, perhaps something like that. What happens is when we
3 closed on the property, which is my role is to bring the thing
4 up to closing, I take a step back, and I'm not really involved
5 from that point on in running with the development as it is, we
6 have a development department and a development outside
7 development firm that really comes and takes that piece of it
8 over.

9 Q. So let me interrupt you to simply this, your job is to
10 acquire the property, then another entity within Sun, their job
11 is to develop it and build it, and then finally there would be
12 another group that would be in charge of operations; is that
13 fair to say?

14 A. That's correct.

15 Q. How long after Sun broke with ground on the Conway
16 location did Sun become aware of the property that's now known
17 as the Beach Club?

18 A. So we broke ground in spring, again, I think it was
19 April, so January of 2019 is when I was contacted by Mace
20 Watts.

21 Q. Did you know Mr. Watts before that contact?

22 A. No.

23 Q. And you heard him testify today, correct?

24 A. Yes, I did.

25 Q. Do you disagree with anything that you heard him say?

1 A. I don't disagree with anything he said.

2 Q. Tell the Court your side of that relationship.

3 A. Okay. So knowing that we were, I get a call one day
4 from Mace Watts, he tells me that he's familiar with our
5 development, because we were partially developed at that point,
6 I guess eight or nine months into it.

7 Q. Had you put feelers out up to that point, that you
8 wanted beachfront property --

9 A. No.

10 Q. -- or you did this --

11 A. No, we didn't.

12 Q. -- this just came to you out of the blue?

13 A. We didn't, we realized that we could take folks to the
14 beach using the shuttle, and that at that point was our plan
15 even though we hadn't finished the property and the specific
16 plan of how we were going to do it, it was being left up to the
17 operations folks.

18 Q. So the original plan was to take people to the public
19 facilities --

20 A. Yes.

21 Q. -- and use that as access?

22 A. Correct, correct. So when Mace called me it was, in
23 many ways it was like, my reaction was, wow, this is really an
24 interesting concept, you know, we never really thought of
25 building the structure ourself there on the beach and doing

1 that, but here's a guy that says he has a beach club that's on
2 the ocean and we could see that it's only a 10 to 15-minute
3 drive from our front door of our Carolina Pines development,
4 and this could be a really neat amenity for us to own in
5 addition to all of the other amenities we were going to add at
6 the Carolina Pines Resort, as well. This would be another draw
7 to bring people in. If they could go to a public facility --
8 excuse me, a private facility, as opposed to a public facility,
9 just for the reason that they wouldn't have to fight the crowds
10 and they'd have privacy and they'd have changing rooms and
11 restrooms and you could go inside for air conditioning, you
12 know, et cetera, maybe grandparents could stay there while the
13 grandkids, you know, go to the beach. People come in, they use
14 the pool, you know, and come and go, and this would be a great
15 amenity, and I took it to our operations team who were the ones
16 that were telling me, you know, they were going to get the
17 shuttle to the public location. I said, hey, I got a call from
18 this guy and it all sounds great, you know, but is this
19 something you guys want to do? Is this something you guys want
20 to do before -- I mean, even though I'm thinking, I said, is
21 this something you guys want to do before I spend another
22 minute on this, and they said, this sounds like a great
23 opportunity for us to add a great amenity to our project, and
24 we're gonna, you know, have this built, and it will be built
25 out, you know, within a year, and if we could own this, you

1 know, by next summer, that would be great. By the time we open
2 or after we open it would be a great addition to our property.
3 So I said, well, why don't you guys go down and look at it and
4 tell me what you think, lay eyes on it, so they came down and
5 they met with Mr. Watts.

6 Q. Were you part of that additional trip?

7 A. No, I was not part of that trip, but I was updated on
8 what they did when they returned so I don't know the specifics.

9 Q. Were they enthusiastic about it when they came back?

10 A. They were. You know, they were, and they wrote me a
11 memo for all the reasons why they thought it would be a great
12 thing and they also told me they were concerned about the
13 membership component of it. They raised that, so I knew that
14 was on my radar I had to deal with, as opposed to just looking
15 at the property, you know, through my lens, I mean they --

16 Q. What do you mean by the membership component of it?

17 A. So the membership component is, like, there were, I
18 think 45 or so members, and Mr. Watts testified to that, that
19 he had that were paying \$900.00 a year to use the club and so
20 we knew that we were going to be adding significantly to that
21 number and we needed to make sure that those 45 people were
22 aware if we pursued and bought this property that they were
23 going to be part of a beach club that was going to have a lot
24 more traffic than previous, and we wanted them to know and in
25 effect sign off on the fact that they were okay with that and

1 they still wanted to be a member. It also gave them the
2 option, we came up with a concept that if they didn't want to
3 be a member that we would reimburse them for their initiation
4 fee, plus an additional percentage, 10 or 15 percent, I don't
5 remember the exact number, but a little sweetener in case they
6 just said, you know, this isn't for me, I don't want to be part
7 of some big operation, I'm just fine taking my money and going
8 home so --

9 Q. Did you interact with any of these members prior to
10 signing the sales contract?

11 A. No, I did not.

12 Q. How about after the sales contract was signed? Did you
13 guys have any interaction, or was it primarily through Mr.
14 Watts?

15 A. I'll explain what happened. So we asked Mace, we said,
16 you know all these people, we don't, and we need you to go to
17 take to them this option. They can either check the box that
18 they want to stay as a member or that they don't want to stay
19 as a member, and if they want to not stay as a member we'll
20 give them X-dollars. We also gave them a third option, sort
21 of, you know, try it for 60 days and in 60 days if I don't like
22 it I still can get my money, because some people just didn't
23 know. We created the third option because we were getting
24 feedback from them that they just didn't really know whether
25 they wanted it, they didn't know what they were getting into.

1 So Mace went to each of these people and got them to sign a
2 document to tell them which way they wanted to go and
3 explaining to them how the property was going to be used and we
4 were going to shuttle people from our resort that wasn't even
5 open yet, but that was the plan, and so he handled that. I
6 will say, though, after that, I did get some phone calls from
7 some of the members that wanted to talk to me about it more.
8 These are not ones that I initiated, but they received it and
9 they weren't sure what to do, and so Mace said this guy is
10 going to call you, and I said, okay, you know, I'll tell them
11 what I can tell them. So a few of them reached out to me and I
12 tried my best to answer their questions.

13 Q. Why was it important to Sun to try to keep the existing
14 members of the Beach Club or to give them an option to remain
15 members, as opposed to just terminating those memberships and
16 going with the RV guests only?

17 A. Well, the way we looked at it is these people, it
18 wouldn't have been fair to them. They paid money to join this
19 and it was represented to them, they have a membership
20 agreement that they signed and that would not have been fair to
21 them to sort of change the way the property was going to be,
22 from a number standpoint, that wasn't really what they
23 expected, even though they knew that this, I think, had a
24 maximum of 5,000, members, they also knew that that wasn't
25 going to be happening overnight, it was going to be ramping up

1 over time. So in fairness to them, we wanted to be up front
2 with them and explain to them what our intention was and why we
3 were doing it and we knew that this is not what they expected,
4 so we thought that was the fair thing to do, to treat them that
5 way.

6 Q. Before closing on the transaction for the subject
7 property that's the subject of this litigation, did the
8 acquisition team look at any other beachfront properties for
9 the purposes of having this amenity?

10 A. No, we did not.

11 Q. Why not?

12 A. Well, what we found one that we you felt was fairly
13 priced that was in a location that was close enough to our
14 property, and frankly, was very well maintained. We had to do
15 very little, if any, upkeep changes, and Mace and his group had
16 done a nice job of presenting a very clean, neat property, and
17 so we were going to be able to buy something that was already
18 there, and it has a pool, which is a tremendous feature, so it
19 connected us to the property in a very positive way, and so it
20 was fairly priced so we didn't need to feel that we needed to
21 look any further, bird in the hand, basically.

22 Q. Is the fact it only had eight or nine parking spaces,
23 was that a problem for how you guys intended to operate it?

24 A. No.

25 Q. Why not?

1 A. Because as I mentioned, we were going to do a shuttle to
2 the public access, and so when this opportunity came, we felt
3 we would just use the same shuttling concept but be dropping
4 the folks off in the parking lot. To us it was just important
5 to have a place to drop them off and there were a few spaces so
6 if there were outside members that were, you know, potentially
7 people would drive over that was an outside member we needed to
8 retain parking for them, but we didn't need parking spaces for
9 our residences or guests at the Carolina Pines Resort.

10 Q. Did you believe this gave you any sort of competitive
11 advantage over other competition in the area?

12 A. Yes. We feel it definitely did because other than the
13 ones that actually on the beachfront, to our knowledge, none of
14 the other RV resorts in the area that are off the beach have
15 such a relationship with the Beach Club, and if they do then we
16 would just simply be matching what they had, but we felt it
17 would just give another amenity, another draw, to get folks to
18 come to our property over another one.

19 Q. Does the Sun project in Carolina Pines only compete with
20 other RV parks, or is there a broader sort of competitive
21 market?

22 A. It's a broader competitive market. We have -- you know,
23 there's other types of rental properties. I mean, we rent
24 units within our resort and someone can choose to stay at our
25 resort and rent a thousand square foot place or they could find

1 a B and B or some other type of housing, rental, they could
2 rent someone's condo, they could rent somebody's home, you
3 know, there's other types of things that they can do when they
4 come here for that, motels, certain hotels I'm sure have
5 amenities that are strong.

6 Q. We're going to bring the current RV park manager to come
7 testify today, and she'll go into, I'm sure, more detail with
8 that, but I do want to maybe show the Court sort of the overall
9 scheme or plan of the RV park.

10 MR. WILLIS: Can you recall what that exhibit is?
11 I'm doing this on the fly, but there's an image of the RV park.
12 For the record that would be Exhibit 50, if you could pull that
13 up, please, Jim?

14 Q. Mr. Colman, do you see that?

15 A. Yes.

16 Q. Alright. So what are the yellow spaces?

17 A. Yellow? Okay, it says: RV sites, is the marker for
18 that.

19 Q. And then the sort of light blue?

20 A. Those are called vacation rentals, and that's what I was
21 just describing as units that people are on vacation that do
22 not have an RV, per say, that they bring in and put on an RV
23 site, they can vacation in one of these stand alone units that
24 are set up. They are kind of like tiny homes, is the best way
25 I'll describe them on our RV site.

1 Q. Is that what you call on this map, the annual cottage
2 owners? What are they?

3 A. Well, those would be people that actually own their
4 unit, as opposed to the light blue where you're renting the
5 unit from us.

6 Q. So if you want to buy a unit from Carolina Pines, that's
7 possible?

8 A. Correct. That's what these sites, the black or the
9 darker color.

10 Q. So I assume this would be like a year-long rental, is
11 that fair to say?

12 A. Yes. I don't know if the property is operating 12
13 months out of the year, but I just don't know. Some of our
14 non-southern and Florida-type resorts will only be open, say,
15 eight or nine months out of the year, then might close during
16 the cold months in the winter. In this case I don't recall
17 whether they do or not, but they would have the right when the
18 property is open, any time during the year that that property
19 is open that they would be able to do that, yes.

20 Q. Do some people come to the Carolina RV park and stay for
21 a long period of time, more than a weekend or a week?

22 A. Yes.

23 Q. Now, were you the one that primarily negotiated the
24 sales contract with Mr. Watts?

25 A. Sales and purchase agreement, yes, it would be me.

1 Q. And at the time you did that, again, I think we've gone
2 over this, but what was your understanding as to how Mr. Watts
3 was utilizing the Beach Club prior to the Sun acquisition?

4 A. My understanding is he had 45 members which we had a
5 list of and we had copies of their membership agreements and
6 those folks were living off site somewhere, and they would come
7 in periodically and use it to either just go to the beach or to
8 go for a swim, or whatever they did, but they had the right to
9 use the club, and that was our understanding, that he was in
10 the process of, and I think he explained it today, by trying to
11 attract other members by using this club as a way to sell a
12 home and give them a club membership or give them, you know,
13 some sort of a deal on a club membership as part of the
14 transaction.

15 Q. So it's fair to say it was a going concern at the time
16 that Sun looked at it and acquired it?

17 A. Yes. You know, we -- you know, not only did he just
18 tell us this, but as I said, in January before we signed the
19 agreement we had three of our operations people come down and
20 meet with Mr. Watts and he took them through the facility and
21 all the lights were on and the air conditioning was going and
22 the pool was filled, and I don't remember if there were members
23 around that day or not because it was in January, and I wasn't
24 there, but they came back and said, this is a well-maintained
25 functioning ongoing facility, and we just need to deal with the

1 whole membership concern and make sure that we're recovering
2 that in our due diligence.

3 Q. Is it fair to say that the Beach Club, maybe it's a
4 little more busy during the season or the summer months than it
5 would be during the fall/winter early spring?

6 A. I would suspect that's the case, you know, January is
7 probably not the best time to go the beach.

8 Q. Now, you were not here yesterday to hear the city's
9 testimony, were you, sir?

10 A. No, I was not.

11 Q. Let me tell you that the city zoning administrator, Mr.
12 Blust, and the city planning director, Mr. Wood, both testified
13 yesterday that they believed that at the time that Sun made the
14 request for the zoning letter that the Beach Club was not in
15 use, that would have been in March of 2019 when the zoning
16 letter was requested. Is that accurate?

17 MR. RICARD: Objection. Relevance and hearsay, and
18 speculation, for that matter, too.

19 MR. WILLIS: Your Honor, this is not only accurate,
20 but a big point of contention, or not only relevant, but a big
21 point of contention in the case.

22 THE COURT: I'll let it in and I'll consider it for
23 what it's worth.

24 MR. WILLIS: Thank you very much.

25 Q. Let me rephrase the question. Is it your understanding

1 in March of 2019 when you acquired it that it was an active
2 going concern in use?

3 A. Yes.

4 MR. WILLIS: Let's go to, if you could pull up
5 section nine of the sales agreement, please, Jim. That would
6 be Defendant's Exhibit 9, page 10.

7 Q. Actually, if you could turn to page six 16 of the
8 document first. Is that your signature on the document, Mr.
9 Colman?

10 A. Yes.

11 Q. Alright. Do you recognize the other signatures on that
12 page?

13 A. Yes.

14 Q. What's the other signature?

15 A. Mace Watts.

16 Q. Then if you could now turn to Section 8.1 of that
17 document, that provides for the seller's warranties, and go
18 down there. This has already been talked about by Mr. Watts
19 and read out loud, but if you go down there to Section C, pull
20 that up. Are you familiar with that warranty?

21 A. Yes.

22 Q. And is it fair to say that you relied on that warranty
23 in closing this transaction?

24 A. Yes.

25 Q. Now, that warranty says, quote: To the best of seller's

1 knowledge the assets and the operation of the beach club comply
2 in all respects with all permitted exceptions and applicable
3 laws, ordinances, codes, rules and regulations, including those
4 pertaining to zoning and access, so forth. Do you believe that
5 Mr. Watts misrepresented that to Sun Corporation?

6 A. No.

7 Q. Was it your understanding that at that time that
8 representation was made it was completely accurate?

9 A. Yes.

10 Q. Let's now look at Section 9 of the agreement. The
11 investigation period and government approval. Explain that,
12 why is that important? Is that what we call the due diligence
13 period?

14 A. Yes. I mean, the investigation period is really one of
15 the same. It says that we had 40 days from the date that we
16 signed this purchasing sale agreement to do our inspection of
17 the property and make a determination whether or not we wanted
18 to proceed with the property or not, and we put up an earnest
19 money in deposit at the time we signed the agreement and so
20 went into effect in 40 days or it could be refundable no
21 questions asked, and that's what it is.

22 Q. Could you summarize for the Court what the due diligence
23 period or process consisted of?

24 A. Sure. In this case, since it was a going concern
25 project we would do a phase one environmental to make sure

1 there's no environmental issues. We would do some sort of an
2 inspection, you know, our engineer, somebody of that nature
3 would go through and do a physical needs inspection to make
4 sure there aren't any latent effects that we need to address,
5 things with the wiring, electricity, the water, whatever it
6 might be, or the grounds, pool, et cetera, and we would also
7 have our attorneys look into the land use side of it, the
8 zoning, to see if there were any issues in that regard, and we
9 also looked at the membership area, that was a very big part of
10 what we did. We knew about it and we knew we had to address
11 the membership, the termination, making sure the membership
12 agreements were all valid, and that we had the members that
13 wanted to stay and the members who didn't want to stay and had
14 a way of addressing that before we would continue down that
15 path.

16 Q. Let's focus on the zoning aspect of it.

17 MR. WILLIS: Jim, if you could pull up Defendant's
18 Exhibit 3, please, which is the request for the zoning letter.

19 Q. Have you seen this document?

20 A. Yes.

21 Q. And what is this document, Mr. Colman?

22 A. It's an e-mail from a paralegal at the Jaffe Law Firm,
23 Stephanie Van Newkirk, who wrote to Paul Blust at the City of
24 North Myrtle Beach requesting, sending him, they apparently had
25 a conversation, and she's sending him a sample zoning letter.

1 I don't see it here, maybe it's on another page, but there's
2 something attached.

3 Q. Yeah, it's on the next page, we'll get to that in just a
4 second.

5 A. It's something that was attached, a form letter, if you
6 will, to give him guidance on exactly what she probably spoke
7 to him about on a telephone call.

8 Q. Let's look at the next page. Do you recognize that
9 document?

10 A. I've seen this document, yes.

11 Q. And what is that?

12 A. It's a form or a sample letter, the type of letter that
13 she was asking for that she's asking Mr. Blust to either fill
14 in the blanks or compose something of his own nature, but to
15 cover the areas that are stated, and most of which are in bold
16 print, to make sure that he understands what we're looking for,
17 and this is what this letter is, sample letter.

18 Q. That paragraph at the bottom of the page that says, as
19 of the date hereof, can you read that out loud?

20 A. As of the date hereof the premises and the improvements
21 thereon are not in violation of the aforesaid zoning laws,
22 rules and regulations including the building setbacks, height
23 of the structures and parking requirements that are in
24 compliance with our building codes, and then it says: If any
25 violations exist, please state what they are.

1 Q. Now, as a result of that request, was the zoning letter
2 ultimately sent by the City to Sun?

3 A. Yes, either to us or to our attorney. I don't remember
4 how it was addressed.

5 Q. Have you seen that letter?

6 A. Yes, I have.

7 Q. Let's pull that up. That would be Defendant's Exhibit
8 2. Are you familiar with this document?

9 A. Yes, I am.

10 Q. And that's addressed to your company, correct, Sun
11 Acquisition, LLC in care of the Jaffe Raitt Heuer and Weiss Law
12 Firm that was advising you in handling the transaction,
13 correct?

14 A. Correct.

15 Q. Now, Mr. Colman, based on the receipt of this letter
16 from Mr. Blust who was the zoning administrator for the city,
17 what was Sun's understanding with respect to whether the
18 property that you were inquiring was in violation of any zoning
19 ordinances when it was owned and operated by North Myrtle Beach
20 Ocean Club Partners?

21 A. So my understanding from reading this letter is that the
22 City stating what the use is as a cabana house and under the
23 R-4 district of, you know, of their zoning ordinance, and that
24 the structure is permitted legally and has been used as such
25 since construction, and as of the date of this letter that

1 there no violations. So the way I look at it is that the way
2 the property is being operated as of March '19 they are in
3 compliance and there's no outstanding issues, and this to me is
4 a verification in addition to what we've also been represented
5 to by Mr. Watts, that he's not aware of anything and the City
6 is saying that they're not aware of anything and they're
7 basically closing the loop on this, that there's no violations.

8 Q. There's no mention in this letter that it was the City's
9 belief that a beach club in the R-4 zoning district was a
10 violation of the zoning ordinances or not permitted, correct?

11 A. If this is the only piece of paper and there's no other
12 second page or something, I would say this is what it says. It
13 doesn't have any issues raised in here that would be of any
14 concern to me on behalf of the company that I would go ahead
15 with the transaction. This to me is a clean letter.

16 Q. Now, it doesn't say anything about the property needing
17 to be owned by a homeowner's association, does it?

18 A. No, it does not state that.

19 Q. And it doesn't say anything about the property can only
20 be operated for a project that's located in North Myrtle Beach,
21 correct?

22 A. Correct.

23 Q. Now, why didn't your team go behind this letter and make
24 your own judgment of what the zoning ordinances were required?

25 A. Well, seeing that it was an ongoing concern, the

1 property was being operated, it wasn't something that was new,
2 and the seller had represented to us that he's not aware or had
3 received any notices and the City is saying they're not aware
4 of any notices or any violations that exist at the time of
5 this, we didn't feel there was any need to go any further
6 because there were no red flags that were raised by either of
7 those and we relied on those two components to proceed with the
8 transaction.

9 Q. And that was going to be my next question. Did Sun rely
10 on this zoning letter to move forward with the acquisition of
11 the property?

12 A. Yeah, it was one of many things, but yes, this was the
13 key element of it, always is, the zoning letter.

14 Q. Now in retrospect now, knowing the situation that we
15 find ourselves in, do you wish you'd done your own analysis?

16 A. Yes.

17 Q. And why is that?

18 A. Because the subsequent interpretation, based upon the
19 City providing us with the cease-and-desist order some two and
20 a half years later after this was received indicates that they
21 interpret the ordinance in a way that we are in violation of
22 it, and this was not something that was brought to our
23 attention at the time we bought the property knowing that their
24 interpretation is what it is, if we had been aware of that
25 concern on March 19th of 2019 what we would have done is we

1 would have looked at it and said, okay, we've got a problem
2 here, and we will go work it out or not work it out, as the
3 case may be, while we're still in the due diligence period
4 before we buy the property and see if we can reach any kind of
5 agreement with the City to allow us to use it, we would go in
6 face to face and do that, and you know, that's what our company
7 does. I mean, that's what we did when we bought Carolina
8 Pines, we were face to face and decided not to move ahead with
9 the MH because there was push back. If there was push back we
10 would have walked from this deal, and if there wasn't push back
11 and we could work something out, we would have proceeded with
12 it.

13 Q. You've had an opportunity to read the zoning ordinance
14 22-23 and the definition in 22-3, have you not?

15 A. Yes, I have.

16 Q. Is there anything in those definitions or in that
17 ordinance that specifies the use of the cabana house by a
18 project in North Myrtle Beach must be exclusive to that project
19 and exclude anyone that doesn't live or reside in North Myrtle
20 Beach?

21 A. No.

22 Q. But it's your understanding that's how the City is
23 interpreting the zoning ordinance, fair to say?

24 A. Yes, yes.

25 Q. But there's nothing in the ordinance itself that would

1 tell you that or put you on notice of that, is there?

2 A. No.

3 Q. Did you meet with Mr. Blust or Mr. Wood prior to the
4 acquisition or the closing on the Beach Club?

5 A. No, I did not.

6 Q. Why not?

7 A. Because we don't meet with the town officials, city
8 officials, unless there's some reason to, and in this case
9 nothing was raised that would have brought to our attention
10 that we had any issue here of this nature, so I would not have
11 reached out to these individuals.

12 Q. Now, after the property was acquired and the project was
13 closed can you describe briefly to the Court what you guys did
14 with regard to the members, existing members?

15 A. After the closing?

16 Q. Yes, sir.

17 A. Well, after the closing, depending upon which way they
18 elected to go, we either retained them as members and they
19 were, you know, notified that we were the new owners, we sent a
20 letter out to them letting them know who we were, and so they
21 would know where to send their dues and that there was a change
22 of ownership type letter, and to those that elected to get a
23 payout we would then pay them their amounts that they had asked
24 for and they resigned as members. There would have been a
25 document that they would have signed resigning as a member and

1 accepting this as full payment and we would give them a check.

2 MR. WILLIS: Let's pull up Defendant's Exhibit No.
3 10, Jim, and go to page 880 of that exhibit.

4 Q. First of all, before you do that, what is this, Mr.
5 Colman?

6 A. This looks like the cover page of the closing book that
7 would have been prepared by our attorneys some time after the
8 closing date of May 3, 2019, probably a month or so later.

9 Q. So how this works, is the closing book part of the, is
10 it there at the closing, or is it put together later by the
11 attorneys and then sent to the client?

12 A. It's the latter. It's put together by the attorneys
13 post-closing as a summary of all of the relevant pieces of
14 information, documents, have them all in one place so that we
15 can have a permanent record of what happens at the transaction.

16 Q. Now, if you could go to the membership list on page 880
17 of that document. I believe it's a two-page document. Are you
18 familiar with this document?

19 A. Yes.

20 Q. And are these the people that Sun reached out to to
21 determine whether they wanted to remain a member or not?

22 A. Well, Mace actually reached out to them, but ultimately,
23 you know, we settled with each one of them one way or another,
24 so, yes, these are the people.

25 Q. Do you recall how many members remained once Sun

1 acquired the property?

2 A. It was roughly 20 members, is my recollection, out of
3 the 45, and the rest of them would have taken the buyout.

4 Q. And these members would have paid dues to Sun to remain
5 a member, correct?

6 A. Correct. I believe what they did is they would pay an
7 annual amount which we would have received a proration for at
8 the closing for the amount of days that we owned the property
9 in 2019, so May 3rd forward we would have received some sort of
10 a proration from Mace's entity and their next annual payment
11 was likely not due until January 1st of the following year.

12 Q. So it's fair to say that the operation of the Beach Club
13 was a commercial enterprise, correct?

14 A. Yes.

15 Q. Now, how did you come to learn that the City had a
16 problem with the compliance issue having to do with the zoning
17 regulations with regard to the beach club?

18 A. So based upon the correspondence that I looked at, the
19 letters that were sent by attorneys for the City, some time in
20 September 2021, I was copied on an e-mail from the Sun office
21 or the Jaffe attorneys saying that they received this letter
22 and since I was involved in the acquisition of the property
23 they wanted to include me on the call. We also had operations
24 people, of course, because they were the ones that were, they
25 were discussing a lot of operational related issues, but I was

1 included on a phone call and also on some e-mails pertaining to
2 that where we had discussions about what's going on and how
3 were we going to address this issue, so September of 2021 is
4 when I would have worded this.

5 Q. Did Sun reach out to Mr. Guyton, Shep Guyton, who was
6 the lawyer for Mace Watts to get with the City and attempt to
7 work this out?

8 A. Yes. That was one of our initial approaches, was Mr.
9 Guyton felt that he could be of help because he's local and he
10 thought he could go down and a talk to the folks at the City,
11 try to straighten out the situation.

12 Q. How did those efforts turn out?

13 A. They ended up not turning out. It was a very short
14 period of time we realized that that was not going to work out.

15 Q. Now, we've been over this before, but let me ask you,
16 Mr. Colman, what your understanding is of the City's
17 interpretation of the relevant sections of the zoning ordinance
18 that makes it illegal, according to them, for the Sun
19 defendants to own and operate the Beach Club?

20 A. That's my understanding.

21 Q. Yeah. What aspects?

22 A. What aspects are they basing that on?

23 Q. Yeah. I mean, my understanding it is two, correct?

24 A. So my understanding is there's two aspects. One is that
25 it's not owned by a homeowner's association, clearly where the

1 owner of the property, it's on the title, deed at the closing,
2 and the second thing is that it's, you know, it's not for a
3 project that's in North Myrtle Beach, so it's the project that
4 we own in a municipality.

5 Q. Is it your understanding that the homeowner's
6 association that's referred to in the zoning ordinance must be
7 a homeowner's association established for a project in North
8 Myrtle Beach?

9 A. Yes, that's my understanding.

10 Q. Almost done. Let's change topics.

11 A. Okay.

12 Q. I want to talk about the economic importance to Sun of
13 an amenity like the Beach Club to Sun's RV park in Conway. Why
14 is that an important amenity?

15 A. It allows us to have another amenity that distinguishes
16 us from our competition, and so when people decide what they
17 want to do is they're gonna come to the Myrtle Beach area.
18 This is something that would be, you know, would clinch them,
19 staying at our property rather than going to another property
20 or not coming at all or choosing, maybe, a property that's near
21 the beach that's, you know, like a home or something like that.
22 This way they could have the amenities of the Carolina beach
23 facility and also have the beach amenity.

24 Q. Now, I realize you were not in charge or involved in the
25 operation of the beach club, but I'll tell you for the purpose

1 of this question that the City takes the position that cabana
2 houses that are governed by this zoning ordinance are for
3 non-commercial use, even though the zoning ordinance doesn't
4 literally say that, but does that mean that the beach club has
5 no economic value to Sun?

6 A. No. It doesn't mean that at all. We've determined that
7 by not having the Beach Club, or the certain years that we've
8 not had it the last two years that our occupancy rates have
9 been lower than they were when we had the Beach Club.

10 Q. And Mr. Dibella is going to testify about that later on
11 today.

12 A. Okay. That's fine. But anyhow, I'm aware of that, so
13 clearly that proves out what we thought, you know,
14 speculatively that when we bought the property, nobody really
15 knows. You're assuming this is going to be an amenity that's
16 going to be attractive and all the different reasons, but until
17 the economics occur you don't know if that's actually accurate
18 but it's been proven that it definitely made a difference.

19 Q. When the City brought suit against Sun and moved for
20 preliminary injunction to stop the use of the Beach Club, is it
21 your understanding that Sun agreed in a consent order to stop
22 bringing RV guests to the park and simply left the club open
23 for beach access for the existing members at that time?

24 A. Yes, correct.

25 Q. Now, you're aware, are you not, from reading documents

1 of the complaints from the neighbors, Sea Cloisters, Sea
2 Cloisters I, Cloisters II, Mr. Shortle, who is in the room, as
3 to the operational issues at the beach club during the time it
4 was operated by Sun, you're aware of those complaints, are you
5 not?

6 A. Yes. I'm aware of the ones from reading the
7 correspondence.

8 Q. Complained about lighting, noise, shuttle dropoff,
9 behavior of guests, parking, trespassing, overcrowding, events,
10 that sort of thing. In your experience as a senior executive
11 with Sun, can these operational issues be addressed by actions
12 short of shutting the beach club down and requiring Sun
13 to divest itself of --

14 MR. RICARD: Objection. Speculation, Your Honor. I
15 understand, preserve it for the record.

16 MR. WILLIS: I'm not asking to speculate, Your Honor,
17 I'm asking if there are --

18 MR. RICARD: Then I'll object on foundation, as well,
19 Your Honor.

20 MR. WILLIS: -- if there are ways to deal with those
21 issues short of requiring the property to be divested or shut
22 down.

23 A. I would say, yes, there are.

24 Q. And what would they be?

25 A. To have a conversation with the neighbors and with the

1 City, sitting around a table and hashing it out to see what
2 would make everything work out here, assuming that there's,
3 you know, reasonable people on all sides.

4 Q. Is it your understanding that the City can't impose
5 conditions that would address every one of those issues?

6 A. Yes.

7 Q. Now, is it possible for Sun to relocate the RV park to
8 come within the city limits of North Myrtle Beach?

9 A. No.

10 Q. Is Sun TRS a homeowner's association?

11 A. No.

12 Q. Where is Sun headquartered?

13 A. South Hill, Michigan.

14 Q. Do the Sun RV park guests come just from North Myrtle
15 Beach or South Carolina or are they from all over the country?

16 A. As far as I know they come from all over the country,
17 but I'm not on the operations side, but I would assume they're
18 coming from other places other than local.

19 Q. Shutting down the beach club and requiring Sun to divest
20 it, would that have a commercial economic adverse effect on
21 Sun?

22 A. Yes.

23 Q. How so?

24 A. We would --

25 MR. RICARD: I'm just going to preserve for the

1 record, Your Honor, objection speculation.

2 Q. Are you aware of whether or not it would have an
3 economic effect, and I believe there's another witness that is
4 going to talk in more detail about it, but could you describe
5 what your understanding is based on your personal knowledge?

6 A. Yes. We're not allowed to operate it as a beach club,
7 we would literally have to figure out a way to monetize our
8 value in our property that we paid two-and-a-half million
9 dollars for, and currently, the way that the interpretation is
10 by the City that would limit our purchasers to a very small
11 group and it would also be something that would be imposed on
12 us as more of a fire sale, and that would obviously diminish
13 the value that we could obtain for the property to be far less
14 than what we paid for it.

15 MR. WILLIS: Thank you. Just a second. We have
16 nothing further for Mr. Colman.

17 THE COURT: Why don't we take a 15-minute break.

18 (Recess taken.)

19 **CROSS-EXAMINATION**

20 BY MR. RICARD:

21 Q. Mr. Colman, how are you?

22 A. I'm okay, how are you doing?

23 Q. I'm doing well.

24 A. Great.

25 Q. Mr. Colman, you haven't been here the first two days of

1 trial; is that right?

2 A. Correct.

3 Q. But you were here for Mace Watts testimony this morning?

4 A. Yes.

5 Q. Would you consider Mace Watts to be a friend?

6 A. No.

7 Q. Would you consider him to be bias in any way and in
8 favor of defendants?

9 A. No.

10 Q. You took a deposition in this case, correct?

11 A. Yes.

12 Q. You brought with you some notes?

13 A. Yes.

14 Q. They were handwritten notes?

15 A. Yes.

16 Q. I'm displaying on the screen some notes, Mr. Colman, do
17 you recognize these notes?

18 A. They are in my handwriting so --

19 Q. Are these, in fact, your notes?

20 A. Yes.

21 Q. And labeled Sun, underscore, zero, six, 286. I want to
22 highlight a portion of these notes, Mr. Colman. Do you see
23 what I've highlighted there?

24 A. Uh-huh.

25 Q. I'm sorry, is that a yes?

1 A. Oh, yes.

2 Q. I'm going to read it for you and you let me know if I've
3 read it accurately: Mace Watts, hyphen, on our side. Did I
4 read that correctly?

5 A. Yes.

6 Q. Alright. You had some testimony on direct examination,
7 Mr. Colman, about when Sun communities first began looking into
8 the RV market. That was around 1996, you said?

9 A. To clarify, the RV market in Florida is when we entered
10 the Florida, which I'll call the retirement RV market, it was
11 strictly in Florida at that time.

12 Q. Okay. But Florida was the first state that you all
13 looked at in opening an RV resort or buying an RV resort?

14 A. We bought existing resorts in Florida, yes, '96.

15 Q. But '96 was the first time?

16 A. Correct.

17 Q. Okay. Is it fair characterize the Florida communities
18 as being more permanent retirement-type guests?

19 A. Compared to -- yes.

20 Q. Compared to Carolina Pines, let's say.

21 A. Yes.

22 Q. Carolina Pines is more family vacationers, correct?

23 A. I agree, yes.

24 Q. More transient?

25 A. Yes.

1 Q. Originally the Sun Communities, you all looked into
2 buying beachfront property for an RV resort in the Grand
3 Strand; is that right?

4 A. Yes.

5 Q. And I think you said that was some time around 2011,
6 2012?

7 A. That's when we started to look. You know, we continued
8 to keep our eyes open, but that would have been the starting
9 point at which we started doing it, yes.

10 Q. Okay. And ultimately you decided to look further inland
11 for an RV resort?

12 A. Yes.

13 Q. You bought property in Conway in 2017?

14 A. Yes.

15 Q. And that property in Conway, that's cheaper than
16 oceanfront property, would you agree?

17 A. For raw land, yes, I would agree.

18 Q. And ultimately you all broke ground for the RV resort in
19 Conway in 2018?

20 A. Yes.

21 Q. At that time you all did not have plans to purchase a
22 clubhouse on the beach, correct?

23 A. Correct.

24 Q. And then in January 2019 you, in fact, were approached
25 by Mace Watts, the seller of the cabana house in this case?

1 A. Yes.

2 Q. And the Sun defendants ended up going through a due
3 diligence period for that property?

4 A. Yes.

5 Q. The Sun defendants, you all never looked at a property
6 in any other zoning district within the City of North Myrtle
7 Beach, correct?

8 A. Correct.

9 Q. Are you aware that the resort commercial district allows
10 for recreational facilities in North Myrtle Beach?

11 A. I think you need to ask that again because I've got to
12 listen entirely to see if I agree or not.

13 Q. Sure. Are you aware that the resort commercial district
14 allows for recreational facilities in the City of North Myrtle
15 Beach?

16 A. When you say "resort," I just need you to clarify. Is
17 that like a zoning term or something?

18 Q. Are you familiar with the resort commercial zoning
19 district in North Myrtle Beach?

20 A. No.

21 Q. Okay. So in that case you're not aware of what
22 permitted uses and special exception uses are allowed in a
23 resort commercial district?

24 A. Other than what we provided in that letter that we
25 received from Mr. Blust.

1 Q. Okay. You understand that the property in this case is
2 R-4 resort residential?

3 A. Yes, correct.

4 Q. Okay. But you understand that there's other zoning
5 districts in North Myrtle Beach?

6 A. You're saying there are others besides that in the whole
7 place?

8 Q. Right.

9 A. Yeah, I would expect there's more than one district,
10 yes.

11 Q. Okay. One of those resort commercial, do you know if
12 that's one or not?

13 A. I don't know.

14 Q. So you wouldn't know what permitted uses are within
15 those other zoning districts?

16 A. Correct, I do not.

17 Q. Same thing with business commercial?

18 A. Correct, I don't know.

19 Q. And same thing with highway commercial?

20 A. Correct.

21 Q. Defendants never communicated with anyone in the zoning
22 division about how they intended to use the cabana house prior
23 to their purchase, correct?

24 A. Can you restate the question?

25 Q. Sure. Prior to defendants purchase of the property

1 defendants never communicated with anyone in the zoning
2 division about how they intended to use the cabana house, isn't
3 that right?

4 A. I never did, and as far as I know nobody else at Sun
5 Communities contacted them.

6 Q. Okay. And likewise, defendants never communicated with
7 anyone in the planning and development department about how they
8 intended to use the cabana house, correct?

9 A. Correct.

10 Q. Never communicated with the city manager about how the
11 defendants wanted to use the cabana house?

12 A. Correct.

13 Q. But defendants admit to knowing about sections 23-2 and
14 sections 23-22 of the city's code of ordinances prior to their
15 purchase of the cabana house, right, you're aware of that?

16 A. It's not correct. When you say, defendants, I did not
17 or anybody at Sun did not know of that --

18 Q. Okay.

19 A. -- at the time prior to purchase we're talking about.

20 Q. Okay. I'm displaying what's been marked as Plaintiff's
21 Exhibit No. 7. Have you seen this before, Mr. Colman, this is
22 Defendant's Sun TRS Carolina Pines RV LLC's responses to
23 Plaintiff's first set of request for admission. Have you seen
24 this document before?

25 A. Yes.

1 Q. I'm going to scroll down to page seven of this document,
2 which is actually the Defendant's Sun TRS Ocean Club, LLC, Sun
3 TRS Carolina Pines, LLC and Sun TRS Carolina Pines RV, LLC's
4 response to plaintiff's first set of request for admission to
5 all defense, have you also seen this particular document within
6 the exhibit?

7 A. I mean, it's been a couple of months, but likely I did a
8 few months ago.

9 Q. Okay. Do you recall covering this in your deposition?

10 A. Do I recall covering this?

11 Q. This document, yes, sir?

12 A. Number 12, or what?

13 Q. Number 12 would be the question I'm going to go to next,
14 but, sure. Do you recall that question?

15 A. Specifically, I mean, there were a lot of questions, but
16 I don't recall specifically number 12 or number 11.

17 Q. Okay. And the question asked, if you, being the
18 defendants, were aware of section 23-2 of the city's zoning,
19 ordinance prior to acquisition of the property? And the
20 response is: Sun defendants admit that they were aware of the
21 existence of section 23-2 of the city zoning ordinance prior to
22 the purchase of the property; isn't is that correct?

23 A. Being that it says that, that's what it says here, yes.

24 Q. And we go down to question 14. It asks the same
25 questions, the same response, it's just in regards to section

1 23-22 instead of section 23-2, would you agree?

2 A. Likely it's the same answer.

3 Q. Okay. So defendants admit to knowing sections 23-2 and
4 23-22 in the city's code of ordinance prior to the purchase of
5 the cabana house, correct?

6 A. I guess I would ask you a question. Does "defendants"
7 mean attorneys the defendants or does it mean the entities
8 themselves?

9 Q. Well, the defendants admitted this.

10 A. Okay. From a legal, I mean, I don't know how that --
11 when your attorney knows something and the client hasn't, like
12 myself or somebody at Sun seen it, are they considered --
13 they're not considered a defendant -- I'm just -- maybe it's a
14 technical issue, but I can speak for myself as a Sun person.

15 Q. Right, and we can go through that. You specifically
16 were not aware of these, the zoning ordinances?

17 A. I was not, correct.

18 Q. That would be your testimony, right?

19 A. Yes.

20 Q. Okay. But you understand the defendants have admitted
21 in this case of being aware?

22 A. I admit that. That's what it says and that's what it
23 is.

24 Q. Mace Watts was the seller, correct, we covered that?

25 A. One of his entities, yeah. It was signed on behalf of

1 the seller.

2 Q. Okay. I'm displaying now what's been marked as
3 Plaintiff's Exhibit 15. Who is Tom Obranovic, Mr. Colman? Tom
4 Obranovic was the senior vice president in charge of RV
5 operations at the time that this occurred. He since retired,
6 and Nick Dibella is his replacement, and Mindy is also in here
7 was also at that visit.

8 A. Okay.

9 Q. So Nick Dibella is copied on this e-mail?

10 A. Yes.

11 Q. And so is Mindy Kirtley?

12 A. Yes.

13 Q. And then there's also the name John McLaren. Who is
14 that?

15 A. John McLaren was the chief operating officer of Sun at
16 the time, at this time.

17 Q. Okay. And this e-mail purports to be from Tom Obranovic
18 to you and the other folks that you've identified as well as
19 some others from January 24th of 2019, correct?

20 A. Correct.

21 Q. Do you recall this e-mail?

22 A. Yes.

23 Q. I'm going to scroll down to, it talks about the property
24 and property details and one of the last bullet points here,
25 which I'll highlight says: The seller was to provide more

1 specific detail about the property including lot description,
2 building dimensions, covenants, et cetera, have not received
3 yet. Do you recall this e-mail?

4 A. Yes.

5 Q. And Mace Watts, he ultimately provides more information
6 relevant to this particular bullet point, correct?

7 A. I mean, when we signed a purchase agreement, whatever
8 was requested in the purchase agreement should encompass
9 everything we need. This particular line item here, I don't
10 know if we specifically have it in our purchase agreement or
11 never made it into the purchase agreement, but to Mace it
12 apparently says he's going to provide that, that's all I can
13 say here.

14 Q. Okay. And this e-mail is from January 24, 2019, right?

15 A. Yes.

16 Q. And then a few days later, January 31st of 2019, Mr.
17 Paul Blust sends an e-mail to Mace Watts. Have you seen this
18 e-mail?

19 A. Yes.

20 Q. This was in the closing file for the defendant's
21 purchase of the cabana house, correct?

22 A. Correct.

23 Q. Okay. So Mace Watts provides -- in some form or fashion
24 he provides this e-mail to the Sun Communities?

25 A. Yes.

1 Q. And this e-mail includes the regulations within the R-4
2 resort residential district?

3 A. Yes.

4 Q. This document, Plaintiff's Exhibit Number 16, this is
5 something that your lawyers would have looked at, correct?

6 A. Yes.

7 Q. Is this something that they would have read?

8 A. Looked at, read, yeah, sure.

9 Q. Switching topics a little bit, Mr. Colman. You all
10 wanted the title work expedited for the cabana house, correct?

11 A. When you say "expedited," we needed the title policy
12 with the zoning endorsement in order to close.

13 Q. Right. But you all wanted that work, the work, the
14 title work, you all wanted that to be done in an expedited
15 manner, correct?

16 A. Expedited like anything else, when you're ready for a
17 closing you want it to be done as quickly as you can.

18 Q. Okay. Do you recognize the name, Stephanie Van Newkirk?

19 A. Yes.

20 Q. She's affiliated with the Jaffe Law Firm?

21 A. Yes.

22 Q. Who is the Jaffe Law Firm?

23 A. The Jaffe Law Firm represented Sun Communities as the
24 buyer on this transaction, buyer by the Cabana Club.

25 Q. And on page two of Plaintiff's Exhibit Number 18, which

1 I've displayed in an e-mail from February 13, 2019, she asked
2 for the title work ordered to be expedited, would you agree?

3 A. Yes.

4 Q. As part of due diligence, it's normal course of business
5 to check out the survey, correct?

6 A. Yes.

7 Q. Are you familiar with the survey for this particular
8 property of the cabana house in this case?

9 A. No, vaguely familiar, it's not something I typically
10 spend a lot of time on in my role.

11 Q. Okay. I've displayed what's been marked as Plaintiff's
12 Exhibit No. 23. Would you agree on the survey for the Cabana
13 House in this case that there's a box identified as current
14 zoning information?

15 A. Yes.

16 Q. And in that it depicts that the R-4 resort residential
17 district applies for this particular property?

18 A. Yes.

19 Q. And it talks about the cabana house, specifically, does
20 it not, in the second to last sentence in the current zoning
21 information box?

22 A. Eight spaces for cabana use, is that what you're
23 referring to?

24 Q. Yes.

25 A. Yes.

1 Q. And that last line there, not only does it refer to
2 Chapter 23, Section 22, but it also provides a paragraph,
3 number four D as in "delta"; is that correct?

4 A. Yes.

5 Q. So this would have been -- also, the survey would have
6 been in the closing file for the Sun defendants, correct?

7 A. Correct.

8 Q. Displaying now what's been marked as Plaintiff's Exhibit
9 Number 20. Do you know what this letter is, Mr. Colman?

10 A. It looks like a letter from Stephanie Van Newkirk to
11 Mace Watts and Mace Watts' attorney, Mr. Guyton, and so it
12 implies that there was a title commitment, a commitment for
13 title insurance was received and that they object to certain
14 items that showed up in the title work. At least that's what
15 it -- it looks like an objection letter to the items in the
16 title work that need to be reconciled or resolved before we get
17 approval.

18 Q. And this is also something that's done in normal course
19 of business for the title work back and forth?

20 A. Yes.

21 Q. I'm going to scroll down to page five of this exhibit,
22 Mr. Colman.

23 A. Okay.

24 Q. I've highlighted here paragraph 28. It says: Under the
25 heading the survey site heading the lane needs to be shown as

1 commercial. Attached a zoning letter obtained from the City of
2 North Myrtle Beach dated March 19th, 2019 for your review.
3 Please replace commercial with Cabana House. Did I read
4 accurately?

5 A. Yes.

6 Q. Alright. So it seems to suggest that you all knew that
7 the Cabana House was not commercial, correct?

8 A. To me, it seems that they're replacing with the cabana
9 house because the letter from Mr. Blust, which I assume is what
10 the letter that they are talking about has the words "cabana
11 house" in it, it doesn't have the word "commercial" in it.
12 Apparently before this it had the word "commercial" and they
13 are asking it to be replaced to be consistent with this letter.

14 Q. Right.

15 A. That's the way I interpret it.

16 Q. Right. So defendants recognized -- or the
17 representatives of the defendants recognized that this property
18 was not zoned commercial, correct?

19 A. Not zoned? No, it didn't have the commercial
20 designation, it had a cabana house designation.

21 Q. Okay, thank you.

22 A. You're welcome, but to me it's a subtle difference. I
23 don't know the difference between the two, it's just changing
24 the word from one thing to another.

25 Q. And I guess that's because you didn't read section 23-2

1 or 23-22 of the city zoning ordinance?

2 A. Correct.

3 Q. Okay. I think you were asked some questions about this
4 particular document. It may have a different designation in
5 the defendant's exhibit list, but for plaintiffs it's exhibit
6 number 8 and number 28. This is the zoning request letter from
7 to the Jaffe Law Firm, specifically Ms. Van Newkirk, correct?

8 A. Right, the same one we looked at a little while ago,
9 yeah.

10 Q. Okay. And then on the second page is kind of a template
11 of what Ms. Van Newkirk is asking of the City, would you agree?

12 A. Yes.

13 Q. But within this template it's not asking for the City to
14 opine as to whether or not it's okay for defendants to own the
15 property, would you agree?

16 A. I would agree.

17 Q. And it doesn't inform the city how the defendants
18 intended to use the property?

19 A. Correct.

20 Q. In fact, it doesn't even inform the City that the Sun
21 defendants are going to purchase the property?

22 A. I mean, it's a letter written to a law firm. They had a
23 phone conversation that led up to this. To me it looks like
24 this is based upon a phone conversation in which I don't know
25 what occurred on that conversation. She represented herself to

1 be a paralegal with a law firm. She must have explained
2 something to Mr. Blust about who she was and why she was
3 requesting the letter on behalf of the client. Why would her
4 client want the letter needs to be addressed to Sun
5 Communities, blah, blah, blah.

6 Q. But you weren't part of that?

7 A. I wasn't part of it, but I'm just saying that this isn't
8 just in a vacuum, something led up to this letter that required
9 her to tell him something about it on the phone. What it was,
10 I don't know.

11 Q. Okay. Right, because you weren't part of that, correct?

12 A. Correct, I wasn't part of it, right.

13 Q. And in this letter, though, there was no mention that
14 the defendants are purchasing the property, would you agree?

15 A. Correct.

16 Q. And it doesn't ask whether the defendants can use the
17 property as they intended to use it, correct?

18 A. Correct.

19 Q. I'm now displaying what's been marked as Plaintiff's
20 Exhibit Number 29. This is the letter, we've seen this before,
21 but this is the letter from Mr. Blust back from Ms. Van
22 Newkirk?

23 A. Yes.

24 Q. And would you agree that Mr. Blust answers Ms. Van
25 Newkirk's questions?

1 A. What is her question?

2 Q. He answers the questions that were prompted by her
3 template in that second page of Plaintiff's Exhibit 28?

4 A. Yes. This is his version of the zoning letter that he
5 felt was appropriate to answer her questions, yes.

6 Q. And defendants never inquired any further as to the
7 zoning regulations following this particular letter from Mr.
8 Blust, do they?

9 A. Correct, they did not.

10 Q. And I think you stated before that you don't claim to
11 have any personal knowledge prior to the purchase of the
12 restrictions on the cabana house on restrictions and use; is
13 that right?

14 A. Yes.

15 Q. Had you known about the restrictions, you would have
16 stopped to transaction, correct?

17 A. I would have stopped the transaction at that point and
18 either resolved the issue to our satisfaction or we would have
19 walked away from the transaction.

20 Q. I'm going to switch topics a little bit, Mr. Colman, and
21 talk a little bit about events. I don't want to belabor the
22 point because I know you may not have personal knowledge of
23 them, but in your deposition as the 30(b)(6) designee for the
24 defendants, you recall where we discussed some events that took
25 place at the cabana house, correct?

1 A. Right.

2 Q. Okay. There's no disputing that defendants hosted
3 events and charged for events at the cabana house, correct?

4 A. Correct.

5 Q. Okay. In 2021 there was a birthday party?

6 A. 2021, I can tell you what I recall, if you want, rather
7 than telling me dates, I don't know specifically 2020 or 2021.

8 Q. Okay. So let's -- we'll remove the date aspect to that
9 question then.

10 A. Yeah.

11 Q. Do you recall there was a birthday party that was hosted
12 at the cabana house, correct?

13 A. Yes, yes.

14 Q. And another one was of a business meeting?

15 A. Yes.

16 Q. And then ultimately there were three weddings in 2020,
17 do you remember the three in 2020?

18 A. I remember there were three in 2020, I remember there
19 was one in 2021. The months, I don't know, but I remember the
20 years.

21 Q. Okay, but ultimately four weddings overall?

22 A. Yes.

23 Q. And then six events overall?

24 A. Correct.

25 Q. Okay. Those events, that was a different use than what

1 Mace Watts had been using the cabana house for, correct?

2 A. I don't know, other than, you know, he had members and
3 he may have done those events. I was not aware that he had
4 done any other events, personally.

5 Q. He never told you that he had hosted events?

6 A. No.

7 Q. Okay. And you're aware that some of these events had
8 alcohol service?

9 A. I -- I'm trying to remember from a couple months ago,
10 you have to excuse me. If it did, I remember there was
11 questions you asked me if they had alcohol, and I don't have
12 any notes with me right now so I can't remember if they did or
13 they didn't right now.

14 Q. Okay. Some had music?

15 A. Some had music. I heard there was a DJ at some of them
16 and not at all of them. I remember one of the weddings was
17 actually for a Sea Cloister family member, was one of the four
18 weddings, I remember that, and it was a kid's birthday party,
19 is what I remember.

20 Q. Okay. And some had catering?

21 A. Yes, some had catering, yes. I think in one case, at
22 least I recall, that was catered by Carolina Pines itself and
23 other cases it was catered by somebody from the outside.

24 Q. I'm not going to go through all the different events,
25 Mr. Colman, but do you recall this one regarding the Rodney

1 Christianson wedding? Do you recall that name on all?

2 A. Could I read this for a second here?

3 Q. Sure, absolutely.

4 A. Is there an attachment to this, too?

5 Q. Yeah, I'll keep scrolling down. Let me note what page
6 we're on. For the record, let me just note what page we're on.
7 We're on page three of Plaintiff's Exhibit Number 53. Do you
8 recognize this?

9 A. Yes, I do. I recognize this attachment more than the
10 body of a e-mail, yeah, I remember this, too.

11 Q. So this was a 6:00 a.m. wedding?

12 A. Uh-huh.

13 Q. I'm sorry, I need a verbal for the record.

14 A. Yes.

15 Q. Thank you, sir. And there's a pre-paid deposit amount
16 of \$500.00; is that right?

17 A. Yes.

18 Q. Okay. If I go to the next exhibit, Mr. Colman,
19 Plaintiff's Exhibit 57. This was related to the same wedding,
20 would you agree?

21 A. I don't know. It just says, the big bus, it doesn't say
22 what wedding.

23 Q. Sure. Going back to Plaintiff's Exhibit No. 53 you see
24 there is an invoice for a wedding to occur on April 10, 2021,
25 would you agree?

1 A. April 10th, yeah.

2 Q. And so if we go back to Plaintiff's Exhibit 57, which
3 I'm back to. This is an e-mail chain in the dates prior to
4 April 10th, would you agree?

5 A. Yes, April 8th, April 7th.

6 Q. Okay. And at the bottom portion of page 1, there's
7 discussion about taking 75 people over starting at 5:00 a.m.
8 and 5:40 a.m., correct?

9 A. Yes.

10 Q. And there's also mention of a big bus there?

11 A. Yes.

12 Q. And there was music playing that morning, correct?

13 A. There was music playing there?

14 Q. Yeah. Do you know if music was playing that morning at
15 the sunrise wedding on April 10, 2021?

16 A. I don't know. I mean, I would know only what I learned
17 from these e-mails.

18 Q. Okay.

19 A. And was the wedding actually at the cabana house or was
20 it on the beach? I heard some of the weddings were on the
21 beach and some of them were actually -- they may have used it
22 as a reception after the wedding, maybe that's where the music
23 was, sometime after 6:00 a.m., or maybe they had wedding music
24 on the beach.

25 Q. Okay. You don't know any specifics?

1 A. I don't know the specifics like that, no.

2 Q. Okay. Again, though, no disputing that multiple events
3 occurred in the cabana house, correct?

4 A. The six that you mentioned.

5 Q. And there's no disputing that an altercation also
6 occurred with one of your guests that was visiting the cabana
7 house?

8 A. Yes. I don't know if that's in relation to a wedding or
9 I don't know if it happened at another time, I don't know when
10 that happened.

11 Q. Okay. We'll go to Plaintiff's Exhibit Number 65.
12 You're familiar with the name Troy Bittner, correct?

13 A. Yes.

14 Q. Who was that?

15 A. Troy Bittner was the manager, or general manager of
16 Carolina Pines Resort at the time it opened. He's no longer a
17 manager, but he was there at this time in 2021.

18 Q. Okay. This e-mail chain on page one of Plaintiff's
19 Exhibit 65, the e-mail from Robin Stryker (phonetic) to Mr.
20 Bittner dated June 8, 2021, she states: Remember, this is what
21 caused the fight last week between one of our guests and a
22 resident at the condo.

23 A. Uh-huh.

24 Q. Did I read that correctly?

25 A. Yes.

1 Q. And so defendants knew about the altercation, correct?

2 A. Yes.

3 Q. Do you know if there was any investigation into the
4 altercation?

5 A. I don't know specifics, I know there was no report
6 filed, so somebody likely looked into it to see if there was
7 any police report or anything filed, so there was some follow
8 up on it for sure.

9 Q. Do you know if there was any attempt to interview the
10 guest that got into the altercation?

11 A. I don't recall.

12 Q. Do you know if there was any attempt to remove the guest
13 or ban the guest from the RV resort?

14 A. My understanding was that she was not banned from the
15 resort. I also heard that the rules were discussed with her,
16 but at that time, nothing, she was not removed from the resort.

17 Q. Okay. And you're not disputing that RV resort guest
18 trespassed onto Sea Cloister's property, right?

19 A. At that time, that's correct. I'm not disputing that,
20 no.

21 Q. I'm sorry, not disputing that?

22 A. Not disputing, yes, sir.

23 Q. Okay. I want to talk a little about the title insurance
24 on the property, Mr. Colman. Are you familiar with Amrock
25 being the title insurance provider?

1 A. I don't know if their name was on the policy or I
2 believe there was another name that was on the previous.

3 Q. Harbor City?

4 A. Harbor City, yeah. So I don't know if Harbor City
5 writes for Amrock, I don't know exactly how that works, but
6 Harbor City, I think is the name on the title. I know Amrock
7 was the group we were working with to obtain the title
8 insurance.

9 Q. Thank you. So if we go to page four of Plaintiff's
10 Exhibit 21, there's an e-mail back and forth between Amrock and
11 Van Newkirk. Do you see her name there at the bottom of page
12 three?

13 A. Yes.

14 Q. Okay. And Amrock has a note at that bottom of this
15 e-mail on page four. It says: The current zoning letter is
16 not sufficient to issue the ALTA 3.1, specifically, paragraph
17 2: I can issue the ALTA 3.0, if necessary. She's referring to
18 the zoning letter of Mr. Blust, correct?

19 A. Yes.

20 Q. Page three, Ms. Van Newkirk in paragraph five says:
21 Concerning the zoning endorsement our letter being insufficient
22 as to paragraph two, our letter points out that there are no
23 violations on the property. Please let us know what is
24 specifically needed to issue the ALTA 3.1. Do you agree it
25 says that there?

1 A. Yes, I agree.

2 Q. Ms. Van Newkirk here doesn't say there are no known
3 violations on the property, she says, no violations on the
4 property, would you agree?

5 A. It says the letter points out that there are no
6 violations, yeah.

7 Q. Okay. That's not the language that Mr. Blust used,
8 though, right?

9 A. Let me look at his letter. There are no known -- yes,
10 correct, she does not use the word "no."

11 Q. And following Ms. Van Newkirk's e-mail we scroll up to
12 page two of this e-mail chain, it says that Ms. Roberts has
13 confirmed with state counsel that the zoning letter is
14 sufficient in this case, and that follows Ms. Van Newkirk's
15 e-mail, correct?

16 A. Yes.

17 Q. Switching to Plaintiff's Exhibit No. 22. I'm currently
18 on page six. This is Harbor City title that you were referring
19 to earlier, correct?

20 A. Yes.

21 Q. Okay. I'm going to keep scrolling down to page ten
22 here. I want to direct your attention to paragraph one and
23 then into paragraph B, so paragraph B. It says: The company
24 insures against loss or damages sustained by the insured in the
25 event that at date of policy the following use or uses are not

1 allowed under that classification, cabana house. Do you see
2 that?

3 A. Yes.

4 Q. Okay. And I read that correctly?

5 A. Yes.

6 Q. Okay. So essentially, Harbor City is insuring you all
7 against the loss if you're allowed to use the property as a
8 cabana house; is that right?

9 A. Yes.

10 Q. Do you believe that Mace Watts provided you everything
11 in due diligence?

12 A. Yes.

13 Q. Did he tell you about the ordinances?

14 A. Did he tell us about the ordinances? No.

15 Q. Okay. But he provided that e-mail that had the R-4
16 regulations in there?

17 A. Yes.

18 Q. Okay. He never told you all that you couldn't use it as
19 a private beach club?

20 A. No, he never told us we couldn't use it as a private
21 beach club.

22 Q. Okay. But you all still believed that he provided
23 everything?

24 A. Yes.

25 Q. I'm going to display what's been marked as Plaintiff's

1 Exhibit No. 41. Down to page two is an e-mail from Carol
2 Thomas, and it has you in the CC line, correct? Do you see
3 your e-mail address there?

4 A. Yes, I do.

5 Q. It says: Hi, Chris, the seller did not give us the
6 provider during due diligence. So can we agree that at minimum
7 that Mace Watts didn't provide the gas provider during the due
8 diligence?

9 A. Yes.

10 Q. So you've claimed that you don't have personal knowledge
11 of the ordinance in this case, the restrictions, at least,
12 prior to the purchase of the property, correct?

13 A. Yes.

14 Q. Wouldn't you agree that the closing attorney should have
15 made you aware?

16 A. Yes.

17 Q. And your closing attorneys refused to sit for a
18 deposition, correct?

19 A. I'm not aware of that.

20 Q. Okay. You all are not seeking any claim against your
21 title insurance policy?

22 A. No.

23 Q. You're not seeking identification against Mace Watts?

24 A. No.

25 Q. You're not suing him for breach of warranty?

1 A. No.

2 Q. And you're not considering a legal malpractice claim?

3 A. No.

4 Q. I'm going to switch topics, Mr. Colman, again, and I'm
5 going to display Plaintiff's Exhibit No. 31. This is an e-mail
6 from you in March, 2019, correct?

7 A. Yes.

8 Q. And it's to Mace Watts?

9 A. Yes.

10 Q. And you recognize his e-mail address there?

11 A. Yes.

12 Q. You're asking in paragraph one: How do you propose we
13 notify the existing members of the sales and future use by its
14 guests from its Myrtle Beach area properties? Why would you
15 want to do that?

16 A. I will just reiterate what I said earlier during my
17 previous testimony that we wanted to make sure that the members
18 that were there, the 45 people knew that we were going to be
19 buying this property and that our intention was to shuttle
20 guests from the RV resort to the beach club and that would
21 change the volume of people that would be at the beach club
22 compared to what they were used to with just the 45 members or
23 the few that they may add every couple months, or whatever.
24 Basically, we were changing the direction of what Mace was
25 doing to a different way, and we felt it was important to

1 communicate with them about this up front before we bought the
2 property so if anybody wanted out we would give them the
3 opportunity to get their money back, and if they wanted to stay
4 then at least they knew that they were going in with their eyes
5 wide open full disclosure.

6 Q. Okay. Now, I think you used the words, change in
7 volume. It wasn't just that, right? In fact, you state here
8 in the second sentence: This will certainly change their
9 world. You used those words in this e-mail, correct?

10 A. Right, yeah, uh-huh.

11 Q. And you agree with that, it will change their world?

12 A. Yeah, uh-huh.

13 Q. When I say, the world, I mean, that's, obviously, a
14 colloquialism. I mean, the beach club is not going to be, only
15 having 45 members, it's going to have a lot more members coming
16 in each day.

17 A. Okay.

18 Q. I've switched to Plaintiff's Exhibit No. 26, and Mr.
19 Colman, and I've scrolled down to page three here. This is an
20 e-mail from Mr. McLaren, correct?

21 A. Yes.

22 Q. He talks about trying to make an improvement on the
23 property and installing some type of locker room or a smaller
24 gathering place, would you agree?

25 A. Yes.

1 Q. And essentially, what he's looking for here, the purpose
2 is for it to be used by many more and then be able to generate
3 revenue with less staffing, would you agree?

4 A. Let me just read what it says here.

5 Q. Sure.

6 A. So builder Fullum (phonetic) was in the acquisitions
7 department with me, so do we know who that is, okay, to have an
8 have. He had an idea of a way to try to generate revenue from
9 this facility as opposed to not, yes.

10 Q. Right. So it could be used by many more?

11 A. Yeah, uh-huh.

12 Q. And then to have less staffing, as well, correct?

13 A. Yeah. It says less staffing, yeah.

14 Q. Alright. Further down there's an e-mail from you, just
15 bear with me. I'm going to have to find where I want to direct
16 your attention. In this paragraph, it's the fifth paragraph on
17 your March 25, 2019 e-mail. You agree that that's from you,
18 correct?

19 A. Yes.

20 Q. That's your e-mail address there?

21 A. Uh-huh.

22 Q. I'm sorry, I need a verbal.

23 A. Yes, I'm sorry, yes.

24 Q. And I've highlighted a sentence here: "He," I assume
25 you're referring to, is that Ken Clarkston that you're

1 referring to there? The paragraph starts with Ken Clarkston's
2 name.

3 A. No. I think that "he" may refer to Mace, the seller in
4 this case: He will also advise the members that the -- the
5 idea here was to let them know we were going to -- while we
6 could go up to 7,000 members, we might have a couple hundred
7 per day. This was, I think, a way of communicating -- he had a
8 the relationship with the members so I think that he probably
9 refers to Mace in this case.

10 Q. Just for the record, can you describe who Ken Clarkston
11 is?

12 A. Ken Clarkston was the lead attorney on the acquisition
13 of the property at the Jaffe Law Firm.

14 Q. And this e-mail from you is another example of your
15 concern that the facility may see an increase, and not just an
16 increase but a dramatic increase in the number of folks that
17 with using --

18 A. That's correct.

19 Q. And that notice that's referred to in your e-mail, that
20 notice actually occurs, correct?

21 A. Yes.

22 Q. So I've displayed Plaintiff's Exhibit 27, is this the
23 notice that you were referring to in your e-mail?

24 A. Let me take a quick read of that if I could.

25 Q. Sure.

1 A. If you keep scrolling, that would be great, please.

2 Q. Yes, sir.

3 A. Yeah, this is the notice that we are going to be
4 acquiring that beach ocean club and that we intend to utilize
5 it for the guests of our community and that they will know that
6 there's going to be more people coming, and we give them the
7 option at the bottom there, we give them the choice, we
8 describe how we're going to pay out, if they want to take the
9 money and go away or if they decide to stay.

10 Q. Okay. So in sum, this is a notice of change in
11 ownership to the pre-existing members of the beach club?

12 A. Yes.

13 Q. This notice is only given to them, correct?

14 A. Yes.

15 Q. It's not given to the city?

16 A. Correct.

17 Q. The city was not given notice of the change in ownership
18 at the Cabana House?

19 A. Correct.

20 Q. And in this notice to the members it says: While the
21 numbers of the members using the club on a given day is
22 uncertain, the number of members using the club will be
23 significantly more than the number of club members currently
24 using the club, would you agree?

25 A. Yes.

1 Q. Okay. So again, just more communication regarding the
2 use by the RV resort, correct?

3 A. More -- can I -- what are you asking me to confirm?

4 Q. Right, right. More communication, not only internal but
5 also external to the members of there being -- an expectation
6 of there being more use of the cabana house?

7 A. Yes, correct.

8 Q. And ultimately the members that do come to the cabana
9 house, they resulted in canceled memberships, would you agree?

10 A. Well, no, because it was before -- the canceled
11 memberships were being done before we actually built the
12 property and before people started coming there. This was all
13 done while Carolina Pines was still under construction, so they
14 elected right at the time that we bought the property, the
15 ocean club, whether they wanted to get their money back or
16 remain as members, so there was no increase at that time, it
17 happened once the resort was open probably by the following
18 summer.

19 Q. I'm talking about the memberships at the cabana house.
20 There were some cancellations of memberships, correct?

21 A. Yeah. Some people elected to take the cancellation and
22 the refund as opposed to staying on as a member, yes.

23 Q. Right. And then there was also a grace period, I think
24 you discussed, with counsel for defendants?

25 A. Yes.

1 Q. Okay. And that grace period allowed certain members to
2 see what the use of the cabana house would be with like and
3 then make a decision on whether they wanted to stay members or
4 receive a refund?

5 A. Yes, yes.

6 Q. Okay. And in this particular e-mail that I've
7 displayed, Plaintiff's Exhibit No. 36, this is an example of
8 one of those canceled memberships?

9 A. Let me read it. Okay, yes, this appears to be one of
10 the people on the membership list. I would have to look at the
11 list to confirm that, but.

12 Q. Okay. I'll focus your attention on paragraph 2, it
13 says: To be honest, since you've opened your RV resort we have
14 used the amenity center three times, unfortunately there are
15 many guests in the pool so we simply use the beach. While we
16 can deal with kids and amount of people, there appears to be a
17 considerable amount of alcohol use and I was disappointed that
18 your staff allowed two couples to make out in the pool and
19 found that distasteful. On Sunday we also overheard about the
20 plans to open up the golf cart parking area for additional
21 space and refreshments. Given the behaviors we've observed the
22 three times we have been there briefly since July 4th, we're
23 simply not interested in continuing.

24 A. Uh-huh.

25 Q. So you would agree that the RV resort's use of the

1 cabana house led to some canceled memberships?

2 A. Yes.

3 Q. Turning to the next exhibit, Mr. Colman, this is
4 Plaintiff's Exhibit Number 37. This is one that you're copied
5 on?

6 A. Uh-huh.

7 Q. And I'll scroll down to the second page here. Of course
8 it would be an e-mail from Mr. Frederick Gordon, Jr. July 21,
9 2019 to Carol Thomas. Do you know who Carol Thomas is?

10 A. Yeah. Carol Thomas has worked in the acquisitions
11 department for me.

12 Q. And I'll read this for the record. So beginning with
13 the, I believe it's the fourth sentence, but it says: In my
14 conversation I mentioned that I wasn't happy with how things
15 were at the pool and understood it was the Fourth of July
16 weekend, but there were way too many people in the pool and
17 around the pool. We did speak about me seeing how it was in
18 the next week or so. We spent many days visiting the pool
19 thereafter. While I did not go out of town last week and
20 returned to the pool this weekend, I feel this will not work
21 for our family. I have health concerns with the pool along
22 with other issues of facility changes. I also heard the golf
23 access is being replaced with a kitchen and bar. Not being
24 able to make a decision on how the facility would be until you
25 are open, I've experienced enough, and I am requesting my

1 refund and that was offered in the contract we signed. Do you
2 agree that issues with overcrowding were occurring at the pool?

3 A. Yes.

4 Q. And that was as a result of the RV resort's use of the
5 cabana house?

6 A. Yes.

7 Q. And that ultimately resulted in members cancellations in
8 memberships?

9 A. Yes.

10 Q. You testified on direct examination, Mr. Colman, that
11 one of the purposes for trying to obtain this cabana house was
12 so that the guests of the RV resorts wouldn't have to fight the
13 crowds on public access points, do you agree?

14 A. Agree.

15 Q. Okay. But there's also overcrowding concerns at this
16 cabana house, as well?

17 A. It appears at the pool there was. I don't know about
18 access to the beach, but yes, to the pool.

19 Q. Okay. Ultimately these members that we've just seen in
20 Plaintiff's Exhibit 36 and 37, they didn't want to be a part of
21 the big operation of the Sun defendants, correct?

22 A. Correct.

23 Q. Now, these members, I believe you testified that you
24 were aware that Mace Watts had a business license for the
25 operation of this beach club private membership, correct?

1 A. Yes.

2 Q. Okay. But the Sun defendants didn't go get a business
3 license for the members that continued to stay on with the
4 cabana house, correct?

5 A. I'm not privy to that, if we did or we didn't, I just
6 don't know.

7 Q. Okay. I believe the last topic, Mr. Colman, do you
8 agree your guests are not prohibited from using the public
9 roadways in North Myrtle Beach, right?

10 A. Agreed.

11 Q. And they are not prohibited from using public parking in
12 the city?

13 A. Agreed.

14 Q. They're not prohibited from using the public access
15 points to the beach?

16 A. Agreed.

17 Q. So you agree the guests of the RV resort are not
18 excluded from the City of North Myrtle Beach?

19 A. Correct.

20 Q. And you testified earlier that the defendants can't move
21 the RV resort in Conway to North Myrtle Beach, right?

22 A. Yes.

23 Q. But the Sun defendants can buy property in North Myrtle
24 Beach, right?

25 A. Yes.

1 Q. And they could buy it for a project or a development,
2 correct?

3 A. Yes.

4 Q. And in fact, you all have looked into that possibility
5 some years ago, right?

6 A. No. We looked, actually, a town that's North Myrtle
7 Beach. I don't know where the dividing line is for the resorts
8 that we looked at. They may have been in North Myrtle, they
9 might have been in Myrtle, we just looked at the general, the
10 Grand Strand area, so I don't know for certain that any of them
11 are actually located in North Myrtle Beach.

12 Q. Do you agree that the number of visitors to the City of
13 North Myrtle Beach is independent of defendant's ability to use
14 the cabana house?

15 A. Can you repeat the question? I'm going to try to
16 understand what you're asking.

17 Q. Sure. Do you agree that the number of visitors to the
18 City of North Myrtle Beach is independent of defendant's
19 ability to use the cabana house?

20 A. The number of visitors? Yes.

21 Q. In other words, people are still going to come to the RV
22 resort in Conway, correct?

23 A. People will still come, yes.

24 Q. And people are still going to come to the City of North
25 Myrtle Beach, regardless of defendant's use of the cabana

1 house, correct?

2 A. Say the question again.

3 Q. Sure. People are still going to visit North Myrtle
4 Beach regardless of if defendants have the cabana house,
5 correct?

6 A. Yes, correct.

7 Q. And in fact, people will still come in very large
8 numbers to the RV resort despite the closure of the cabana
9 house during the pendency of the consent order, right?

10 A. They do, but I will say our occupancy is diminished, but
11 they still come in large numbers, yes.

12 Q. Okay. And we'll talk more about that later --

13 A. Sure.

14 Q. -- but I appreciate your testimony, Mr. Colman. Sit
15 tight, because there may be some Redirect.

16 A. Okay. Thank you.

17 MR. WILLIS: We have no questions for this witness,
18 Your Honor. I ask that he be excused.

19 THE COURT: You have a good day.

20 THE WITNESS: Thank you, you too.

21 THE COURT: Let's resume at 2:30.

22 MR. WILLIS: Thank you, Your Honor.

23 MS. SHOUN: Thank you, Your Honor.

24 (Recess taken.)

25

1 NICK DIBELLA WAS DULY SWORN AT THIS TIME AND
2 **TESTIFIED AS FOLLOWS:**

3 THE CLERK: State your name for the Court, please.

4 THE WITNESS: My name is Nick Dibella.

5 MR. TAMASITIS: Mr. Dibella, can you please spell
6 your last name for the record?

7 THE WITNESS: D-i-b-e-l-l-a.

8 MR. TAMASITIS: Thank you.

9 **DIRECT EXAMINATION**

10 BY MR. TAMASITIS:

11 Q. Mr. Dibella, who do you currently work for?

12 A. I work for Sun Communities.

13 Q. Can you just give me your educational background, work
14 history?

15 A. Sure. So I went to college out in California and
16 graduated from Pepperdine University with a degree in
17 international business in Spanish. After graduating I went
18 into finance and accounting for a publically traded company out
19 in California for about three years. After that I moved back
20 to the Detroit area and joined Sun Communities for my first
21 stint for two years. I was an accountant supporting the
22 properties at Sun Communities, that was in 2007/2008. In 2008
23 I left the company to join one of the competitors, the American
24 Residential Communities as a district manager overseeing a
25 portfolio of manufactured housing communities both in North

1 Carolina, Tennessee, and then I moved to Colorado and Colorado
2 and Wyoming is my territories. That was 2008 to 2012 and at
3 the end of 2012 I reached back out to Sun, left on great terms,
4 had some different operational experience and wanted to see if
5 I could come back to the company, it was a great opportunity at
6 the time. They were getting into the RV industry buying RV
7 resorts, as John mentioned earlier, and so I came back in
8 January 2013 as a regional vice president, specifically focused
9 on growing the RV portfolio, overseeing the portfolio. In 2016
10 I was promoted to divisional vice president and then in 2019
11 took over as senior vice president, which is my current role.

12 Q. And where is your office currently located?

13 A. I'm based in the main office in South Hill, Michigan.

14 Q. And how often are you traveling on work for Sun?

15 A. Minimum 50 percent, 50 to 75 percent of my time is spent
16 on the road.

17 Q. And what are your roles and responsibilities as senior
18 vice president with Sun Communities?

19 A. I oversee the day-to-day operations and really financial
20 performance and results for the entire Sun Outdoors RV
21 portfolio, which is comprised of approximately 190 resorts and
22 in approximately 30 states and also Ontario, Canada, and like I
23 said, overall, just responsibility for the entire portfolio,
24 financial results, customer service, day-to-day with the
25 people, customers, all of those things.

1 Q. Who do you directly report to at Sun Communities?

2 A. I report to the current chief operating officer, Bruce
3 Thelen.

4 Q. Does anyone report directly to you?

5 A. Yes. I have eight direct reports, four VP's, a VP of
6 revenue management and then some asset managers that help
7 oversee the portfolio.

8 Q. And that's the RV resort portfolio for Sun Communities?

9 A. Correct.

10 Q. Can you please provide an overview for the Court of the
11 organizational structure for Sun Communities?

12 A. Sure. So at the top level is the Sun Communities
13 Incorporated, which is the publicly traded real estate
14 investment trust formed in 1993, then the layer underneath that
15 is Sun Communities operating limited partnership, which are the
16 corporate support positions that support the properties,
17 including myself, operations, HR, accounting functions,
18 marketing functions, IT. Those would all fall up under the
19 operating limited partnership, and then underneath the
20 operating partnership are the actual properties that are each
21 formed under an LLC based upon TRS or non-TRS, depending on if
22 it's core business or not.

23 Q. And how do the entities involved in this case, Sun TRS
24 Ocean Club, LLC, Sun TRS Carolina Pines, LLC and Sun Carolina
25 Pines RV, LLC fall into that corporate structure?

1 A. Yes. So those are the three separate entities for the
2 property down here in South Carolina. All three of those
3 entities flow up to the operating partnership, the TRS for the
4 Ocean Club, so that has -- everything that rolls up for the
5 Ocean Club including the asset that sits in North Myrtle Beach,
6 the TRS for Carolina Pines, all of the ancillary revenues,
7 meaning, retail, food and beverage, all of the amenities on
8 site, the arcades, the bowling, all of those things, all of the
9 revenue, non-core revenue flows through the TRS account and
10 then Sun Carolina Pines RV is the core business, and that's
11 where all the assets and the buildings and the RV revenues from
12 the actual property flow through.

13 Q. And you were in the courtroom earlier when Mr. Colman
14 was testifying, and he talked about there are three distinct
15 divisions or markets that Sun Communities is involved in. Can
16 you just explain those for us?

17 A. Yes. So there are three different operating platforms.
18 There's the manufactured housing communities, there's the RV
19 campgrounds/campground space, which I oversee, then the third
20 platform or the marinas, that we purchased a few years ago.

21 Q. And how would you classify the broader market that the
22 RV resort portfolio operates within?

23 A. Yeah, I mean, the RV resorts phase falls under the
24 hospitality industry. We directly compete with traditional
25 hospitality such as hotels. You know, we are referred to as

1 outdoor hospitality, but we fall under the general hospitality
2 whether it's hotels, other types of resorts, those types of
3 things.

4 Q. And how large is the RV resort portfolio for Sun
5 Communities?

6 A. Approximately 190 properties.

7 Q. And you said where are they located?

8 A. Approximately 30 states in Ontario, Canada.

9 Q. Are they concentrated in any specific state?

10 A. Our highest concentration is Florida, approximately 60
11 resorts in Florida, and then after that it would be Texas and
12 California.

13 Q. What is the business model for the RV resort portfolio?

14 A. So our goal is to offer best in class RV sites or
15 vacation rentals for guests to come in and rent on a daily,
16 weekly, monthly or annual basis, and then, as well as offering
17 all of the on-site entertainment events and those types of
18 things to really make it an all inclusive experience.

19 Q. If we could turn to Defendant's Exhibit Number 53. Mr.
20 Dibella, it should pop up on your screen there. Do you
21 recognize this document?

22 A. Yes.

23 Q. And what is it?

24 A. It's the Annual Form 10-K.

25 Q. Do you have any role in helping to prepare the Form 10-K

1 for Sun Communities?

2 A. Yes. As an operations leader the involvement would just
3 be final review after this is put together.

4 Q. And what is the purpose of this form?

5 A. As a publicly traded company this is a required document
6 annually that really tells the financial health throughout
7 financial statements, as well as just a general business
8 operations of the company for the public to digest.

9 Q. If we could turn to page one, part one of this document
10 at the bottom, it's base labeled: Sun 05966. Can you please
11 read through the paragraph, I think it's the fifth paragraph
12 that starts with: As of December 31st, 2022.

13 A. As of December 31, 2022, we owned and operated directly
14 or indirectly or had an interest in a portfolio of 669
15 properties located in the U.S., the UK and Canada, including
16 353 MH communities, 182 RV communities, and 134 marinas. As of
17 December 31, 2022 the properties contained an aggregate of
18 227,541 developed sites comprised of 118,240 developed MH
19 sites, 30,000 --

20 MR. TAMASITIS: Mr. Dibella, if you could go a lot
21 slower so she can take down what you're saying, this is the
22 hardest part of her job.

23 THE WITNESS: Okay, sorry, I'm a fast talker.

24 MR. TAMASITIS: Yeah, that's okay, so am I. Mr.
25 Willis points it out to me all the time that I talk too fast.

1 THE WITNESS: Alright, sorry about that.

2 BY MR. TAMASITIS:

3 Q. So let's go to the second sentence, starting: As of
4 December 31, 2022, and go slower.

5 A. As of December 31, 2022 the properties contained an
6 aggregate of 227,541 developed sites comprised of 118,204
7 developed MH sites, 30,333 annual RV sites, inclusive of both
8 annual and seasonal usage rights, 31,181 transient RV sites,
9 and 47,823 wet slips and dry storage spaces. Additionally, we
10 own or control land or support developing and expanding nearly
11 16,200 additional MH and RV sites suitable for development.

12 Q. So in this little description, first, I guess the
13 question I want to ask you, are these numbers here, are they
14 still accurate, have they changed any significant measure?

15 A. They are still fairly accurate. 2023 hasn't been that
16 much of an inquisitive year from a property standpoint, so
17 these numbers are fairly close to what you see at the end of
18 2022.

19 Q. And in that paragraph it talks about MH communities, is
20 that manufactured homes communities?

21 A. Correct.

22 Q. And there's also, it discusses annual RV sites. What is
23 an annual RV site?

24 A. So an annual RV site is when a guest wants to rent a
25 space at one of our RV communities for an annual length of time

1 for a 12-month cycle, and with that we have an agreement that
2 they sign and fill out which lays out the terms, the 12-month
3 terms, the monthly rent that they're going to pay and rules and
4 regulations, those types of things.

5 Q. And so then the transient RV sites, then I guess those
6 would be on more of a weekly basis or even weekend basis?

7 A. Correct, daily, weekly, mostly, sometimes monthly,
8 depending on the season.

9 Q. So there's 30,000 and some change annual sites and
10 31,000 and some change transient; is that right?

11 A. Correct.

12 Q. So it's almost a 50/50 split?

13 A. Correct.

14 Q. If we could go to page four of this document that has
15 "real property operations," and there is a paragraph on here
16 that the second paragraph: In an RV community. If you could
17 go ahead and read that slowly, please, for the court reporter?

18 A. An RV community is a resort with sites for the placement
19 of RV's for varied lengths of time. RV communities may also
20 provide vacation rental homes and may include a number of
21 amenities such as restaurants, golf courses, swimming pools,
22 water parks, tennis courts, fitness centers, planned activities
23 and spacious social facility.

24 Q. Do you agree with this explanation of an RV community?

25 A. Yes.

1 Q. Does Carolina Pines fall under that definition?

2 A. Yes, it does.

3 Q. So Sun Communities has vacation rental homes at its RV
4 resorts?

5 A. Correct.

6 Q. Are there such homes at Carolina Pines?

7 A. Yes, there are. There's approximately 120 or so
8 vacation rental homes at Carolina Pines. We refer to them from
9 a marketing standpoint as cottages, but they are one or two
10 bedroom. John Colman referred them earlier as tiny homes,
11 however, they're technically registered RV's, so, yeah, there's
12 approximately 120 or so in Carolina Pines.

13 Q. Yeah, so we were talking about that last night. So
14 there are actually, and I didn't know this until last night,
15 they're actually RV's that sit there but they look like tiny
16 homes.

17 A. Correct. Yeah, they're stamped by the RV industry
18 association as official RV's.

19 Q. And there can be annual guests there or transient guests
20 there?

21 A. Correct.

22 Q. If we could then turn to page six of this document,
23 which is "acquisitions and expansion/development." Can you
24 please describe the growth that occurred within Sun Communities
25 in the year that ended, December 31, 2022?

1 A. Yeah. During the year ending December 31, 2022, we
2 acquired 61 MH and RV communities totaling 21,795 sites and
3 2,655 development sites and eight marinas, totaling 2,552 wet
4 slips and dry storage spaces for a total of approximately 2.2
5 billion. This includes our acquisition of park holidays at an
6 enterprise value 950 billion pounds, or approximately 1.2
7 billion.

8 Q. And in that next section it talks about expansion and
9 development. It says during that same year Sun Communities
10 completed construction of over 2,000 sites at six ground-up
11 developments and 11 expansion properties, do you see that?

12 A. Yes.

13 Q. So what is the difference between a ground-up
14 development and an expansion property?

15 A. So ground-up development would be, Carolina Pines is a
16 perfect example. When we go buy a piece of raw land and
17 develop it pretty much from the ground up and an expansion
18 example would be an existing asset, sort of a mature asset that
19 we've had for a while. It potentially has an additional parcel
20 of land that we might be able to add, what's called a 20 sites,
21 30 sites, there might be another parcel of land next door that
22 we go acquire that we can add, whatever the number of sites
23 might be to just continue to grow the revenue, but an expansion
24 is usually at a mature stable property.

25 Q. And how much has Sun grown this year as compared to

1 2022?

2 A. We have not grown that much from a property standpoint.

3 Q. So it's been kind of stable?

4 A. Pretty stable in '23, yup.

5 Q. What is Sun Communities typical involvement with the
6 communities where it has properties?

7 A. Some that we're proud of, we're very involved in the
8 local communities. In fact, we have a whole social
9 responsibility arm called Sun Unity, which has a director and
10 several other team members on the staff that work with the
11 properties across the U.S., you know, give opportunities for
12 our team to go ahead and do volunteer activities, paid
13 different donations of charitable organizations, in fact, one
14 that I'm involved with now and it's near and dear to my heart
15 is we are involved with a partner called Camp Quality. We
16 offer up five of our locations for families and kids with
17 cancer to come in and enjoy a weekend or a week of free stay at
18 our place and interact with other kids that are going through
19 the same situation, it's a pretty amazing process, so, yeah,
20 we're very involved in the communities any way we can.

21 Q. Now, I want to discuss the RV resort portfolio more
22 specifically. How is the RV resort portfolio organized and
23 structured through the difference divisional presidents and
24 things like that?

25 A. Yeah, sure. So, yeah, there's a defined work chart,

1 obviously, myself would be leading it, and then underneath me
2 there's four divisional vice presidents that each have
3 approximately 30 to 50 properties under their supervision, and
4 underneath those four vice presidents there's 14 regional
5 managers, and each regional manager has supervision of eight to
6 ten properties usually in a given geographic area as best as we
7 can. We like to have a regional base where the properties are,
8 and then from there each property has a general manager that
9 reports up to the regional manager.

10 Q. And what region covers the Carolina Pines RV resort?

11 A. Currently it's region 30. Our regions are numbered.

12 Q. They're numbered, are they geographically situated? I
13 know this is a difficult question.

14 A. No, they're not, so there's the regions between our
15 manufactured housing portfolio and the RV portfolio, there's
16 about 40 regions starting with region one all the way up to
17 region 40. My first region, for example, is region nine, you
18 know. Region one through eight, we're already there due to our
19 legacy on beach properties when we start buying RV, that's when
20 region nine came into play, but there's no really rhyme or
21 reason for the numbering order.

22 Q. And who reports to the regional vice presidents? I
23 think you've testified just a bit ago, but can you --

24 A. Yeah, general managers or a district manager.

25 Q. And what's the difference between the two of them?

1 A. A general manager would just have oversight of one
2 property, a district manager would have two or more.

3 Q. And who is the current general manager for Carolina
4 Pines RV Resort?

5 A. Michelle Maynora.

6 Q. Alright. Let's take a step back, and I want to talk
7 about the RV resort industry as a whole. How would you
8 classify the broader market where RV resorts compete?

9 A. I think we talked about it a little bit earlier. I
10 think the general market where we compete is the hospitality
11 industry, and like I said, whether it's hotels, resorts, even
12 private rentals such as, you know, Airbnb's, and those types of
13 things, we are definitely in tune with the hospitality
14 industry. Like I said, it's more traditional hospitality,
15 which would be the hotel space versus outdoor hospitality,
16 which would be the RV resorts.

17 Q. And as part of your roles and responsibilities as a
18 senior vice president for the RV resort portfolio, do you keep
19 track of the market trends in the RV resort industry?

20 A. Yes. It's very important to stay in tune. Like I just
21 said, with, you know, whatever the hotel operators are doing,
22 especially in drive two leisure markets, such as Myrtle Beach,
23 it's very important just to stay in tune with how the other
24 hotels and resorts are doing and make sure it's a good
25 benchmark for us to see how we're doing.

1 Q. And what are the trends you've noticed in the RV resort
2 industry in the last five years?

3 A. The last five years have been interesting. So 2019, we
4 had great momentum into 2019, even in the mid-2000, 2015 to
5 2019 was a good momentum for us as we continued to add
6 properties and those things, and then 2020 COVID hit, and the
7 industry pretty much came to standstill, just like other
8 hospitality businesses. In 2021 as some of the code
9 restrictions left we had an influx of new guests, and
10 obviously, returning guests that came to the properties for a
11 banner year '21, but then the last two years we've seen a
12 normalization of occupancy levels to pre-COVID.

13 Q. And who are Sun Communities biggest competitors in the
14 overall market in the RV resort space?

15 A. The biggest competitor that I keep referring to are the
16 hotels, primarily any hotel chains, other resorts, other RV
17 resorts.

18 Q. And who are the big players in the RV resort market? I
19 think Mr. Colman was kind of testifying to that earlier,
20 Jellystone, I think was one of them?

21 A. Correct. That's the biggest operator of campgrounds is
22 Campgrounds of America, or KOA, as they are referred to.
23 Jellystone is a franchise company with approximately 80
24 properties, Sun Outdoors, and then there's one other, ELS,
25 American residential based in Chicago as a couple hundred RV

1 park.

2 Q. Now, you discussed that the amenities that are offered
3 at a lot of these RV resorts, are those amenities a
4 pay-as-you-go, or how does the resort structure the access to
5 those amenities?

6 A. So there's the base rate fee that we charge, it's a
7 structured base rate fee that covers whether a guest comes in
8 and rents an RV site or a vacation rental, there's a base rate
9 that covers that, and then we also have a resort fee at certain
10 resorts that cover the current amenities as well as reinvesting
11 in the amenities and making it an all inclusive feel so they
12 don't have to pay for a per use or a basis.

13 Q. Some the RV resorts for Sun Communities are all
14 inclusive?

15 A. Correct.

16 Q. Are the amenities of the RV resorts, like the one at
17 Carolina Pines, is that all inclusive?

18 A. Yes. Most of the amenities are, except, for example, if
19 you wanted to eat at the restaurant, obviously, that wouldn't
20 be free, but all the other amenities such as mini golf, fitness
21 center, the pools, all of that is included.

22 Q. Okay. So it's kind of like a hotel, you don't pay to
23 use the fitness center or pool at the hotel?

24 A. Correct.

25 Q. Alright. I want to talk about budgeting, and you and I

1 bickered a little bit over the definition of budgeting so I
2 want to be clear. What does the term "budget" mean to you in
3 your position with Sun Communities?

4 A. The budget is really the annual score card. It's the
5 guide that the properties use to really judge how they are
6 doing year over year, so for us, the budget is the most
7 important function that we do every year.

8 Q. And how does the budgeting process work for Carolina
9 Pines RV Resort?

10 A. So the process starts, we're literally in the middle of
11 it right now for the 2024 cycle. So the process starts with
12 the regional managers and the general managers sort of getting
13 together and looking at how the year went, past trends, current
14 local, macro economic conditions, and really coming up with
15 what they feel is the best revenue as well as expense budget
16 for the next year, and then they submit that and once it gets
17 submitted, myself, as well as the rest of the leadership team
18 takes a look, and we have certain growth targets that we're
19 looking to achieve, and if certain growth targets are met then
20 we accept the budget, if not, we go back and forth to a certain
21 point where everyone feels comfortable and it can be achieved.

22 Q. And who ultimately approves the budget for Carolina
23 Pines RV Resort?

24 A. Myself and the rest of the leadership team.

25 Q. What specific factors are considered when setting a

1 budget for an individual resort?

2 A. Well, there's a few different things. The first one
3 would be understanding the life cycle of where the current
4 property is at, whether it's a property that we've developed
5 from the ground up, whether it's a property we just acquired,
6 or whether it's a more stable mature property, all of that is
7 really factored in the first step. For example, if a property
8 such a ground-up development is coming online you have to
9 understand where we're at with the development, are there more
10 sites coming online the following year, and those types of
11 things.

12 Q. And how would you classify Carolina Pines' performance
13 as an asset in the RV resort portfolio?

14 A. Well, for the last several years versus what we have set
15 as our budget, it has done fairly well.

16 Q. And you said the life cycle. How would you characterize
17 the life cycle right now of Carolina Pines?

18 A. It's still in the growth cycle since this is going on
19 year five, so you know, after usually year five to seven we
20 start to see a little stabilization, so it's still, I'd say, at
21 the tail end of the growth cycle.

22 Q. And are there any special considerations when assessing
23 and analyzing budgeting plans for a newer resort?

24 A. Yeah. I think the biggest one is just understanding the
25 growth and is it coming from new customers, which we would hope

1 it would be, or is it coming from adding, like I said, if we're
2 still in the growth construction phase, is it because we've
3 added new inventory, meaning new sites. If we have 100 new
4 sites year over year, obviously that's going to drive a lot
5 more revenue, so those are the biggest key factors.

6 Q. Does it make it more difficult when it's a ground-up
7 development in that growth phase?

8 A. Yes, it does, it's because there's uncertainty, as we've
9 talked about. I think we had a good feeling, that, you know,
10 this market would be good for us, and you know, we put together
11 projections as best we can based upon what we think the
12 property can do and go from there.

13 Q. What are the fee structures for reservations at the RV
14 resort?

15 A. So as I described earlier, I think the distinction is
16 there's a base rate fee for whether you rent an RV pad or a
17 site from us or a vacation rental. That base rate fee covers
18 the actual site or the rental and the things affixed to that
19 site, whether it's the picnic table or fire pit, those types of
20 things, and then we also have the resort fee that we add, as
21 well, and that, like I said earlier, covers really current
22 amenities, reinvesting in those amenities, keep investing class
23 as well as the all inclusive motto we want to provide.

24 Q. And you talked about that resort fee. It's my
25 understanding that that was recently instituted. Were you

1 involved in that decision?

2 A. Yes, I was. Yeah, we implemented it in January of '23.

3 Q. And can you explain why that Sun began to implement that
4 resort fee for certain properties?

5 A. Yeah, I think, like I said, the main crux for it for us
6 was two-fold. One is looking at a way for us with the highly
7 amenitized property, such Carolina Pines, to understand the
8 best way for us to continue to, we either had new amenities, or
9 make sure that we keep the ones up in top shape, as well as an
10 all inclusive model so there's not a per use. We felt like
11 from a customer standpoint rolling out a resort fee and
12 explaining it that way would be the best for our guests.

13 Q. How many other of the resorts that are under the
14 portfolio have instituted a resort fee?

15 A. Approximately we're up to 80 at this point.

16 Q. And how are these RV resorts chosen?

17 A. There's a few different factors. I think the business
18 motto of the property, for example, I know it was referenced
19 earlier, but for, like, a transient family destination property
20 like Carolina Pines, highly amenitized, those are the type of
21 properties that we are looking at to implement a resort fee, as
22 on opposed to the more long-term snowbird-type properties in
23 Florida that we wouldn't do it at those type of properties.

24 Q. And do you know, is there a resort fee charge to annual
25 guests at Carolina Pines?

1 A. Not to the annual guests, no.

2 Q. So I want to focus now specifically on Carolina Pines.
3 When was the first time you visited the Carolina Pines
4 property?

5 A. 2017.

6 Q. And I sort of asked this already, but how successful has
7 that, Carolina Pines been in comparison to the rest of the
8 portfolio?

9 A. Up until, really, up until the last couple of years it's
10 been pretty much on par with the rest of the portfolio.

11 Q. And when did you first visit the beach club that's at
12 issue in this case?

13 A. Early 2019.

14 Q. What were your initial impressions of the beach club?

15 A. It was a finding, it was an amazing, fantastic facility,
16 right on the beach, you know, just a great amenity for our
17 guests. If there was a way to make it happen, I definitely
18 supported it. The big thing was distance from the property,
19 making sure timing wise, and those types of things, you know,
20 from an operation standpoint that we could make it work, and
21 you know, we timed the driving distance, and on top of the
22 property being on the beach, it was for us, from an operation
23 standpoint would be a great add to the property.

24 Q. Who did you meet with during that first visit?

25 A. We met with Mace Watts.

1 Q. And why did you meet with him?

2 A. He was the owner of the cabana house at the time.

3 Q. And what was he using the beach club for at that time?

4 A. He was using the beach club as, he was selling private
5 memberships to, you know, the general public at that point. As
6 we mentioned earlier, it was between 40 or 50 members he had at
7 the time.

8 Q. And how do you know that?

9 A. He disclosed it.

10 Q. Does Sun Communities have any other off-site amenities
11 like the beach club in its portfolio?

12 A. No, we don't, and it's definitely out of the box for us,
13 all of our amenities are located on the property.

14 Q. Are you familiar with whether any of your competitors
15 have similar off-site amenities?

16 A. I am not familiar.

17 Q. Let's discuss the competitors for a moment. Who would
18 you classify as the competitors to Carolina Pines in this area?

19 A. Definitely the biggest competitors are the large RV
20 resorts such as Pirateland, Ocean Lakes, those ones that were
21 referenced earlier that are right on the ocean, but then the
22 other hotels in the area, the resorts, the private rentals,
23 Airbnb, those types of things.

24 Q. And I think you've just answered this, but are you aware
25 of whether any of these competitors have private beach access?

1 A. Some do.

2 Q. How involved were you in the negotiations to purchase
3 the beach club?

4 A. I was not involved in the negotiations.

5 Q. Who was mainly involved?

6 A. Our acquisitions team led by John Colman.

7 Q. Let's stay on the beach club real quick. What are the
8 operational costs annually for the beach club?

9 A. Approximately \$60,000.

10 Q. And what do those costs include?

11 A. It would be the taxes, the insurance, general upkeep of
12 the landscape, the pool, and then just some small payroll
13 dollars from the property, going over there just to keep our
14 eyes on it, making sure the asset stays in working order.

15 Q. Has Sun Communities noticed an impact to the RV resort
16 performance from the closure of the beach club?

17 A. Yes, we have.

18 Q. And what has been that impact?

19 A. Since 2021, we have seen occupancy drop in '22. After
20 the high mark in '21, occupancy dropped significantly in '22,
21 and has not rebounded in '23.

22 Q. If we could turn to Defendant's Exhibit Number 40,
23 please. I want to talk through these summaries here first
24 before we actually delve into more detail. Are you familiar
25 with the profit and loss statements for Carolina Pines?

1 A. Yes.

2 Q. And Mr. Dibella, we ask you to review the profit and
3 loss statements for Carolina Pines since its inception through
4 present; is that right?

5 A. Correct.

6 Q. Did you review them?

7 A. Yes.

8 Q. How many pages of spreadsheets were there?

9 A. Approximately 50 or so.

10 Q. What were those spreadsheets comprised of?

11 A. They were the full 12-month PNL statements dating back
12 from when the property opened in 2019 through 2023 year to
13 date.

14 Q. Were you also asked to review those records to determine
15 the changes in occupancy rate for Carolina Pines from before
16 the closure of the beach club in this case until after?

17 A. Yes.

18 Q. And finally, have you reviewed the summary charge
19 identified in the beginning of Exhibit Number 40, which
20 summarizes the changes in occupancy rate between May and
21 September for Carolina Pines since 2019?

22 A. Yes, I have.

23 Q. Do those charts accurately and completely summarize the
24 PNL statements and occupancy rates for Carolina Pines during
25 that time?

1 A. Yeah, it's just the visual representation.

2 Q. What does Sun Communities consider the peak season for
3 coastal resorts like Carolina Pines?

4 A. Memorial Day through Labor Day.

5 Q. Why is that considered peak season?

6 A. Because that's the prime time for folks to come to the
7 coastal beach vacations, I mean, it coincides with the summer,
8 summer vacations.

9 Q. And why is peak season most important to the operation
10 of the beach club?

11 A. That's when it's utilized the most. That's what we
12 referenced earlier, there's not a lot of folks going over there
13 in January.

14 Q. Alright, I want to go through this data. Just so we are
15 clear, this is the occupancy rates for the RV resort, right?

16 A. Correct.

17 Q. And how do you calculate the occupancy rate?

18 A. Occupancy rate is calculated by taking the total
19 occupied site nights divided by the total available site nights
20 for a given time period and a site night would be a kin to a
21 room night in a hotel stay, so a guest comes in and rents an RV
22 site or a vacation rental for a night for a specified rate.
23 That's sort of the definition of a site night.

24 Q. Why is the occupancy rate an important metric for
25 your purposes?

1 A. I think in the hospitality industry in general, it's the
2 number one benchmark just to show general demand and keeps sort
3 of perspective in relative comparison to your competitors
4 looking at occupancy as the key metric.

5 Q. How is an occupancy rate a better or worse comparison of
6 a performance than strictly revenue numbers?

7 A. Well, I mean, revenue is just the output of the
8 occupancy, so I mean, for us, like I said earlier, occupancy
9 really shows the demand of a property and it gets you an apples
10 and apples comparison between different resorts because you
11 could have one property in a certain market that charges a lot
12 more but has lower occupancy but the revenue's the same and so
13 it's an important metric to keep comparison apples to apples
14 for different types of properties in the portfolio, especially
15 a new build, a new ground-up development such as Carolina Pines
16 that continues, you know, for the five to seven years, as I
17 mentioned earlier, as a continual growth cycle, so the
18 occupancy for us really shows, are we gaining new customers
19 like we think we are, or is the revenue just growing because
20 we're adding more sites to the market?

21 Q. Now, if we can scroll through these charts real quick
22 until we get to the last chart. Now, we're looking at the peak
23 season occupancy percentage rates from 2019 to 2023, and it
24 would appear to me that, I would say that it looks like July is
25 the peak of the season for peak season?

1 A. Correct.

2 Q. Why would that be the case?

3 A. July is the peak of the summer season, as we mentioned
4 earlier, between Memorial Day and Labor Day, those summer
5 months, July is by far the most popular month and the most
6 popular month, once again, to come to the beach for a vacation.

7 Q. And that top line, that's 2021, it looks like that was
8 the high-water mark, I think you said earlier?

9 A. Correct.

10 Q. And why would that be the case?

11 A. As I mentioned earlier, 2021 was the banner year for the
12 RV industry as a whole as we were coming off all that pent up
13 demand from the COVID restrictions and folks not being able to
14 get out and travel.

15 Q. When did the beach club close again?

16 A. Early in '22.

17 Q. Was it January of '22?

18 A. Correct.

19 Q. What was the overall occupancy rate for the entire year
20 of 2022, and if you need to look, if you need to look into the
21 spreadsheets there should be the paper file there where the
22 spreadsheets are underneath for exhibit number --

23 A. Forty?

24 Q. Forty.

25 A. The occupancy rate for '22 was the question?

1 Q. Yes.

2 A. It's 62.68.

3 Q. Okay. So 62.68 percent of occupied site nights out of
4 100 percent?

5 A. Correct, for the year, yeah, 62 percent.

6 Q. And how is that rate compared to 2021?

7 A. It's a drop of 6.5 percent.

8 Q. So there was a 6.5 percent occupancy rate drop from 2021
9 to 2022?

10 A. Correct.

11 Q. Now, I know you testified that 2021 was a banner year
12 for Carolina Pines. Was it also a banner year for all of the
13 RV resorts in the Sun Communities portfolio?

14 A. Yes, it was.

15 Q. Was there a corresponding 6.5 percent drop off in
16 occupancy rate across Sun Communities entire portfolio in 2022?

17 A. No. For the whole portfolio we only saw a drop of a
18 little over one percent.

19 Q. Just one percent?

20 A. Correct.

21 Q. Now, looking back at the chart on the screen, how does
22 the 2023 occupancy rate for peak season at Carolina Pines
23 compare to 2021?

24 A. It's still significantly lower.

25 Q. Now, are you seeing the same thing across all of the RV

1 resorts in the portfolio for Sun Communities?

2 A. No, not to the same level that we're seeing on this
3 chart.

4 Q. So 2023 at Carolina Pines is still lower than the rest
5 of Sun Communities portfolio?

6 A. Correct.

7 Q. How do you explain the fact that the drop in the
8 occupancy rate at Carolina Pines from 2021 to 2022, and now
9 2023, is greater than Sun Communities RV resort portfolio as a
10 whole?

11 A. I mean, the one area that we can directly point to is
12 the closure of our beach club in early 2022. You know, we had
13 a lot of excitement when we announced that we were acquiring
14 that asset and became a big driver for guests for us to come
15 and be able to utilize our amazing property in Conway, as well
16 as being able to be transported to a private beach club, so --

17 Q. Now, there may be other factors, right? I mean, could
18 you think of any factors?

19 A. Yeah, there could possibly be other factors, you know,
20 the general market conditions that might affect other areas,
21 but there's nothing else that we can put our finger on except
22 the closure of the beach club.

23 Q. What did Sun Communities do in order to try and offset
24 the impact related to the loss of the beach club?

25 A. So, yeah, after we got the notification that we weren't

1 going to able to operate it anymore, we regrouped internally,
2 and you know, and decided, you know, how can we sort of
3 overcome this loss not knowing the outcome of it, and we had
4 some available land still on the property of Carolina Pines
5 that we could potentially expand the water park/pool area, and
6 so we decided to finish it off and build a lazy river complex
7 that cost us over four million.

8 Q. What was the status of the lazy river in January of 2022
9 when the beach club closed?

10 A. There was no status. It wasn't even on the radar at
11 that point.

12 Q. Okay. Why did Sun Communities think it was necessary to
13 begin construction?

14 A. Because, once again, we had this amazing waterfront
15 amenity that the guests had been used to for several years, and
16 you know, in order for us to sort of offset taking away such a
17 great competitive advantage for us we decided that we needed
18 some sort of other water type amenity to be able to communicate
19 out to the guests in order to offset the loss of the beach
20 club, and we decided to go ahead and move forward with the lazy
21 river, or else we were afraid we were going to see more sliding
22 of the occupancy.

23 Q. What effect, if any, did the construction of the lazy
24 river have to the Carolina Pines occupancy rates in 2023?

25 A. I think they've helped us rebound, definitely, from '22.

1 Q. Had the lazy river not been constructed, what do
2 you think would have been the result of the occupancy numbers?

3 A. I think it would have kept declining.

4 Q. There were some questions during Mr. Colman's testimony
5 about, has Sun Communities looked for other potential
6 opportunities to purchase property in North Myrtle Beach, has
7 that been done?

8 A. There hasn't been the right opportunities for us. As
9 you know, we are a manufactured housing community owner
10 operator, as well as RV resort, owner operator, and there
11 hasn't just been those opportunities for us in North Myrtle.

12 Q. And Carolina Pines is considered one of your most
13 valuable assets; is that right?

14 A. Correct, yes, it's a -- one of the premier RV resorts on
15 the east coast.

16 Q. So the investment of 4.5 million dollars to get the lazy
17 river up and running, that matches what you consider Carolina
18 Pines one of your most important assets, right?

19 A. Correct.

20 MR. TAMASITIS: Thank you. No further questions.
21 Please answer any questions.

22 MR. RICARD: Your Honor, may we take a quick recess?

23 THE COURT: Sure.

24 (Recess taken.)

25

CROSS-EXAMINATION

1

2 BY MR. RICARD:

3 Q. Good afternoon, Mr. Dibella, how are you?

4 A. Good. Thank you.

5 Q. Okay. So the defendants closed on the cabana house in
6 May of 2019, right?

7 A. Correct.

8 Q. And you all did not apply for a special exception at
9 that time?

10 A. I am not aware.

11 Q. The grand opening for the RV resort was later that year
12 in 2019, right?

13 A. Correct, October, yes.

14 Q. So the cabana house really wasn't used very much,
15 relatively speaking, in 2019, right?

16 A. Well, yeah, a little, yeah, a little bit.

17 Q. Relative to later years?

18 A. Correct. It was more of just shuttling folks over there
19 to see it at that point in late of '19, correct.

20 Q. And then COVID hits in March of 2020, right?

21 A. Correct.

22 Q. So again, the degree of use doesn't pick up until later
23 that summer at the cabana house, would you agree?

24 A. I agree.

25 Q. By 2021 South Carolina is fully opened?

1 A. Correct.

2 Q. Okay. And then most of southeast is, too, right?

3 A. Correct.

4 Q. I want to display on the screen what's been marked as
5 Plaintiff's Exhibit 33. Are you familiar with this depiction,
6 Mr. Dibella?

7 A. Yes.

8 Q. It's the depiction of the resort map for the RV resort?

9 A. Correct.

10 Q. There are phases that were developed at this RV resort,
11 correct?

12 A. Correct.

13 Q. One of the phases was completed in 2021, right?

14 A. Correct.

15 Q. Do you recall which phase that was?

16 A. I don't. I'd need to look at documents for the specific
17 dates for the phases, yeah.

18 Q. Sure, sure. But there are different portions of this
19 resort map, and we can zoom in, but they have different
20 letters, right, like, there's an A section, a B section, a C
21 section, right?

22 A. Right.

23 Q. Do you recall when each section and each phase was built
24 out at the RV resort?

25 A. I mean, it was per year, so the first sections were A

1 and B, then C, and then the last as you scroll up over to the
2 left was the last phase.

3 Q. And so the last portion, the last phase of the RV
4 resort, that was built out at the very end of 2021, correct?

5 A. Correct.

6 Q. Okay. You all have over 30 amenities at the RV resort,
7 correct?

8 A. I don't know the exact number, but it's significant.

9 Q. I believe you described it as being highly amenitized?

10 A. Correct.

11 Q. I'm going to display what's been marked as Plaintiff's
12 Exhibit Number 34. These are some marketing photos that were
13 produced in discovery by defendants. I'll scroll through some
14 of these pictures, but generally speaking, there's a restaurant
15 and snack bar at the RV resort?

16 A. Yes.

17 Q. And then turning to page four of Exhibit 34, there's a
18 gym at the RV resort?

19 A. Yes.

20 Q. There's an arcade room at the RV resort?

21 A. Yes.

22 Q. That's depicted on page six of the exhibit. There are
23 both indoor and outdoor pools, correct?

24 A. Correct.

25 Q. So this is page seven of the exhibit. And then turning

1 to page 11, 12 of the exhibit, this is a water park feature,
2 correct?

3 A. Water playground.

4 Q. Water playground?

5 A. Yup.

6 Q. And there were some other playgrounds as well that we
7 kind of --

8 A. Standard playgrounds, correct.

9 Q. Right, without the water, correct?

10 A. Correct.

11 Q. What is depicted on page 15 of the exhibit is a
12 Pickleball courts; is that right?

13 A. Pickleball courts, it looks like, shuffle board, and the
14 basketball is at the far end on the right.

15 Q. Okay, basketball there, too. And putt-putt is depicted
16 on page 20 of Exhibit 34?

17 A. Yes.

18 Q. I believe there's another picture of putt-putt, as well.
19 Bowling is depicted, bowling alley is depicted on page 26 of
20 the exhibit, correct?

21 A. Correct.

22 Q. Cornhole area, as well?

23 A. Cornhole, yeah, I thought that was shuffleboard, it
24 probably was, we converted it to Cornhole, but, yeah, correct.

25 Q. And the putt-putt again on page 29 exhibit?

1 A. Yes.

2 Q. So again, highly amenitized property, right?

3 A. Yes.

4 Q. You indicated that there was a resort fee that was
5 imposed at some point in time for the Carolina Pines RV Resort;
6 is that right?

7 A. Correct.

8 Q. It was not originally imposed at the time that Carolina
9 Pines opened, right?

10 A. Correct.

11 Q. That resort fee didn't begin until earlier this year in
12 2023?

13 A. Correct, January.

14 Q. Okay. So that was after the lawsuit was filed by the
15 City?

16 A. Yeah.

17 Q. At the RV park there's also, in addition to the 30
18 amenities that are out there, or approximation, I know you said
19 you didn't quire know, but approximation of 30 or so amenities,
20 they're also hosted theme nights at the RV park, correct?

21 A. Correct.

22 Q. Okay. That would include, like, Halloween events,
23 probably, a day or so ago?

24 A. Correct.

25 Q. Alright. I kind of forget what day it is at this point