

**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 VI

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SC Court of Appeals

INDEX

VOLUME VI (Pages 2441-2682)

Court Exhibit 5 – Deposition Transcript of Barefoot HOA.....	2441
Court Exhibit 3 – Deposition Transcript of Paul Blust.....	2475
Court Exhibit 5 – Deposition Transcript of The Links	2548
Court Exhibit 5 – Deposition Transcript of Tidewater	2586
Respondent Ex 4 – Blust Letter to Powell.....	2615
Respondent Ex 5 – Carolina Pines RV Park Reservations and Guest List Summary Excel Spreadsheet (refer to native format produced in OneDrive email to Court of Appeals).....	2616
Respondent Ex 6 – Pan, LLC deed to NMB OceanClub LLC.....	2617
Respondent Ex 16 – Beach Club Property’s Restrictive Covenants.....	2620
Respondent Ex 17 – NMB OceanClub, LLC deed to NMBOC Holding Co., LLC	2629
Respondent Ex 18 – NMBOC Holding Co., LLC deed to NMBOC Holding Co. II, LLC	2635
Respondent Ex 19 – NMBOC Holding Co. II, LLC deed to Sapphire, LLC	2640
Respondent Ex 20 – Sapphire, LLC deed to NMB Ocean Club Properties, LLC	2646
Respondent Ex 21 – NMB Ocean Club Partners, LLC deed to Sun TRS Ocean Club, LLC .	2649
Respondent Ex 32 – Technical Review Committee Minutes.....	2653
Respondent Ex 33 – Respondents’ Responses to Appellant’s First Interrogatories	2656
Respondent Ex 43 – Facebook Photos of Carolina Pines	2669

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2)
3 COUNTY OF HORRY) CA No. 2021-CP-26-07489

4

4 City of North Myrtle Beach, :

5 Plaintiff, :

6 vs. :

7 Sun TRS Ocean Club, LLC; Sun TRS :

Carolina Pines, LLC; and Sun TRS :

8 Carolina Pines RV, LLC, :

9 Defendants. :

10

11

12 30(b)(6) Deposition of KELLY NELSON WHITE, taken

13 before Michele E. Starkey, Court Reporter and Notary

14 Public in and for the State of South Carolina,

15 commencing at the hour of 9:51 A.M., May 16, 2023,

16 at the office of Ponderosa Management, LLC, 4876

17 Barefoot Resort Road, Suite C, North Myrtle Beach,

18 South Carolina.

19

20 Reported by
Michele E. Starkey

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1	INDEX	
2	Stipulations:	4
3	Examination by Mr. Tamasitis:	4
4	Examination by Mr. Ricard:	28
5	Re-examination by Mr. Tamasitis:	32
6	Certificate of Reporter:	34

7

8

9

EXHIBITS

10	Defendant's 1, Subpoena and Notice of Deposition:	8
11	Defendant's 2, Title to Real Estate:	13
12	Defendant's 3, Special Warranty Deed:	13
13	Defendant's 4, Settlement Agreement:	14
14	Defendant's 5, Google Map:	21
15	Defendant's 6, Barefoot Resort web page:	23
16	Defendant's 7, USA Today article:	23

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1 STIPULATIONS

2 It is stipulated by and between counsel for
3 the respective parties that all objections are
4 reserved until the time of trial, except as to
5 the form of the questions.

6 This deposition is being taken pursuant to
7 the South Carolina Rules of Civil Procedure and
8 all applicable rules.

9 - - - -

10 The reading and signing of this deposition is
11 waived by the deponent and counsel for the
12 respective parties.

13 Whereupon,

14 KELLY NELSON WHITE, being duly sworn and
15 cautioned to speak the truth, the whole truth, and
16 nothing but the truth, testified as follows:

17 EXAMINATION

18 BY MR. TAMASITIS:

19 Q Good morning. Could you please state your full name
20 for the record.

21 A Kelly Nelson White.

22 Q And your date of birth?

23 A 10/21/67.

24 Q Ms. White, my name is John Tamasitis. I represent
25 Sun TRS Ocean Club, LLC; Sun TRS Carolina Pines,

1 LLC; and Sun TRS Carolina Pines RV, LLC in a lawsuit
2 brought against them by the City of North Myrtle
3 Beach related to a zoning ordinance and a cabana
4 house owned by one of my clients. We subpoenaed the
5 Barefoot Resort Residential Owners Association for
6 its deposition today. Have you ever been deposed
7 before?

8 A I have.

9 Q Okay. And when was that?

10 A My last one was probably three months ago.

11 Q Okay. So you're well versed in the rules that we'll
12 go over say.

13 A Yes.

14 Q I'm required by the court to go over these rules
15 again. If you have any questions, please let me
16 know. First I need you to understand you're under
17 oath. I'd like you to do a few things for me today.
18 First, please answer with yeses or nos or I don't
19 knows when appropriate other than nodding your head
20 or saying uh-huh or uh-uh. Normal conversation we
21 do a lot of that, but for her to make an accurate
22 record, yeses and nos and audible responses would be
23 great.

24 Also, please understand that none of my
25 questions are intended to trick you, but I do

1 sometimes ask poor questions, more often than not.

2 A Okay.

3 Q So if I ask a question that confuses you or you
4 don't understand, please ask me to rephrase or
5 repeat the question. Okay?

6 A Okay.

7 Q And let me finish my question before you answer and
8 I'll likewise let you answer before I ask the next
9 question. If you need any clarifications,
10 definitions or explanations of any of my words,
11 questions, documents I provide to you, during the
12 course of this deposition, please let me rather than
13 your attorney. Okay?

14 A Yes.

15 Q And if you answer a question, I will assume you
16 understood it. Is that fair?

17 A Yes.

18 Q Okay. Finally, if you need a break at any time,
19 please let me know. This is not an interrogation,
20 so if you need to take a water break or anything,
21 just give me a heads up and we'll take a break for
22 you. Okay?

23 A Okay.

24 Q If you do have any questions with your counsel off
25 the record, I can ask you the substance about -- or

1 about the substance of this deposition, I can ask
2 you questions about that. It is one of the rarities
3 in the attorney/client privilege relationship.
4 However, I doubt we'll have that situation here.
5 I'm going to try to be quick as possible. Okay?

6 A Okay.

7 Q Are you under any disability, alcohol, drugs, or any
8 medication today that will affect your ability to
9 testify honestly?

10 A No.

11 Q You've been identified as the designated
12 representative for the Barefoot Resort Residential
13 Owners Association. Obviously, I cannot depose an
14 association like I can an individual, so our rules
15 allow me to send a list of topics to the
16 association's attorney and then the association
17 provides individuals to testify about each topic.
18 Do you understand that you're the associations
19 representative today?

20 A I do.

21 Q Do you understand that the association has
22 designated you as its corporate representative
23 today?

24 A I do.

25 Q Do you understand the testimony you give today is

1 not your own individual testimony but the testimony
2 of the association and is binding on the
3 association?

4 A Yes.

5 Q So when I ask you a question, other than some of
6 these background questions, I'm asking questions of
7 the association and you're responding on behalf of
8 the association. Is that clear?

9 A Yes.

10 Q Great. Let's go ahead and mark Exhibit No. 1.

11 (Defendant's Exhibit No. 1 was marked.)

12 Q And I'll represent to you this is the subpoena and
13 notice of deposition and topics that were provided
14 to your attorney for this deposition today. Have
15 you seen the topics that I provided?

16 A I have.

17 Q Okay. At the outset, are there any topics
18 identified that you do not feel comfortable
19 testifying to today on behalf of the association?

20 A No.

21 Q What did you do to prepare for today's deposition?

22 A I reviewed this, the subpoena. I reviewed some
23 files that I had, and I spoke with Robert yesterday.

24 Q And what is your current home address?

25 A 2443 Hunters Trail, and that's in Myrtle Beach.

1 Q And is that in Horry County?

2 A Yes.

3 Q And how long have you resided at that address?

4 A About 18 years.

5 Q And what is your current marital status?

6 A Married.

7 Q And what is your spouse's name?

8 A Benjamin.

9 Q Same last name?

10 A Yes.

11 Q And does he reside with you in Horry County?

12 A He does.

13 Q Do you have any children?

14 A No.

15 Q Do you have any relatives by blood or marriage in

16 Horry County other than you and your husband?

17 A Yes.

18 Q Okay. And what are their last names?

19 A Forehand, White. That's it.

20 Q The reason we ask that question is in case we have

21 to pick a jury, we don't want to pick your

22 relatives.

23 Can you give me a quick snapshot on your

24 education, how far you went?

25 A I graduated high school in 1985. I took some

1 classes in college. I didn't finish. With CAI I
2 earned my AMS, my CMCA, and my PCAM.

3 Q Okay. A lot of acronyms there. Can you explain
4 what those are?

5 A Yes. Community Associations Management -- excuse
6 me. Community Associations Institute provides
7 education for managers, so an AMS is Association
8 Management Specialist. CMCA is Certified Manager of
9 Community Associations, and a PCAM is Professional
10 Community Association Manager.

11 Q Okay. And those are for -- so for managing
12 homeowners associations?

13 A Yes.

14 Q So this is your specialty?

15 A It is.

16 Q What is your current position with the association?

17 A I am the community manager.

18 Q And how long have you been in that position?

19 A For Ponderosa Management?

20 Q Yes, ma'am.

21 A It will be 10 years in October.

22 Q Do you -- does Ponderosa Management have -- or I
23 guess do you manage other properties other than
24 Barefoot Resort?

25 A I do.

1 Q And what are those?

2 A Within Barefoot Resort I manage the nonresidential
3 association, the joint committee, Tuscan Sands, the
4 Woodlands, and Barefoot Residential Association.

5 Q In your employment with Ponderosa Management, are
6 you aware of whether Ponderosa Management manages
7 any other properties in Myrtle Beach and North
8 Myrtle Beach?

9 A Yes.

10 Q And what are those?

11 A There's about 30 of them. Do you want me to list
12 all of them?

13 Q No, we don't need to go through all of them. That's
14 -- that's good enough. Prior to your position as
15 the community manager with Ponderosa Management,
16 what did you do?

17 A I worked for Omni Management here at Barefoot
18 Resort.

19 Q Okay. And so was Omni Management the predecessor to
20 Ponderosa?

21 A It was.

22 Q What are your day-to-day responsibilities?

23 A Oh, communication with the board, oversight of
24 contracts, dealing with owners, dealing with
25 vendors, attending meetings, preparation of

1 meetings, paying bills.

2 Q And what positions did you have with Omni
3 Management?

4 A I was the same, community manager.

5 Q Okay. And what were your -- was your
6 responsibilities there the same?

7 A The same.

8 Q Who is your current supervisor?

9 A Me.

10 Q Good for you. For the deposition today I'm going to
11 use some definitions. We'll set them now. When I
12 say "property," I'm referring to 4611 South Ocean
13 Boulevard located in the city of North Myrtle Beach.
14 When I say "cabana house," it's the building located
15 on the property. Is that okay?

16 A Yes.

17 Q What do you guys call it?

18 A We call it the cabana.

19 Q And then when I said "zoning ordinance" or zoning
20 code," I'll interchangeably use those terms, we'll
21 talking about the zoning ordinance for the city of
22 North Myrtle Beach. Okay?

23 A Okay.

24 Q Do you know when the association actually acquired
25 the property where cabana house is located?

1 A The association -- excuse me -- the building was
2 built in 2001 or 2002-ish. Centex was the developer
3 of control until 2011, and they deeded that property
4 to the association.

5 MR. TAMASITIS: We're going to mark these as
6 Exhibits 2 and 3.

7 (Defendant's Exhibit Nos. 2 and 3 were marked.)

8 Q Ms. White, are you familiar with these documents?

9 A I've seen them before, yes.

10 Q Okay. And you said that Centex Homes deeded the
11 property to the association sometime in 2011?

12 A That's when they transitioned the property, yes.

13 Q Okay. And who owned the property prior to Centex?

14 A Silver Carolina.

15 Q And when -- do you know when Silver Carolina
16 Development Company deeded the property to Centex?

17 A I do not.

18 Q If you look at Exhibit No. 2, it would appear the
19 date on there says October 24, 2002?

20 A Yes.

21 Q Okay. Do you have any reason to dispute that?

22 A No.

23 Q Do you know who Silver Carolina Development Company
24 was?

25 A I do.

1 Q And who was or is it?

2 A Sammy Puglia, the original developer of Barefoot
3 Resort.

4 Q That was his company?

5 A Mm-hmm, yes.

6 Q And you said -- what was Centex's home role in this
7 process?

8 A It's my understanding that they purchased property
9 from Silver Carolina and developed that property.

10 Q Okay. And one of those pieces of property was the
11 property where the cabana house is situated?

12 A Yes.

13 Q And Centex Home owned the property from 2002 to
14 2011?

15 A Yes.

16 Q Do you know -- strike that.

17 MR. TAMASITIS: Let's mark this as Exhibit
18 No. 4.

19 (Defendant's Exhibit No. 4 was marked.)

20 Q It's my understanding that the use of the cabana
21 house as it's currently situated is subject to a
22 settlement agreement stemming back from a lawsuit
23 brought back in 2002; is that correct?

24 A Yes.

25 Q Okay. And is Exhibit No. 4 an accurate copy of that

1 settlement agreement?

2 A Yes.

3 Q And I should have asked this before. Do you
4 recognize that document?

5 A I do.

6 Q Do you know what the background was behind the
7 dispute that led to that settlement agreement?

8 A I do not.

9 Q And who are the parties to that settlement
10 agreement?

11 A Emerald Cove is -- if you're looking at the beach
12 cabana, I believe -- and I get them confused. I
13 believe Emerald Cove is the property on the right
14 and Crescent Sands is the one on the left. They're
15 condominium buildings.

16 Q And was it Silver Development -- Silver Carolina
17 Development Company is the one that entered into the
18 settlement agreement with Emerald Cove and the other
19 neighbor?

20 A Yes.

21 Q And the city is listed as a party to this suit. Do
22 you know how the city was involved in this case?

23 A I do not.

24 Q If you look at the recitals, so if you look at it,
25 it says on the first page, recitals, the second

1 recital, so it's the next page, provides that a
2 special exception was granted for the cabana house
3 in May 15th of 2001. Is that accurate?

4 A I was not here in 2001.

5 Q Do you have any reason to dispute that that date is
6 accurate?

7 A No.

8 Q So from May 15th of 2001 until October 24th of 2002,
9 the property and the cabana house were owned by
10 Silver Carolina?

11 A I believe so, yes.

12 Q Okay. And from October 24th , 2002 until September
13 27th, 2011, the property and the cabana house was
14 owned by Centex Homes?

15 A That's my understanding.

16 Q And then in 2011 Centex Homes deeded the property to
17 the association?

18 A Yes.

19 Q Do you know how much the association purchased the
20 property from Centex Homes for?

21 A They did not.

22 Q What do you mean by that?

23 A Well, there's an agreement. I don't know the title
24 of the agreement. There was -- it's legalese for
25 five dollars.

1 Q Uh-huh. So it was just deeded, it was -- I
2 understand what you're saying. Okay. And you've
3 already answered this question in your background
4 but Omni Property Management Services was the
5 predecessor to Ponderosa; is that correct?

6 A Correct.

7 Q Is the cabana house that's currently situated on the
8 property the only cabana house ever owned by the
9 association?

10 A Yes.

11 Q And I understand that it's gone through some
12 renovations in the last few years?

13 A Yes.

14 Q Let's discuss the rules governing the use of the
15 cabana house. Who was allowed access to the
16 property and the cabana house?

17 A Property owners, their guests as long as they're
18 accompanied by the owner, and long-time -- long-term
19 rentals with the lease of one year or more.

20 Q And is that requirement of access to the property
21 and use of the cabana house dictated by the
22 settlement agreement?

23 A Yes. There's not verbage in here with regards to
24 long-term rentals but that was a rule that the board
25 of directors made.

1 Q Is there any fee in addition to any dues that are
2 normally paid by property owners to use the cabana
3 house?

4 A Not in addition.

5 Q How does the association classify the cabana house?
6 Do they classify it as an amenity?

7 A Yes.

8 Q And who does the association -- who has the
9 association hired to maintain the cabana house?

10 A Daily maintenance?

11 Q Yes, ma'am.

12 A We have a staff. There's -- this season there will
13 be ten part-time employees that are required to keep
14 the building clean and neat. We also hire outside
15 vendors as necessary.

16 Q Okay. And who does the hiring?

17 A Ponderosa Management through the board of directors.

18 Q Okay. So just so I'm clear on the control here, the
19 association's hired Ponderosa Management to then
20 hire third parties necessary to maintain the cabana
21 house?

22 A Yes.

23 Q This is a very broad question, up front. What
24 restrictions are in place governing the use of the
25 cabana house? For example, what types of events are

1 allowed to be there, what's the occupancy rate?

2 A Private events are not permitted. Occupancy rate I
3 believe is 300.

4 Q You said private events. Are there other events
5 that are hosted at the cabana house?

6 A If the association sponsors them, yes.

7 Q What are some examples of events the association
8 sponsored?

9 A We had -- this past Christmas season they had Photos
10 with Santa. This weekend they're having an ice
11 cream social.

12 Q Any others that you can think of?

13 A We had a grand opening event when the building was
14 completed.

15 Q Were there food and drinks served at those events?

16 A At the grand opening it was coffee, hot chocolate.
17 For Photos with Santa, I think it was cookies. And
18 then this weekend will be ice cream.

19 Q Does the cabana house have beach access?

20 A Yes.

21 Q Are folks allowed to go to local restaurants or
22 other locations and bring food to the cabana house?

23 A They are.

24 Q Do they routinely, are you aware?

25 A They do.

1 Q Is there any restrictions on what types of food or
2 drink they're allowed to bring back to the cabana
3 house?

4 A The only restriction is glass.

5 Q Does the cabana house have, like, a refreshment
6 center or vending machines or anything?

7 A No vending machines. There are two commercial ice
8 makers and a small kitchen area that has a sink and
9 a refrigerator.

10 Q Random question. Who does the landscaping for the
11 cabana house?

12 A Mainscape Landscape.

13 Q Does the association advertise the cabana house?

14 A Not currently, no.

15 Q What do you mean by not currently?

16 A As part of the transition agreement, when Centex
17 turned it over, Barefoot hired a marketing company
18 to take photos. Barefoot leased billboard space and
19 the cabana space was advertised on one of those
20 billboards.

21 Q So the association hired a third party to do the
22 advertising for the cabana house?

23 A Yes.

24 Q So the cabana house is advertised?

25 A It was advertised.

1 Q Okay. And do you remember who that third party was?

2 A Lamar had the billboards. 90 Degrees did the
3 marketing.

4 Q And why was it marketed?

5 A It was part of the transition agreement.

6 Q And that was the agreement between Centex and the
7 association?

8 A Yes.

9 Q Why did they need to market the cabana house?

10 A Barefoot wasn't completely built out at that point.
11 Centex was still building.

12 Q Currently does the association market the cabana
13 house on its websites or anything like that?

14 A It's on the association website.

15 Q And why do they have it marketed?

16 A So the owners are aware that it's there and they
17 post the rules and regulations.

18 MR. TAMASITIS: Let's mark this as Exhibit
19 No. 5.

20 (Defendant's Exhibit No. 5 was marked.)

21 Q And this is -- I pulled this off of the Barefoot
22 website where it discusses the cabana house. Is
23 this what you were talking about, how the homeowners
24 association posts information about the cabana
25 house?

1 A I don't believe this is from the Barefoot website.

2 Q Okay. Where is that from?

3 A It appears to be the golf course website.

4 Q Okay. What's the relationship between the golf
5 course and the association?

6 A They're a member of the association.

7 Q Are they a member of the association that can
8 utilize the cabana house?

9 A That's a good question. They have not asked for
10 access to the beach cabana.

11 Q Okay. How does someone get access to the beach
12 cabana?

13 A As an owner, we require the deed and we provide the
14 owner with two access cards and two vehicle decals.

15 Q Are those like RFID decals?

16 A No. They're parking decals for their vehicles and
17 the access cards you swipe to enter the building and
18 the parking lots.

19 Q So that's for parking access. How does the
20 association manage guests of homeowners that want to
21 visit the cabana house?

22 A They have to enter the building with the owner with
23 an access card.

24 Q So the only way you can get in the building is the
25 access card?

1 A Correct.

2 MR. TAMASITIS: No. 6.

3 (Defendant's Exhibit No. 6 was marked.)

4 Q I believe this is the website from the HOA's or --
5 yeah, this is the website pulled from the HOA's
6 website?

7 A It is, yes.

8 Q So this discusses the amenities that are afforded
9 for owners of Barefoot Resort?

10 A The Barefoot Residential Association.

11 Q Sorry. My apologies.

12 A Yeah.

13 Q Barefoot Residential Association. And so this is
14 utilized for the owners themselves?

15 A The website, yes.

16 Q Yeah. Are there brochures that are handed out to
17 prospective property owners that depict the cabana
18 house?

19 A Not through the association.

20 MR. TAMASITIS: No. 7.

21 (Defendant's Exhibit No. 7 was marked.)

22 Q So I've handed you Exhibit No. 7. I'll represent to
23 you that I did a search for the Barefoot cabana
24 house and this came up on USA Today. Were you aware
25 of this website?

1 A One of my board members brought it to my attention
2 when it was on this website.

3 Q Okay. And when was that?

4 A Sometime last year. I don't recall exactly when.

5 Q And it discusses down there under beachfront cabana,
6 says -- it discusses guests having access to the
7 cabana house but that's not correct, right?

8 A It is not.

9 Q Do you know whether the realtors that sell in
10 Barefoot advertise the cabana house as part of the
11 marketing scheme for homes that are for sale?

12 A I believe they do.

13 Q Does Barefoot provide any shuttle services to and
14 from the cabana house?

15 A Not to the cabana. To public parking.

16 Q So can you explain that to me?

17 A So we -- the joint committee contracts with the
18 shuttle company to take owners from Barefoot the
19 resort down to the public access parking lot on 46th
20 Avenue. If an owner takes the shuttle, the owner
21 would have to disembark the shuttle and walk down to
22 the cabana.

23 Q And how far is it from the 46th Avenue?

24 A About a block.

25 Q Is there a fee associated with that shuttle for

1 owners?

2 A No. It's included in their assessment.

3 Q Who else is allowed to take the shuttle? Is it just
4 owners?

5 A Owners -- renters are allowed to take it but it's
6 for public access. It's not for the cabana.

7 Q Because renters don't have a key card to get access
8 to the cabana house.

9 A Correct.

10 Q Unless they're a long-term renter with a lease over
11 a year?

12 A Correct.

13 Q Other than this settlement agreement that we
14 discussed earlier, that we already talked about, has
15 the cabana house ever been involved in a zoning
16 ordinance enforcement action brought by the city to
17 your knowledge?

18 A Not that I'm aware of.

19 Q Has the association ever been issued a cease and
20 desist letter by the city with respect to the
21 ownership and/or use of the cabana house or the
22 property?

23 A Not that I'm aware of.

24 Q Has the association been issued a warning from the
25 City of North Myrtle Beach with respect to the

1 ownership and/or use of the cabana house or the
2 property?

3 A No, not that I'm aware of.

4 Q Was there ever any inquiry by the City of North
5 Myrtle Beach regarding the ownership of the property
6 the cabana house since 2002 that you're aware of?

7 A No.

8 Q Has the city, and by city I mean North Myrtle Beach,
9 been in contact with the association regarding the
10 lawsuit we're here for today?

11 A Not to my knowledge.

12 Q What other amenities does the Barefoot Association
13 maintain for its owners?

14 A We have a residents club that's available to the
15 single-family owners. The joint committee is also
16 responsible for the management of what's called the
17 north tower pool which is a large swimming pool.

18 Q And where is that located?

19 A That is behind the north tower condominium complex
20 on the intracoastal waterway.

21 Q Of those amenities, which one is the most popular?

22 A Popular for who?

23 Q For the owners.

24 A I would say the residents club would be my opinion,
25 for the single-family owners.

1 Q What is a single-family owner?

2 A Somebody that owns a single-family home within
3 Barefoot with the exception of Dye Estates has
4 access to the residents club.

5 Q And I probably should have asked this at the outset.
6 What owners have access to the cabana house?

7 A All owners within the Barefoot Residential
8 Association have access to the cabana.

9 Q So does that include condominium owners?

10 A Condominiums within the Barefoot Residential
11 Association.

12 Q Do you know whether those condominiums are ever
13 rented out for summer vacation rentals or anything?

14 A They are.

15 Q And those short-term rentals, we'll call them that,
16 do not have access to the cabana house; is that
17 correct?

18 A Anything less than a year does not.

19 Q Hypothetically, so this is a hypothetical, if I
20 owned a condominium and I had a short-term rental
21 during the summer months, and I gave my renters my
22 access cards, is there any mechanism in place to
23 stop those renters from using the cabana house?

24 A If the association was notified, the association
25 would investigate, deactivate their access cards so

1 they did not work the cabana and fine the owner.

2 Q And I think we've discussed this previously, but the
3 restriction on access to the cabana house to only
4 owners and long-term renters is dictated by the
5 settlement agreement we discussed earlier; is that
6 correct?

7 A Yes, and rules and regulations.

8 Q Which were promulgated through that settlement
9 agreement?

10 A Correct.

11 Q Are there any questions that I've asked that you
12 have additional information for me that you think I
13 need to know about?

14 A Not that I can think of.

15 MR. TAMASITIS: I don't have any other
16 questions. Please answer --

17 EXAMINATION

18 BY MR. RICARD:

19 Q Good morning, ma'am. I introduced myself before but
20 my name is Rhett Ricard. I represent the City of
21 North Myrtle Beach in this litigation. I just have
22 a few follow-up questions. The events that you
23 spoke about -- I'm going to try to ask this question
24 just generally speaking, but I think you mentioned
25 an ice cream and Photos with Santa and that sort of

1 thing. Does your organization track the attendance
2 of any events hosted by the association at the
3 cabana house?

4 A No.

5 Q Does the association charge for any of those events?

6 A They did not. No, they do not.

7 Q Does your organization track how many individuals
8 access the cabana house on a daily and/or monthly
9 basis?

10 A We do not.

11 Q Those access cards, is there some database where the
12 -- the fact that, you know, on any given time or any
13 given day a card is swiped in order to access the
14 building, is that kept somehow?

15 A It is -- excuse me. I've got a frog in my throat
16 today. It is -- it's a cloud-based system that we
17 can run reports as to who entered on a particular
18 date or time, but that information is only saved for
19 30 days.

20 Q Is that cloud-based system organic? When I say
21 organic, I just mean is it owned and operated by the
22 organization or is that a third-party system?

23 A It's a Brevo system that the association purchased.

24 Q Okay. So but you would have access to those
25 records?

1 A Yes.

2 Q Switching topics, ma'am, you mentioned a billboard
3 advertisement that occurred; is that correct?

4 A Yes.

5 Q Okay. Do you know when that occurred?

6 A I don't recall the exact dates. I would say 2012
7 and possibly '13. I'd have to pull the contract.

8 Q So the advertised billboard was up for some number
9 of months?

10 A Yes.

11 Q But we're not talking years?

12 A Correct.

13 Q Okay. The next topic, you mentioned the association
14 has a contract with a third-party shuttle company;
15 is that right?

16 A That's correct.

17 Q Okay. And I think you mentioned there's a drop-off
18 location on 46th Avenue, a public parking lot there;
19 is that correct?

20 A Yes.

21 Q Okay. Can you describe that location for me?

22 A If you're familiar with this area and go down --

23 Q Assume that I'm not.

24 A Okay. So if you go down 46th Avenue South to Ocean
25 Boulevard, it's right on Ocean Boulevard, on the

1 ocean side of Ocean Boulevard.

2 Q How many parking spots are in that location if you
3 know?

4 A The public parking lot, I don't have any idea.

5 Q How long has that location been used to shuttle
6 guests?

7 A A number of --

8 Q And when I say guests, I mean owners, I should say.

9 A A number of years.

10 Q Can you ball park it for me? Is it more than three,
11 more than five, more than ten?

12 A The shuttle has been operating since I started here
13 in 2007. The shuttle was dropping people off at the
14 beach cabana facility itself and we moved it to the
15 public parking lot, it's been a number of years.

16 Q Do you know if it was pre-COVID?

17 A Yes.

18 Q So we're talking at least three years?

19 A At least.

20 Q Okay. Did your organization coordinate with the
21 city at all in order to use the location for
22 shuttling services the 46th Avenue location?

23 A I believe it's part of the agreement. I don't
24 recall. I honestly don't. Can I make a correction?

25 Q Sure. Go ahead.

1 A The agreement No. 9 says it will be dropped off at
2 the cabana between 45th and 48th Avenues. It's on
3 page 3, No. 9.

4 Q Okay. And has the city done anything to prevent
5 your organization from shuttling to that location
6 since the execution of this settlement agreement?

7 A I'm sorry. Can you repeat that?

8 Q Sure. Has the city prevented the organization in
9 any way from shuttling guests to that location since
10 the execution of the settlement agreement?

11 A Strictly from memory, we were dropping people off at
12 the cabana and we were told that they had to be
13 dropped off at the public parking area by the City
14 of North Myrtle Beach, but I don't remember what
15 that time frame was.

16 Q Okay. Any issues with the city regarding shuttling
17 guests to that location since the settlement
18 agreement that you know of?

19 A No.

20 MR. RICARD: All right. Thank you, ma'am.

21 I don't have any further questions for you.

22 MR. TAMASITIS: Real quick follow-up.

23 RE-EXAMINATION

24 BY MR. TAMASITIS:

25 Q On that billboard, I'll let you go ahead and restate

1 it, but what was the purpose of the billboard again?

2 A It was part of the transition agreement that the
3 association entered into with Centex.

4 Q Was the cabana house in operation prior to the
5 transfer to the association?

6 A Yes.

7 MR. TAMASITIS: No further questions.

8 THE WITNESS: Okay.

9 MR. TAMASITIS: Thank you so much. I really
10 appreciate it. Thank you.

11 (This deposition was concluded 10:32 a.m.)

12 (*This transcript may contain quoted
13 material. Such material is reproduced as read or
14 quoted by the speaker.)

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In the Matter of:

CITY OF NORTH MYRTLE BEACH

VS.

**SUN TRS OCEAN CLUB, LLC AND SUN TRS
CAROLINA PINES, LLC**

Paul Blust

April 26, 2022



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

DEPOSITION OF PAUL BLUST

CITY OF NORTH MYRTLE BEACH,

Plaintiff,

vs. CASE NO. 2021-CP-26-07489

SUN TRS OCEAN CLUB, LLC, AND SUN TRS CAROLINA
PINES, LLC,

Defendants.

DEPONENT: PAUL BLUST

DATE: April 26, 2022

TIME: 1:22 PM

LOCATION: CITY OF NORTH MYRTLE BEACH
1018 2nd Avenue South
North Myrtle Beach, SC 29582

REPORTED BY: NANCY ENNIS TIERNEY, CSR (IL)

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A P P E A R A N C E S

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I N D E X

Page

Witness Sworn	4
EXAMINATION	
By Mr. Tamasitis	4
By Mr. Ricard	61
Certificate of Reporter	70
Deponent Correction Sheet	71

E X H I B I T S

Page

Defendants' Exhibit Number 1	4
Defendants' Exhibit Number 2	18
Defendants' Exhibit Number 3	28
Defendants' Exhibit Number 4	39
Defendants' Exhibit Number 5	41
Defendants' Exhibit Number 6	43
Defendants' Exhibit Number 7	50
Defendants' Exhibit Number 8	52

1 (Defendants' Exhibit No. 1 was marked for
2 identification.)

3 PAUL BLUST, having been first duly sworn,
4 testified as hereinafter set forth.

5 EXAMINATION

6 BY MR. TAMASITIS:

7 Q. Mr. Blust, my name is John Tamasitis. I
8 represent SUN TRS Ocean Club, LLC, and SUN TRS Carolina
9 Pines, LLC, in a lawsuit brought against the City of
10 North Myrtle Beach.

11 I am here to take your deposition today.
12 And you were subpoenaed for this deposition, right?

13 A. Yes.

14 Q. And you were informed that North Myrtle Beach's
15 attorney said that they would accept service of
16 deposition on your behalf, is that correct?

17 A. Yes.

18 Q. Let me hand you what has been marked previously
19 as Exhibit 1. Do you recognize this document?

20 A. Yes.

21 Q. Is this the Notice of your deposition for today?

22 A. Yes.

23 Q. Have you had your deposition taken before?

24 A. Yes.

25 Q. When?

1 **A. More than once, not for this case, obviously.**

2 **But through my career, more than once.**

3 Q. How many times would you estimate?

4 **A. I'm just guessing, but I'd would say five or six.**

5 Q. And has it been in your capacity as the zoning
6 administrator for North Myrtle Beach?

7 **A. Yes, except for one time when I got deposed for**
8 **an issue, and then about ten months later they called me**
9 **again for the same issue, and when I asked the question**
10 **they said, well, now you're answering for North Myrtle**
11 **Beach.**

12 Q. Okay.

13 **A. So I got called twice for the same issue.**

14 Q. Okay. Do you recall if that was a 30(b)(6)
15 deposition?

16 **A. I don't know the numbers, no, sir.**

17 Q. All right. Well, let me go over the ground rules
18 today. You pretty much know what is going on, but I
19 will just do this so it's clear for the record.

20 There are a couple of things. First, if I
21 ask you a question and it elicits a yes or no response,
22 please say yes or no. In some conversations we do a lot
23 of uh-huhs and huh-huhs. For the court reporter's sake,
24 if you could say yes or no so it's clear, or maybe, so
25 it's clear for her and we can keep a good record today.

1 **A. Okay.**

2 Q. I also want you to understand that none of my
3 questions are intended to trick you, and sometimes I
4 will ask poor questions.

5 If I ask a question that confuses you or you
6 don't understand it, you need a definition or a
7 clarification, please ask me rather than the City's
8 attorney, okay?

9 **A. Okay.**

10 Q. If you answer a question, I will assume you
11 understood it. Is that fair?

12 **A. Yes.**

13 Q. And, finally, if you need to take a break at any
14 time, please let me know. If we take a break and you
15 have a private conversation with the City's attorney, I
16 can ask you about them as long as they are in relation
17 to this deposition, okay?

18 **A. Okay.**

19 Q. So I would suggest just keep it on the up-and-up
20 as far as discussions outside of the deposition, okay?

21 **A. Yes.**

22 Q. Are you under any disability, alcohol, drugs or
23 medications today that would affect your ability to
24 testify honestly?

25 **A. No.**

1 Q. What did you do to prepare for the deposition
2 today?

3 A. I had met with Chris Noury previously, and Ben,
4 and we talked about the property just to refresh my
5 memory when Chris told me this would be occurring, this
6 deposition.

7 Q. And did you look at any documents prior to this
8 deposition?

9 A. I have, yes, sir.

10 Q. And when did you do that?

11 A. I looked at a couple of things when Chris and Ben
12 and I sat down together, and then I looked at some
13 things just a minute ago with --

14 Q. With the City's attorney?

15 A. Yes.

16 Q. What documents do you recall looking at prior to
17 today in regards to this deposition?

18 A. I saw the zoning letter that I had written. And
19 Ben -- I didn't go over the complaint from the neighbor,
20 but Ben showed me the document, just the whole package
21 of it. Without reading it, I saw the packet. And most
22 of that was just discussion of the property, so not a
23 lot of documents at that point. And then I saw the
24 City's documents today.

25 Q. Okay. Thank you. In your own words, can you

1 please explain to me what your understanding is of the
2 lawsuit that we are here for today?

3 **A. It sounds like that the SUN TRS people aren't in**
4 **the city of North Myrtle Beach and are using the cabana**
5 **house, or had bought the cabana house and using it for**
6 **various purposes, and that there was a complaint. And**
7 **part of the problem is that the SUN TRS people weren't**
8 **in the city of North Myrtle Beach.**

9 Q. Thank you. So let's do some background
10 questions.

11 What is your full name for the record?

12 **A. Paul Edward Blust.**

13 Q. And do you have any aliases or nicknames you go
14 by?

15 **A. Only when I'm playing trivia.**

16 Q. Fair enough. What is your date of birth?

17 **A. 10-27-52.**

18 Q. And the last four of your Social Security number?

19 **A. 8845.**

20 Q. And what is your current residence address?

21 **A. 4338 McCorsley, and that's M-c-C-o-r-s-l-e-y,**
22 **Avenue, Little River, South Carolina, 29566.**

23 Q. And is that located in Horry County?

24 **A. It's in Horry County, yes.**

25 Q. And how long have you resided at that address?

1 **A. Fifteen years.**

2 Q. And where were you born?

3 **A. In Hamilton, Ohio.**

4 Q. How did you end up in Myrtle Beach?

5 **A. My parents moved to Greensboro, North Carolina**
6 **when I was seven, with the rest of my family, too.**

7 Q. What is your current marital status?

8 **A. I'm widowed.**

9 Q. I'm sorry to hear that. Do you have any
10 children?

11 **A. I have two children.**

12 Q. And what are their ages?

13 **A. Alex is my son, he's 33, and Amelia is my**
14 **daughter and she's 32.**

15 Q. Do either of them reside in Horry County?

16 **A. No, they don't.**

17 Q. Do you have any relatives by blood or marriage
18 that reside in Horry County?

19 **A. No.**

20 Q. Let's go through your education.

21 Where did you go to high school?

22 **A. Western Guilford High School in Greensboro, North**
23 **Carolina.**

24 Q. And then did you attend a university, college?

25 **A. Yes, East Carolina University in Greenville,**

1 **North Carolina.**

2 Q. And what degree did you receive from there?

3 A. **A bachelor of science in urban and regional**
4 **planning.**

5 Q. And have you gone to any technical schools?

6 A. **No, sir.**

7 Q. Do you have a graduate degree?

8 A. **No, sir.**

9 Q. And I noticed in some of the correspondence and
10 things that I've have been looking up for this case that
11 there is a moniker, AICP, associated with your name on
12 some occasions. What does AICP stand for?

13 A. **That is the American Institute of Certified**
14 **Planners.**

15 Q. And how do you become part of that organization?

16 A. **You have to take the test. And if you pass, then**
17 **you pay into the organization dues every year, as most**
18 **organizations. And, you know, you can use them for all**
19 **sorts of information if you need, different resources on**
20 **planning.**

21 Q. Is there an ongoing continuing education part to
22 that AICP?

23 A. **There is now. Most of my career there wasn't.**
24 **And I think they just initiated it, I'm just guessing,**
25 **maybe 2015 or so.**

1 Q. Are you involved in any civic organizations in
2 the area?

3 A. No, sir.

4 Q. How about a church affiliation?

5 A. No, sir.

6 Q. Prior military service?

7 A. No.

8 Q. Have you ever been arrested?

9 A. Yes.

10 Q. When?

11 A. January the 6th, 2013.

12 Q. And what was the charge?

13 A. DUI.

14 Q. Let's go over your employment history. Are you
15 currently employed?

16 A. No, sir.

17 Q. Are you retired?

18 A. Yes.

19 Q. What was your employment his -- status and
20 history for the last ten years?

21 A. Zoning administrator for the City of North Myrtle
22 Beach.

23 Q. And when did you retire from that position?

24 A. Now, can we go back? You said for the last ten
25 years. I retired two years ago. So the last ten years

1 of my career was with the City of North Myrtle Beach.

2 Q. And how long were you the zoning administrator
3 for the City?

4 A. From November 3rd, 1988 until June the 30th,
5 2020. That was my second tenure. I was with the City
6 of North Myrtle Beach from January of 1984 to March of
7 1986.

8 Q. So as zoning administrator for North Myrtle
9 Beach -- and you said you were in that position from '88
10 until you retired in 2020, correct?

11 A. Yes.

12 Q. What were your roles and responsibilities in that
13 position?

14 A. I was the zoning administrator, and that is
15 responsible for, well, administering the zoning
16 ordinance and enforcing the zoning ordinance, and in
17 that comes any interpretation to the meaning of the
18 zoning ordinance.

19 Q. And the current zoning ordinance that's in effect
20 today, when was that drafted?

21 A. It was adopted February 1st, 1989. Well, excuse
22 me. It went into effect February 1st of 1989. We had a
23 three-month moratorium, more or less, for people to
24 begin to comply with the ordinance.

25 Q. Did you have a hand in drafting that?

1 **A. Yes, sir.**

2 Q. What is your relationship with Ben Caldwell?

3 **A. Ben worked for me. He was my assistant, I think**
4 **2005 until I retired.**

5 Q. And do you still maintain contact with Ben?

6 **A. Periodically Ben or the director will call me and**
7 **ask a question of something that may be going on, and I**
8 **try to assist.**

9 Q. You are not totally out of it yet, huh?

10 **A. No, but far enough.**

11 Q. So on the day-to-day, what does the zoning
12 administrator have to handle from -- whether it be
13 citizens or property owners? What does kind of the
14 normal day look like for a zoning administrator?

15 **A. There are a lot of interactions with the public**
16 **early in the day. We issued permits -- or did at the**
17 **time. The system has changed a little bit as we have**
18 **gone online.**

19 But when I was working, most of my career we
20 would issue permits between eight and ten in the
21 mornings. So a lot of the public would come in between
22 eight and ten and apply for building permits.

23 And in that time there were a lot of
24 questions on zoning, setbacks. And just basic zoning
25 questions dealing with development of property.

1 You deal with the review of plans, approving
2 the plans for permit. If there were problems in
3 reviewing the plans, you would be in contact with the
4 people that submitted them.

5 We had meetings with the planning
6 department -- I mean the Planning Commission and the
7 Board of Zoning Appeals monthly, and there would be a
8 process where we would have zoning input on both of
9 those most of the time, and you would have to write
10 reports and accept applications and talk to citizens
11 about those meetings for that month or coming months.

12 We would have issues that would go on to
13 City Council, and Zoning would write issue papers for
14 City Council, and we would go to the City Council
15 meetings.

16 There would be various issues that come up
17 in enforcement that you would be involved with, and I
18 just followed through with those.

19 Q. Would you consider the zoning administrator's
20 role as being the voice for the City as to zoning
21 issues?

22 MR. RICARD: Objection to form, speculation.

23 Q. (BY MR. TAMASITIS): You can answer.

24 A. Sir?

25 Q. You can answer the question. He's going to do

1 that the whole -- the entire time.

2 **A. Could you ask me the question again?**

3 Q. Yes. Would you consider the zoning administrator
4 to be the voice for the City of North Myrtle Beach with
5 respect to zoning issues?

6 MR. RICARD: Objection.

7 **A. Yes, sir.**

8 Q. (BY MR. TAMASITIS): And when a zoning
9 administrator makes a decision, whether it be with a
10 permit or an enforcement situation, how are those
11 decisions appealed?

12 **A. Well, most of the decisions are not appealed. So**
13 **you're talking about the ones that the people may**
14 **question or want to appeal?**

15 Q. Correct.

16 **A. Most of those would be variance, and they would**
17 **ask if they could get a variance from the ordinance, and**
18 **we would give them the variance application and describe**
19 **the process to them about submission and all that, and**
20 **then they would apply and go to the Board of Zoning**
21 **Appeals.**

22 **There are other issues that may be**
23 **violations, and most of those would not be appealed, but**
24 **they could appeal. You can appeal the decision of the**
25 **zoning administrator that he's wrong in the**

1 interpretation of the ordinance and that would go to the
2 Board of Appeals.

3 And if that was the case, if they decided
4 that, well, I want to pursue this and I'm saying you're
5 incorrect, we would assist them in getting to the Board
6 of Zoning Appeals.

7 With a variance, we would not give the Board
8 any direction as to we are in favor or opposed to this
9 variance if the Board wanted to grant a variance that
10 made it legal with Zoning.

11 And on an appeal, we would definitely give
12 our side of the appeal to the Board and tell them why we
13 are interpreting the ordinance the way we are.

14 Q. If a decision you made as the zoning
15 administrator was not appealed, as you said is often the
16 case, would that then be binding? That would be the
17 City's decision as to that zoning matter?

18 MR. RICARD: Objection to form, speculation.

19 A. This is one I answer again?

20 Q. (BY MR. TAMASITIS): Yes. You are going to
21 answer all of them.

22 A. You told me you were going to do that, but --
23 yes, sir.

24 Q. In the other matters where you have testified in
25 depositions, were those all zoning disputes that were at

1 issue in those cases?

2 **A. No.**

3 Q. And what were -- the ones that were not, what
4 were those disputes about?

5 **A. There was only one, and that was an issue between**
6 **a former employee and our former director, and I was the**
7 **assistant director of planning and development. And**
8 **during this case the director -- our former director**
9 **passed away, and so the person bringing the suit pulled**
10 **me into it because I was the assistant.**

11 Q. And then the rest of the ones you have been
12 involved with have been zoning issues?

13 **A. Yes.**

14 Q. Have you ever had a situation where you have been
15 involved with where there was an attempt by the City to
16 take someone's property from them because of a zoning
17 violation?

18 **A. Not that I can recall.**

19 Q. We are going to go through now kind of the
20 details of what is going on here in this litigation, and
21 I want to put two things out there that are going to be
22 the definitions. So I'm going to use these words, and
23 here are the definitions so we don't have to keep going
24 back and forth.

25 When I use the word "property", I'm

1 referring to Lot 1, Block 18-A Tilghman, which is
2 located in city of North Myrtle Beach, and when I say
3 "cabana house", that is going to be the cabana house
4 located on that property. Is that fair?

5 **A. Yes, sir.**

6 **(Defendants' Exhibit No. 2 was marked for**
7 **identification.)**

8 Q. (BY MR. TAMASITIS): If you could, Exhibit 2.
9 Mr. Blust, do you recognize that ordinance?

10 **A. Yes.**

11 Q. And what is it?

12 **A. It's the definition section of the zoning**
13 **ordinance.**

14 Q. And this is the zoning ordinance for North Myrtle
15 Beach?

16 **A. Yes, sir.**

17 Q. And if you could go down on Section 23-2,
18 Definitions, it says "cabana house".

19 Do you see where that is at?

20 **A. Yes.**

21 Q. Could you read that definition for me, please?

22 **A. "A structure utilizing single-family design and**
23 **development standards in close proximity to the**
24 **oceanfront to be used by projects in North Myrtle Beach**
25 **not located near the ocean.**

1 **"The use of the cabana house shall be**
2 **limited to drop-off and parking area, bathing, changing**
3 **clothes and similar uses. Additionally, it can be used**
4 **as an occasional guest quarter and similar residential**
5 **uses.**

6 **"A cabana house shall be owned and**
7 **maintained by a homeowner's association with a**
8 **maintenance agreement submitted and approved by the**
9 **planning department."**

10 Q. Did you have a hand in drafting this ordinance?

11 A. Yes.

12 Q. Did you have a hand in drafting this definition
13 for a cabana house?

14 A. Yes.

15 Q. What hand did you have in it? What was your
16 involvement?

17 A. I did the original draft for the definition. I
18 can't tell you whether it was tweaked by our director or
19 planning commission or City Council, which happens
20 sometimes, but the initial definition was written by me.

21 Q. And you acted as the zoning administrator under
22 this definition after it was enacted by City Council,
23 correct?

24 A. Yes.

25 Q. I want to break this definition down, and we're

1 going to talk about some certain sections of it.

2 First, it says here "a structure utilizing
3 single-family design and development standards."

4 Can you put in your own words what that
5 means, a single-family design? What does that mean?

6 **A. The appearance was to be similar to any other**
7 **single-family house in the city, the outward appearance**
8 **of the house -- or, excuse me, of the structure, and the**
9 **development standards would be similar.**

10 They would have to meet our setbacks, the
11 same as for other single-family houses within the
12 district in which the cabana house is located.

13 Q. And why was that important to have that as part
14 of the definition?

15 **A. The cabana houses, as it says, were to be in**
16 **close proximity to the ocean, and all of that is**
17 **residential area. It's -- well, we do have a couple**
18 **commercial areas, but the majority of this was to be in**
19 **the R-4 district, which is a residential area, and we**
20 **wanted to make sure that the integrity of the**
21 **residential area was maintained by this use.**

22 Q. So is it fair to say that what you essentially
23 wanted is the houses to look the same? You wanted it to
24 look residential in nature?

25 **A. You wanted the appearance to be residential, yes,**

1 **sir.**

2 Q. The second piece of this definition in the first
3 sentence is "in close proximity to the oceanfront."

4 What proximity are they talking about here?

5 **A. First or second row would be the thought there.**

6 **If somebody wanted to go a bit further, I mean, it could**
7 **be an interpretation. This is not obviously -- you**
8 **could have some interpretation, but mainly first or**
9 **second row from the ocean on Ocean Boulevard.**

10 Q. And then the next piece is "to be used by
11 projects in North Myrtle Beach not located near the
12 ocean", is that correct? That is what it says right
13 there?

14 **A. Yes.**

15 Q. What are projects?

16 **A. Subdivisions, planned unit developments. In this**
17 **particular case, the reason for the original drafting of**
18 **the ordinance was for a planned unit development that**
19 **was, at the time, about 580 acres, and it was a good**
20 **mile by the roads from the oceanfront.**

21 Q. Does it have to be a planned residential
22 development for it to be considered a project?

23 MR. RICARD: Objection to speculation. You
24 can answer.

25 **A. No, a large subdivision could be.**

1 Q. (BY MR. TAMASITIS): How about an RV park located
2 in the city of North Myrtle Beach?

3 MR. RICARD: Objection, speculation. You
4 may answer.

5 A. An RV park would be a project, yes, sir.

6 Q. (BY MR. TAMASITIS): Why was the projects, or
7 what we are supposed to be using, cabana houses,
8 geographically limited to being in the city of North
9 Myrtle Beach?

10 A. I don't recall the reason for that, but, you
11 know, City Council is always looking out for the good of
12 the citizens, the citizens of North Myrtle Beach, and I
13 would assume since the Tidewater project -- again, the
14 reason we wrote this was for Tidewater. It was within
15 the city of North Myrtle Beach. And I guess it was
16 to -- well, I don't know.

17 Q. Do you recall having any discussions with members
18 of City Council about this geographical --

19 A. No, I don't remember that. No, I don't.

20 Q. And then in the third sentence, this is talking
21 about the use of the cabana house, it says,
22 "Additionally, it can be used as an occasional guest
23 quarters and similar residential uses. "

24 What would you consider similar residential
25 uses?

1 A. I would think it would be like maybe a cookout or
2 something happening that may happen at your normal -- at
3 your house in some regular neighborhood, people coming
4 over and gathering, have a beer or something, and having
5 a cookout.

6 I can't think of all of them, but I would
7 think that if somebody was doing something that -- and
8 the question came up, we would have to make an
9 interpretation on that when it happened. I don't know
10 what all it would be. Most of the uses that you would
11 have at your house, let's say, or my house.

12 Q. So I know in modern day a lot of other counties
13 are dealing with the situation where you have a
14 farmhouse and people are using it for like wedding
15 receptions and stuff like that.

16 Would that be considered a similar
17 residential use, or could it be based on how it's set
18 up?

19 MR. RICARD: Object to form, speculation.
20 You may answer.

21 A. I would think that if you had somebody from the
22 development that was getting married that there wouldn't
23 be a problem to have a wedding reception there.

24 I'm just trying to think because there is
25 different -- I guess different things could fall under

1 the similar uses, and I'm trying to think of it in that
2 aspect. But just a wedding reception for a couple that
3 may live in the development, I would say that would be
4 all right.

5 Q. What if they didn't live in the development?

6 A. Well, if they are relatives, I guess you wouldn't
7 have to if they are relatives, like say an older couple
8 and their son is getting married and they want to have
9 it there, I guess that would be all right, too.

10 Q. Going back to the geographical limitation we were
11 just talking about earlier, that the project has to be
12 inside the city of North Myrtle Beach, I will represent
13 to you that the purpose of the zoning ordinance as it's
14 defined is, "To guide development in accordance with
15 existing and future needs and to promote the public
16 health, safety, morals, convenience, order, appearance,
17 prosperity and general welfare of the community."

18 Does restricting a cabana house to only
19 projects in the city of North Myrtle Beach satisfy that
20 purpose for the zoning ordinance?

21 A. I don't know.

22 Q. Does the limitation, a geographical limitation
23 that it has to be serving a project inside North Myrtle
24 Beach, serve any purpose other than economic protection
25 for the City?

1 **A. I don't know that either.**

2 Q. All right. The final sentence here, "A cabana
3 house shall be owned and maintained by a homeowner's
4 association with a maintenance agreement submitted and
5 approved by the planning department."

6 So this is two parts. It says here, "Shall
7 be owned and maintained by a homeowner's association."

8 Why does the property, cabana house, need to
9 be owned and maintained by a homeowners association?

10 **A. I don't really know that one either. That was**
11 **something that City Council wanted.**

12 And the homeowners association, again, I go
13 back to Tidewater, because at the time we wrote this,
14 that's what we were responding to. Tidewater's
15 homeowners association had asked us for that. A lot of
16 times on these definitions -- not definitions, but on a
17 lot of things that somebody else has asked Council to
18 make an ordinance for to help them out, it's always been
19 to try to make it as narrow as possible toward what they
20 are asking so that it doesn't open things just wide open
21 to everything.

22 Again, I don't know if I'm explaining that
23 correctly. But the homeowners association had to ask us
24 to allow them to build a cabana house, and so the
25 ordinance was kind of tied to the homeowners

1 **association.**

2 Q. You can see the issue here, that if it's not a
3 homeowners association then an individual person can't
4 have a cabana house in the city of North Myrtle Beach,
5 correct? That's the way the ordinance reads?

6 **A. Yes.**

7 Q. And what is a maintenance agreement?

8 **A. I guess it's an agreement between the owners and**
9 **the City as to who will maintain the property.**

10 Q. Are you aware of any other ownership restrictions
11 in the city of North Myrtle Beach that limits who can
12 own certain property?

13 **A. I'm not aware of any off the top of my head. If**
14 **there are any, I just don't know.**

15 Q. Let me ask you, have you ever been involved in an
16 enforcement situation or any other kind of zoning
17 situation as the zoning administrator for the City of
18 North Myrtle Beach where you were dealing with a
19 restriction in the ownership of property in the city?

20 **A. No, sir, I don't remember that.**

21 Q. And, again, just for my recollection, you're
22 aware of the fact that in this litigation one of the
23 issues is that SUN TRS Ocean Club owns the cabana house,
24 yet is not a homeowners association and is not for a
25 project located in North Myrtle Beach, correct?

1 **A. I am aware of that.**

2 Q. After reading this definition, and the fact that
3 you were involved in at least assisting in drafting it
4 initially, do you see any issue with the geographical
5 limitation of the project and the ownership restriction
6 in this definition.

7 **A. No, sir, I don't see any.**

8 Q. How not?

9 **A. Well, those types of interpretations aren't**
10 **something that the zoning department really got involved**
11 **with. And if that's what Council wanted to put in**
12 **there, I would think our legal counsel with the City or**
13 **somebody else would tell them the answer to that one.**

14 **As the zoning administrator, I try to give**
15 **Council what they want in the definition. And, as I**
16 **said earlier, if they tweak it a little bit or whatever,**
17 **there are other people in our department, and of course**
18 **we've got the legal department and members of Council**
19 **that has made those decisions.**

20 Q. Right. So you were not the sole author of this
21 definition? There were other people that had --

22 **A. No, I wrote it initially. Like I said, it could**
23 **have been changed, and I don't remember this, by either**
24 **the Planning Commission or City Council, or even our**
25 **director of planning who would take a look at the**

1 **initial drafting of it and make changes.**

2 **(Defendants' Exhibit No. 3 was marked for**
3 **identification.)**

4 Q. (BY MR. TAMASITIS): Can we go to Exhibit 3?

5 Mr. Blust, do you recognize that ordinance
6 that is in front of you?

7 A. **Yes. That's the R-4 development standards, R-4**
8 **district standards. Development standards are in there.**

9 Q. And in the "purpose" section of Section 23-22 of
10 the zoning code, it says, "Purpose: The purpose of this
11 district is to provide for the orderly development of
12 certain areas within the community where both year-round
13 and seasonal or resort housing may be developed and
14 where, because of close proximity to the ocean, such
15 mixed development would promote year-round use of public
16 facilities, and permit housing choices in response to
17 market demands, but not at the expense of ocean
18 visibility and access by the community."

19 Did I read that correctly?

20 A. **Yes, sir.**

21 Q. Did you have a hand in drafting this ordinance?

22 A. **No.**

23 Q. Did this predate you or did it occur after?

24 A. **It occurred after. It occurred while I was with**
25 **the City.**

1 Q. But you did not have any involvement in the
2 drafting?

3 A. No, sir.

4 Q. But you had involvement in the enforcement of it
5 as the zoning administrator?

6 A. Yes, sir.

7 Q. Can you put into your own words as the former
8 zoning administrator what the purpose of the R-4 resort
9 residential district is?

10 A. It's to allow for different types of residential
11 districts -- I mean residential uses within the R-4
12 district, and the purpose ties into the permitted uses.

13 Those permitted uses are listed, and I guess
14 that's why they use the mixed development in the purpose
15 statement.

16 But it's a residential district that
17 basically the permitted uses are what City Council would
18 like to see in that residential district. R-4 allows
19 more than, let's say, R-1, which is just strictly
20 single-family. And R-4 being close to the ocean would
21 have those different mixed developments such as
22 multifamily and hotels and motels and things like that.

23 Q. And I think that's what I was getting at, is
24 resort residential district is much different than just
25 residential district. There is more that can be put

1 into a resort residential district, more that can be
2 built.

3 A. There is more in the resort residential district.
4 The residential districts are for residences.

5 Now, hotels and motels are allowed in R-4,
6 which aren't strictly residential, but they are, I
7 guess, close enough to be considered similar, transient
8 visitors. But it's more so than, let's say, the R-1,
9 which is strictly single-family.

10 Q. Now, if you can flip to Page 13 of this exhibit,
11 Page 13 of 15 at the bottom, and Subsection 4 is
12 identified as "special exceptions".

13 Do you see that?

14 A. Yes.

15 Q. What is a special exception?

16 A. A special exception is a use that can be
17 permitted in a district with approval of our Board of
18 Zoning Appeals. That use could be a little bit more
19 intense than what is listed.

20 And because of that, our Board of Zoning
21 Appeals looks at it, looks at the surrounding uses and
22 the surrounding properties and makes a determination
23 whether they will allow it or not. They also have the
24 ability to add conditions if they feel like it's
25 necessary.

1 Q. So you used the word "intense" use. Can you
2 define that for me? What makes a more intense use?

3 A. **Something that could have some deleterious**
4 **effects on surrounding properties. And they try to**
5 **limit those issues while still allowing the use to be**
6 **next to existing permitted uses by right in the R-4.**

7 Q. But if we're talking about in the R-4 district
8 just a single-family residence, there is no special
9 exception needed for that, correct?

10 A. **Not in R-4, yes, sir, that's correct.**

11 Q. So you can have a single-family home used for
12 single-family purposes and you don't have to go to the
13 Zoning Board of Appeals for any permit for that,
14 correct?

15 A. **Correct.**

16 Q. How does the special exceptions process work?
17 Like how do I, if I own property and I want to get a
18 cabana house, how would I go about doing that?

19 A. **We have an application form, and you would fill**
20 **that out and we would -- staff would process it for you,**
21 **basically take it to -- get the meeting scheduled, and**
22 **do the public notice, and get you on the next possible**
23 **agenda.**

24 Q. And that's the agenda for the Board of Zoning
25 Appeals?

1 **A. Board of Zoning Appeals, yes, sir.**

2 Q. And the Board of Zoning Appeals takes the
3 application and then makes an up or down vote?

4 **A. They take the application, but then we have the**
5 **meeting. And there may be many questions in the**
6 **meeting, and they do look at the property. Most of the**
7 **time the Board goes out and actually physically looks at**
8 **the property and then they make the decision, yes, sir.**

9 Q. What is the zoning administrator's role in that
10 process?

11 **A. We don't have a role in that process. We will**
12 **facilitate any questions that the Board may have, but we**
13 **don't give our favorable or unfavorable recommendation**
14 **to the Board. If there are questions, we try to answer**
15 **them for the Board.**

16 Q. And so listed under special exceptions you will
17 see there is A, B, C and D, and it goes on and on. But
18 those different uses, non-commercial marinas, fishing
19 piers, lighted tennis courts, cabana houses, these are
20 all special exceptions that you can apply for in the R-4
21 resort residential district for the city, correct?

22 **A. Correct.**

23 Q. So let's focus on the cabana house, Subsection
24 (d). It says, "Cabana houses subject to the following",
25 and then there is a list of seven different bullet

1 points.

2 What are those seven? Are those
3 requirements in order to have a cabana house approved as
4 a special exception?

5 A. I don't know if I would call it requirements.
6 That's a guide for the Board to determine whether they
7 can go there or not.

8 It does say that at least eight parking
9 spaces shall be provided. That would be a requirement
10 of the development of the property.

11 But some of these, I mean, "That the special
12 exception will not be injurious to the adjoining
13 property", that's, you know, undefinable. The Board has
14 to make that determination based on what they are
15 seeing.

16 Q. So -- and I'm not trying to put words in your
17 mouth here, but essentially these are the guidelines?
18 This is what the Board of Zoning Appeals should be
19 looking at when making its decision?

20 A. Yes.

21 Q. And, Number 1, the first thing is, "That a
22 homeowner's association shall have been established for
23 the project and a maintenance agreement has been
24 submitted to the planning department."

25 Did I read that correctly?

1 **A. Yes.**

2 Q. And very similar language to the language for a
3 cabana house in the definition section, right?

4 **A. Yes.**

5 Q. Why isn't the ownership piece and the
6 geographical limitation discussed in bullet point Number
7 1?

8 MR. RICARD: Objection to form, speculation.
9 You may answer.

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

11 Q. (BY MR. TAMASITIS): And this should have been
12 the first question I asked.

13 Did you have a hand in drafting this section
14 of the ordinance?

15 **A. No.**

16 Q. The second one, "That at least eight parking
17 spaces per zoning standards be established." This is
18 talking about the parking requirements.

19 Why do you think this is in here, in this
20 part of the consideration or guidelines that the Board
21 of Zoning Appeals has to consider?

22 MR. RICARD: Object to form, speculation.
23 You may answer.

24 **A. A normal single-family house only requires two**
25 **parking spots, and actually you can even park in the**

1 front yard. We don't even look at parking on a
2 single-family house. If there is enough room to get two
3 cars on the property, they are good to go.

4 In the cabana house, one of the things that
5 I know was discussed was requiring some parking so that
6 the homeowners -- again, I go back to Tidewater, because
7 that's what we were talking about when we wrote this, so
8 they would have a place to park when they went down to
9 the beach.

10 And so -- and the City felt like that was
11 important at the time, I know, because I remember this
12 discussion, is that would take some of the pressure off
13 the public lots. They are parking on their own private
14 property.

15 And eight isn't a lot of parking spots, but
16 it would at least provide them with someplace to park
17 when they went down to the cabana house and go out to
18 the beach.

19 We would look at this -- if the special
20 exception was approved, we would look at that and make
21 sure the site plan had those eight spaces. And it says
22 "at least". They could put ten spaces if they can get
23 them on the property. I mean, you just -- you had to
24 provide some parking for the homeowners.

25 Q. (BY MR. TAMASITIS): Number 3, it says, "That the

1 use of the house be limited to bathing and change of
2 clothing facilities, and occasional use as guest
3 quarters and other similar uses."

4 We discussed this in the definition piece,
5 but what would consist of other similar uses?

6 MR. RICARD: Objection, form, speculation.
7 You may answer.

8 A. I'm having trouble answering that just like I did
9 before. But if you had, let's say, something like a
10 cookout or something that you would normally have at
11 your house, or my house, let's say in Little River, we
12 would look at something and say, well, you can do that
13 at any house, we don't have a problem with that, or we
14 might have a problem with it, just the opposite, let's
15 say.

16 Q. (BY MR. TAMASITIS): The next one, Number 4,
17 "That the special exception will be in substantial
18 harmony with the area in which it is to be located."

19 How would you define substantial harmony?

20 MR. RICARD: Objection to form. You can
21 answer.

22 A. I don't know.

23 Q. (BY MR. TAMASITIS): Is that subjective?

24 MR. RICARD: Objection to form.

25 A. It's somewhat subjective. What we would do on

1 **this -- I didn't make a determination on any of these**
2 **things here that went to the Board.**

3 **The Board was to ask the people applying**
4 **for the special exception what's around it, is it in**
5 **substantial harmony. That's something that the Board**
6 **had to determine.**

7 Q. (BY MR. TAMASITIS): Would that be the same for
8 Number 5, "That the special exception will not be
9 injurious to the adjoining property"?

10 **A. Yes.**

11 MR. RICARD: Objection to form.

12 Q. (BY MR. TAMASITIS): What are some examples of
13 uses that would be injurious to an adjoining property?

14 **A. Well, the first thing that comes to mind was,**
15 **talking about substantial harmony to the area in which**
16 **it is to be located, it's not a cabana house**
17 **necessarily.**

18 But just an example, if you are selling
19 alcohol on Highway 17 at a restaurant or a bar, and the
20 Board look at the property and there is a church, let's
21 saw, a block behind it, the Board may look at that and
22 say, well, we kind of have an issue with this if you're
23 one block or less from the church here and you're
24 wanting to sell alcohol.

25 And the applicant may say, well, there is a

1 restaurant right here that serves alcohol and a
2 restaurant right here that serves alcohol and they are
3 within the same block from the church.

4 The Board may look at that and say, yes, we
5 see what you're talking about, but we feel like to
6 approve you we're going to require you to put up a
7 fence, a six-foot or eight-foot high fence, to block
8 that distance because we feel like it's too close.

9 And they have the ability to add those
10 conditions onto the special exception. All we would do
11 with these issues is tell them what is close, and then
12 the discussion about whether it would be injurious or
13 not would kind of be between the Board and the
14 applicant, as to, well, when is the band going to stop
15 playing in your bar? Are they going to be playing until
16 2:00 in the morning? Well, we think they should be
17 shutting off at 12:00 because there is residents right
18 behind you on Poinsett Street, let's say.

19 There is a lot of -- in North Myrtle Beach,
20 there is a lot of areas that commercial and residential
21 are very close to each other, so we always went through
22 that issue of whether the use of the commercial is going
23 to be impacting the residential in any kind of way that
24 would be a problem.

25 In those areas it was very important,

1 because that starts adding to the cost of sending out
2 police officers to check on people. There is all sorts
3 of different things that come into play if it is
4 injurious that will cost the City money. So the City is
5 going to be interested in whether that's going to be
6 injurious or not. That's not really the zoning
7 department that makes that determination.

8 Q. In your experience as a zoning administrator,
9 have you ever run into a situation where the Board of
10 Zoning Appeals looked at a special exception regarding
11 it could be injurious to the adjoining property and that
12 injury was a reduction in property value to the
13 neighbors?

14 A. No.

15 (Defendants' Exhibit No. 4 was marked for
16 identification.)

17 Q. (BY MR. TAMASITIS): Mr. Blust, do you recognize
18 the letter that I just handed you?

19 A. Yes.

20 Q. What is it?

21 A. That is what I call the determination letters for
22 the Board of Zoning Appeals meetings.

23 Q. And, in your own words, what does a determination
24 letter mean?

25 A. It's a notification to the applicant of what the

1 **Board determined at the meeting regarding their**
2 **application.**

3 Q. And what is the date on this letter?

4 A. **June the 18th, 2007.**

5 Q. Who is it addressed to?

6 A. **Ben Powell.**

7 Q. Do you know who Mr. Powell is?

8 A. **Yes.**

9 Q. Who is he?

10 A. **Ben is a local developer who has done numerous**
11 **subdivisions. It mainly was small subdivisions for a**
12 **long time, and then he got into doing some large ones.**
13 **But he's a developer.**

14 Q. Do you recall drafting this specific
15 determination letter?

16 A. **No, I don't recall drafting this specific one.**

17 Q. And do you recall which special exception 3-07
18 and special exception 4-07 were for?

19 A. **Yes.**

20 Q. What were they for?

21 A. **They were both for Seabrook Plantation, and one**
22 **was for the cabana house in question, and the other was**
23 **for an amenity area for storage of RVs and boats.**

24 Q. And what was the ultimate determination by the
25 Board with respect to these special exceptions?

1 **A. The Board approved both of them.**

2 **(Defendants' Exhibit No. 5 was marked for**
3 **identification.)**

4 **Q. (BY MR. TAMASITIS): If you could pull up Number**
5 **5 as well.**

6 Do you recognize the document that is marked
7 as Exhibit 5?

8 **A. Yes.**

9 **Q. And what is it?**

10 **A. This was the application for the special**
11 **exception. I don't know if it was for both of them or**
12 **not. This looks like the application for just the**
13 **cabana house.**

14 **Q. Where do you see a reference to cabana house?**

15 **A. I don't see where they state cabana house in**
16 **there, unless I'm missing it.**

17 **Q. Do you recall if there was a separate application**
18 **for the cabana house?**

19 **A. No, sir. I'm looking at this and seeing all the**
20 **site plans and the different -- this is an aerial**
21 **view -- the different architectural view and that sort**
22 **of thing, and it's attached to this.**

23 So I'm thinking that must be the second one,
24 because there was two applications, according to this
25 letter, and I don't see that, the RV and storage area on

1 **this.**

2 Q. Okay. But do you -- so with that being said, do
3 you remember that it was PAN, LLC, making the special
4 exception application for both the cabana house and the
5 amenity center?

6 A. **No, sir, I don't.**

7 Q. On the first page of Exhibit Number 5 --

8 A. **Yeah, I see up here at the top, yes.**

9 Q. Do you recall PAN, LLC, making this application?

10 A. **No, sir. I would have dealt directly with Ben
11 Powell.**

12 Q. And so if Ben Powell had created PAN, LLC, to
13 hold this property, you wouldn't have known anyway?

14 A. **No, sir.**

15 Q. It was Ben Powell who you were dealing with?

16 A. **Yes, sir.**

17 Q. Do you recall when this application was submitted
18 whether or not you looked to see if a homeowners
19 association had been developed to own the cabana house
20 that was asked for?

21 A. **No, sir, I did not.**

22 Q. Why not?

23 A. **Well, it's one of those situations where Ben was
24 developing the subdivision, and he was selling the
25 properties as he was developing them.**

1 And I didn't ask him the question, but there
2 was, I guess, an assumption, and I might not even say
3 this, but usually the developer would turn the property
4 over to the homeowners association when they sold a
5 certain number of the lots or the units. And as far as
6 that is concerned, I don't know.

7 Q. Do you recall whether the development that Mr.
8 Powell was working on -- which I believe is Seabrook
9 Plantation, correct?

10 A. Yes.

11 Q. Was that located in the city of North Myrtle
12 Beach?

13 A. Yes.

14 (Defendants' Exhibit No. 6 was marked for
15 identification.)

16 Q. (BY MR. TAMASITIS): Mr. Blust, do you recognize
17 the letter in front of you?

18 A. Yes.

19 Q. And what is the date on the letter?

20 A. March 19, 2019.

21 Q. And is that your signature at the bottom?

22 A. Yes.

23 Q. Do you recall drafting this letter?

24 A. I don't recall drafting the letter, no, sir.

25 Q. Who is it addressed to?

1 **A. SUN Acquisition, LLC, a Michigan limited**
2 **liability company.**

3 Q. And in the regarding line it's 1814 North Ocean
4 Boulevard, North Myrtle Beach, South Carolina, correct?

5 **A. That's correct.**

6 Q. Is that, to your knowledge, the property where
7 the cabana house exists?

8 **A. Yes, sir.**

9 Q. Can you read the body of the letter, please?

10 **A. Yes. "The above referenced property is zoned R-4**
11 **resort residential. The R-4 district permits cabana**
12 **house as a special exception subject to the regulations**
13 **contained in the R-4 district of the North Myrtle Beach**
14 **zoning ordinance. The existing structure on the**
15 **property was permitted as a cabana house and has been**
16 **legally used as such since construction. As of the date**
17 **of this letter there are no known zoning violations on**
18 **the property."**

19 Q. Exhibit Number 4 you identified or classified as
20 a determination letter. What would you classify Exhibit
21 Number 6 as?

22 **A. This is a zoning verification letter.**

23 Q. So a zoning verification letter. Is that the
24 same as a zoning letter?

25 **A. Yeah.**

1 Q. What is the purpose of a zoning letter?

2 MR. RICARD: Objection, speculation.

3 **A. The purpose of Exhibit 6?**

4 Q. (BY MR. TAMASITIS): What is the general purpose
5 of a zoning letter drafted by the zoning administrator
6 for the City of North Myrtle Beach?

7 **A. Okay. I'm not really sure, and I say that**
8 **because we would get all sorts of different reasons for**
9 **these letters. Sometimes it will be to see just what**
10 **the zoning is. Sometimes it would be if there's a**
11 **violation that was really important. I don't know what**
12 **they do once they get the letter.**

13 Q. Based on your review of the body of the letter,
14 what was the purpose of this zoning letter?

15 MR. RICARD: Objection to form, speculation.

16 **A. The purpose would be to know if a cabana house**
17 **was permitted in the R-4 district.**

18 Q. (BY MR. TAMASITIS): All right. Let me try to
19 clarify, and maybe I'm not doing a good job of asking
20 the question because your counsel for the City objected
21 to this as speculation. You identified that there is a
22 lot of purposes for zoning letters, you don't know which
23 ones.

24 Why did you draft this letter, to the best
25 of your knowledge?

1 A. It might help just to tell you what normally
2 happens with a zoning letter.

3 Q. Please do.

4 A. I will get a call from somebody, whether it's a
5 banker, somebody that's interested in buying the
6 property, an insurance company. There is all sorts of
7 different people. A lot of times it's the lawyer's
8 office that is working with somebody.

9 And they will say, can we get a zoning
10 letter? And I will tell them, please send me an email,
11 give them my email address, and send me in that email
12 address why do you want this letter, what do you want
13 answered in the letter, and send to me the name of who
14 to address it to, who to send it to, and all the
15 different information so that I can get the letter to
16 the right people. And then they would send me an email
17 and I would answer their question.

18 As I said, there are a lot of times that
19 there are different questions that they ask, and there
20 were so many that it got to the point where I would say,
21 you tell me what you want and we'll look at that and
22 answer that question.

23 Q. So is it safe to say that this letter is an
24 answer to a question that you were posed about the
25 property?

1 **A. Yes.**

2 Q. And it says here, "As of the date of this letter,
3 there are no known zoning violations on the property."

4 **A. Correct.**

5 Q. Do you recall, when answering the question that
6 was posed by whoever asked for this letter to be
7 drafted, whether you checked to see if the cabana house
8 on the property was owned by a homeowners association?

9 **A. No, sir.**

10 Q. Do you recall whether or not you checked to see
11 if the cabana house was being used by a project located
12 in North Myrtle Beach?

13 **A. No, sir.**

14 Q. So then how did you know there were no zoning
15 violations on the property?

16 **A. Well, I went out and looked at the property and**
17 **it wasn't being used at all. And since it as not being**
18 **used at all, whoever owned it didn't really matter to me**
19 **as far as whether it was a zoning violation or not.**
20 **There is nothing happening here, and so I see no zoning**
21 **violations.**

22 Q. Go with me on this. This is a hypothetical.

23 If after getting the question posed to you
24 about this letter, and you went on the -- into the
25 property records and found that this property was owned

1 by an LLC and not a homeowners association, would that
2 have changed your response in this letter?

3 MR. RICARD: Object to form, speculation.
4 You may answer.

5 A. I don't know, and I say that because the property
6 was not being used. If it were being used at the time
7 and we were interested in who owned it, then, yes, sir,
8 it would change that.

9 But at the time the property was not being
10 used at all, and I don't know at the time -- well, I
11 have to say I did not look into ownership of the
12 property.

13 Q. (BY MR. TAMASITIS): There was some testimony
14 when we were talking to Mr. Caldwell about special
15 exceptions for cabana houses in particular.

16 And when a property that has a cabana house
17 on it, via a special exception, is transferred from one
18 party to another, is there a requirement for that new
19 property owner, the grantee of the property, to seek
20 another special exception for the cabana house on the
21 property?

22 A. No.

23 MR. RICARD: Objection to form. You may
24 answer.

25 Q. (BY MR. TAMASITIS): The answer is no?

1 **A. No.**

2 Q. I may have asked this already, so I apologize if
3 I'm asking the same question.

4 Are you aware of any other special
5 exceptions in the North Myrtle Beach zoning code, while
6 you were the zoning administrator, that had a geographic
7 limitation and an ownership restriction for a special
8 exception?

9 MR. RICARD: Objection to form. You may
10 answer.

11 **A. What exactly do you mean by geographical**
12 **location? I mean --**

13 Q. (BY MR. TAMASITIS): The project being located in
14 North Myrtle Beach.

15 **A. Well, the project -- I asked the question of you,**
16 **because the geographical location is what zoning**
17 **district are we talking about. I don't know of one.**

18 Q. Would you consider the cabana house special
19 exception ownership restriction, being restricted to a
20 homeowners association, to be unique in the North Myrtle
21 Beach zoning code?

22 MR. RICARD: Objection to form. You may
23 answer.

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

25 Q. (BY MR. TAMASITIS): And again, just for

1 clarification purposes, to the best of your recollection
2 you did not check the ownership of the property prior to
3 the transfer --

4 **A. No, sir, I did not.**

5 Q. Let me finish.

6 **A. Oh.**

7 Q. -- prior to the transfer because there was
8 nothing going on at the property, it wasn't in use?

9 **A. That's correct.**

10 **(Defendants' Exhibit No. 7 was marked for**
11 **identification.)**

12 Q. (BY MR. TAMASITIS): Mr. Blust, do you recognize
13 the document I just placed in front of you as Exhibit
14 Number 7?

15 **A. Yes.**

16 Q. And what is it?

17 **A. It's a formal complaint of multiple zoning**
18 **ordinance violations sent to Mr. Ben Caldwell.**

19 Q. And what is the date on the document?

20 **A. July 12, 2021.**

21 Q. And it's my understanding that this is after your
22 retirement as the zoning administrator, correct?

23 **A. Yes, sir.**

24 Q. Have you reviewed this complaint?

25 **A. No, sir, not at all.**

1 Q. When did you first become aware of it?

2 A. About a week ago or so when Chris Noury and Ben
3 and I sat down. It was when I believe Chris called me
4 and told me that we may be in this deposition. And I
5 asked if I could come in and sit down with him and Ben
6 and just review it because I didn't remember anything on
7 the property.

8 Q. And who -- I'm sorry.

9 A. I was going to say, Ben showed me this, but I
10 didn't look at it. I just knew -- he said this is the
11 complaint.

12 Q. So you don't know what's in this document?

13 A. No, sir. I have not read it.

14 Q. You have not come up with an opinion on this
15 document?

16 A. No, sir, not at all.

17 Q. Are situations and issues regarding tax
18 assessments for property under the purview of the zoning
19 administrator?

20 A. No.

21 Q. How about restrictive covenants?

22 A. Restrictive covenants, no, but there is a caveat
23 to that. We never looked at restrictive covenants for
24 years and years while I was zoning administrator,
25 because basically my job was to enforce what City

1 Council adopted as ordinances, not what subdivisions or
2 anybody else that makes covenants adoptive. It wasn't
3 our responsibility to enforce them.

4 And it was my understanding that not too
5 long ago, six years maybe, I don't know the number of
6 years, the State of South Carolina said that we would
7 have to start looking at that.

8 And we changed our building permit
9 application to put on the bottom of it that the
10 applicant had to check whether what they were asking for
11 was in violation, or something, I don't know the exact
12 wording, but whether that complied with the covenants of
13 the property.

14 Since then we had a couple of issues that
15 ran afoul of the covenants, but I really didn't have
16 that much involvement in looking at restrictive
17 covenants.

18 (Defendants' Exhibit No. 8 was marked for
19 identification.)

20 Q. (BY MR. TAMASITIS): Mr. Blust, do you recognize
21 this document placed in front of you as Exhibit Number
22 8?

23 A. Yes.

24 Q. What is it?

25 A. It's the plaintiff's answers to Defendants SUN

1 **TRS Ocean Club, LLC, and SUN TRS Carolina Pines, LLC's**
2 **first set of interrogatories to the City of North Myrtle**
3 **Beach.**

4 Q. Did you have any input into the answers that were
5 provided in response to these interrogatories?

6 A. No.

7 Q. When was the first time you saw this document?

8 A. About an hour and a half ago.

9 Q. If you could turn to Paragraph Number 9, which is
10 on Page 6 of the exhibits.

11 And interrogatory Number 9 asks, "List every
12 cabana house in North Myrtle Beach, identify the owner
13 of each such cabana house, and the project in North
14 Myrtle Beach used by the cabana house, and specify if
15 the owner of the cabana house is a homeowners'
16 association."

17 Do you see that?

18 A. Yes.

19 Q. If you could read the answer for me, please, and
20 I will give you a minute to look at it.

21 A. "Answer: Not including the cabana house subject
22 to the pending litigation, the following is a list of
23 the cabana houses in North Myrtle Beach:

24 A. Barefoot Resort Cabana House - 4611 South
25 Ocean Boulevard, North Myrtle Beach, South Carolina,

1 **29582. Owner, Barefoot Resort Residential Owners**
2 **Association, Incorporated. Project, Barefoot Resort**
3 **& Golf.**

4 **B. Beachwalk Cabana House - 4106 North Ocean**
5 **Boulevard, North Myrtle Beach, South Carolina, 29582.**
6 **Owner, Beachwalk Villas HPR. Project, Beachwalk Villas.**

7 **C. Links Cabana House - 200 11th Avenue**
8 **South, North Myrtle Beach, South Carolina, 29582.**
9 **Owner, The Links Golf & Racquet Homeowners Association.**
10 **Project, The Links.**

11 **D. Tidewater Cabana House - 5710 North**
12 **Ocean Boulevard, North Myrtle Beach, South Carolina,**
13 **29582. Owner, Tidewater Plantation Community**
14 **Association, Incorporated. Project, Tidewater**
15 **Plantation.**

16 Q. Are you aware of any other cabana houses in the
17 city of North Myrtle Beach other than the four
18 identified here and the cabana house at issue in this
19 litigation?

20 **A. No.**

21 Q. Has there ever been any other cabana houses in
22 the city of North Myrtle Beach other than these four
23 listed here and the one involved in litigation during
24 your time as an zoning administrator?

25 **A. No.**

1 Q. So this is it? This is the universe right here?

2 A. Yes.

3 Q. Have these four cabana houses identified in
4 interrogatory Number 9, have they always been owned by
5 homeowners associations?

6 MR. RICARD: Object to form.

7 A. I don't know.

8 Q. (BY MR. TAMASITIS): Have you ever been involved
9 in any zoning enforcement situations with any of these
10 cabana houses?

11 A. No.

12 Q. There was some discussion earlier that the zoning
13 administrator's job and the City's response to zoning
14 issues is a complaint-based enforcement, which means
15 that you guys don't go looking for zoning violations,
16 they come to you by way of complaint.

17 Is that an accurate way to describe the
18 zoning enforcement mechanism in the city?

19 A. I'm not sure. And that's the way it's been under
20 our current City manager.

21 Q. Is that the way it's always been?

22 A. No.

23 Q. How is it different than what it used to be?

24 A. Well, when I started with the City, the city was
25 very small, and we didn't have near as many permits,

1 near as much work in the office as we do now.

2 And I was the only person involved in
3 zoning, and at that time then I would take a couple of
4 hours every day and go out and ride around the city and
5 look for things. Mostly it was off-premise little signs
6 and different other things. And I would take care of
7 those little zoning violations, somebody working without
8 a permit or different things like that, and we would --
9 well, we, I guess I would proactively enforce what I
10 saw.

11 Now, even then we would get complaints and
12 that sort of thing, and I would react to those
13 complaints. Over the years, I mean, the city has grown
14 quite substantially, maybe not so much population but in
15 actually people coming here and owning second homes and
16 different things like that, where we have tripled in
17 size geographically.

18 And the population, including tourists, we
19 are probably never a day without 60,000 or 70,000 people
20 in town, even in the wintertime.

21 So the amount of work has increased
22 substantially. And because of that, our City manager is
23 the one that has to take responsibility for staffing and
24 things like that, and so we take our guidance from him.
25 And the last four or five, six years that I was here,

1 that's the way it became, is that we would not waste our
2 resources going out and looking for things in zoning.
3 We would wait and see if there was a complaint. So it
4 has been like that for the last, like I said, five, six,
5 seven years, whatever.

6 Q. One of the requests made by the City in their
7 complaint and in various other filings made in this case
8 has been for SUN TRS OC, LLC, to relinquish its
9 ownership in the cabana house.

10 Are you aware of any zoning enforcement
11 action that you were involved with as the zoning
12 administrator where the City required a property owner
13 to relinquish ownership of property because of a zoning
14 violation?

15 A. No.

16 Q. Does that seem a bit draconian to you?

17 MR. RICARD: Objection to form.

18 A. I don't know.

19 Q. (BY MR. TAMASITIS): Do you know if the zoning
20 ordinance provides for that ability, for the City to
21 take private property for a zoning violation?

22 MR. RICARD: Objection to form. You may
23 answer.

24 A. No.

25 Q. (BY MR. TAMASITIS): No, you are not aware?

1 **A. I'm not aware.**

2 MR. TAMASITIS: Let's take a quick break,
3 and I think I'm almost done.

4 (A recess was taken.)

5 Q. (BY MR. TAMASITIS): Mr. Blust, going back over
6 the questions I've asked, are there any answers that you
7 want to clarify or explain further?

8 **A. I don't know. I'm trying to remember as much as**
9 **I can to answer your questions. That's two years**
10 **without thinking about zoning codes. It's difficult.**

11 Q. I appreciate your help.

12 Have any of the questions that you can think
13 of, were any of them confusing that you want me to
14 reask?

15 **A. I don't think so.**

16 Q. How did you become aware of the lawsuit we are
17 deposing you for today?

18 **A. I think it was when Chris called me. I wasn't**
19 **aware of it until just recently.**

20 Q. And how recently, a couple of weeks?

21 **A. Yes, sir, I would think so.**

22 Q. And did you speak with the City's attorneys,
23 whether it be Mr. Ricard or Ms. Shoun, prior to this
24 deposition?

25 MR. RICARD: Objection. I will instruct Mr.

1 Blust not to answer that.

2 MR. TAMASITIS: Well, I asked if he'd had,
3 not the contents of it.

4 MR. RICARD: You may answer the question to
5 the extent you can confirm the existence of
6 conversations, but I'm directing you not to testify as
7 to any contents of the conversations that you may have
8 had with any attorney representing the City of North
9 Myrtle Beach, okay?

10 A. Yes. Yes.

11 Q. (BY MR. TAMASITIS): What were the details of
12 your conversations with the City attorneys prior to this
13 deposition regarding this deposition, and not
14 conversations you had with any attorneys for the City
15 during your time as the zoning administrator?

16 MR. RICARD: Objection, and direct you not to
17 answer that question on the basis of privilege.

18 MR. TAMASITIS: And, on the record, the
19 conversations that Mr. Blust had with the City's
20 attorneys regarding this deposition, the instructions he
21 received from the attorneys regarding this deposition,
22 discussions about documents that would be shown at this
23 deposition we do not believe or contend that they are
24 protected by the attorney-client privilege.

25 Mr. Blust is a former employee of the

1 City and is not a current employee, and we have not
2 asked him questions about his conversations with counsel
3 during his employment where he would have been covered
4 by the attorney-client privilege.

5 Therefore, we believe that these
6 questions can be answered and should be answered because
7 he is not an employee of the City; and, therefore, not
8 covered by the attorney-client privilege with respect to
9 testimony and conversations he had with the attorneys
10 about this deposition.

11 I understand counsel's objection and,
12 therefore, we are going to leave the deposition open on
13 that issue only, for the discussions that Mr. Blust had
14 with the City's attorneys regarding his deposition
15 today; otherwise, I have no further questions.

16 MR. RICARD: I will just note for the record
17 that I directed Mr. Blust not to answer any questions
18 regarding the content of the conversations under the
19 attorney-client privilege, as well as the attorney
20 work-product doctrine as well.

21 The City has no objections to keeping
22 this deposition open for this particular limited scope,
23 but we will object to keeping it open for any other
24 matters or any questions or any other topics that may
25 deal with any other matters outside of content of

1 conversations that Mr. Blust may have had with counsel
2 for the City.

3 Given that defendants' counsel doesn't
4 have any further questions, I may have a few. Actually,
5 I do have a few for Mr. Blust, so just bear with me real
6 quick, okay?

7 EXAMINATION

8 BY MR. RICARD:

9 Q. Mr. Blust, you were asked some questions
10 regarding the definition of injurious and who makes that
11 determination and that sort of thing.

12 Do you recall that back and forth
13 earlier today?

14 A. Yes.

15 Q. I believe your testimony included a statement to
16 the effect that the zoning department doesn't make that
17 determination but perhaps the Board of Zoning Appeals
18 makes that determination.

19 Am I characterizing your prior testimony
20 correctly?

21 A. Yes.

22 Q. Is it, nevertheless, true that the zoning
23 administrator has authority to make zoning
24 determinations as well?

25 A. Yes.

1 Q. And ultimately the zoning administrator, as well
2 as the zoning office in general, has the authority to
3 enforce zoning regulations?

4 A. Yes.

5 Q. You were asked some questions earlier, Mr. Blust,
6 about whether it was problematic to have wedding
7 receptions at a cabana house, or even I think there was
8 also some questions and answers about wedding receptions
9 being held at a single-family residence and that sort of
10 thing.

11 Do you recall that testimony and those
12 questions?

13 A. Yes.

14 Q. The way those questions were framed, did you
15 answer those questions under the assumption that it was
16 a one-off type of wedding at a potential single-family
17 residence?

18 MR. TAMASITIS: Object to the form.

19 A. Yes. I was trying to answer as if it was
20 something, let's say, that would happen at my residence
21 in Little River.

22 Q. (BY MR. RICARD): So let's keep on that line of
23 thinking. If it was your residence at Little River,
24 would you market your residence to host wedding
25 receptions?

1 **A. No.**

2 MR. TAMASITIS: Object to the form.

3 Q. (BY MR. RICARD): Would you open the doors to
4 your residence to host wedding ceremonies or receptions
5 at your residence?

6 **A. No.**

7 Q. What would your opinion be if it were determined
8 that an entity using a cabana house marketed it for
9 wedding receptions and as a wedding venue?

10 MR. TAMASITIS: Object to the form.

11 **A. I would look at that as something that if we**
12 **found out first, before the business license department,**
13 **that we would probably approach the business license**
14 **department and say they are operating a business at this**
15 **location.**

16 And normally, in zoning, we would work
17 closely with the business license department and they
18 would enforce a lot of things for us. One of the
19 reasons for that is that there is not an appeal to doing
20 business without a license.

21 If it's a decision that we say you're
22 violating the zoning ordinance, they could actually drag
23 that out by appealing that to Board of Zoning Appeals
24 and letting it last another couple of months, let's say,
25 but there is no appeal to doing a business without a

1 **license. And so a lot of our enforcement in zoning was**
2 **through the business license department. If you're**
3 **marketing something, then you're doing a business.**

4 Q. (BY MR. RICARD): So I have two separate
5 questions from that.

6 The first is, is it possible that the zoning
7 office, and specifically the zoning administrator, could
8 make a determination that hosting and marketing a number
9 of weddings, ceremonies, receptions, other similar types
10 of events could be injurious to adjoining properties?

11 A. Yes, it could. And my hesitation is because we
12 generally don't make that determination of the injurious
13 or not. We are looking at and saying did you comply
14 with the zoning and, again, are they doing a commercial
15 business that we would get business license involved
16 with.

17 In my career, I don't think I have looked at
18 and said this is injurious to the neighboring property.
19 But, to answer your question, yes, it could be. I don't
20 know if I answered that correctly -- I mean right for
21 you.

22 Q. It doesn't matter whether you're answering right
23 or wrong.

24 A. I mean, I don't know if I answered your question.

25 Q. That's fine.

1 Moving from that, Mr. Blust, if you were to
2 receive a complaint from an adjoining property owner
3 about a cabana house hosting weddings, hosting events,
4 marketing those said events, would you view that as
5 potential evidence of an injurious use of the property?

6 MR. TAMASITIS: Object to the form.

7 **A. Yes.**

8 Q. (BY MR. RICARD): And ultimately -- this is
9 picking up on a second line of questioning I had from
10 your earlier answer.

11 Ultimately, would you conduct an independent
12 evaluation in order to determine whether a property was
13 in violation or not?

14 **A. Yes. We would do that in any situation where we**
15 **thought there may be a zoning violation.**

16 Q. And is it fair to say that that would also be a
17 collaborative process with other City staff members and
18 other offices?

19 **A. It could be, yes, sir.**

20 Q. Switching topics to Ben Powell, you were asked
21 some questions about Mr. Ben Powell.

22 How long, roughly, on a professional level
23 did you have to interact with Mr. Powell?

24 **A. Are you asking me how long I knew Mr. Powell?**

25 Q. Let's start with that. How long did you know

1 him?

2 A. I knew -- in 2007, which was the date of that
3 letter, I had known Mr. Powell for 22 years.

4 And to answer what I think your question
5 was, he would come in periodically to do projects, and
6 not a lot. But when he walked in the door, we knew him.

7 Q. Fair to say he was a known commodity?

8 A. Yes.

9 Q. How would you characterize your relationship with
10 Mr. Powell.

11 A. It was close. I could pick up the phone and call
12 him if I needed something from him, or needed his
13 assistance, or he would call me directly.

14 Q. Did you trust him?

15 A. Yes.

16 Q. Was that based off of the history of the working
17 relationship that you had with him?

18 A. Yes.

19 Q. And generally speaking, just for people you don't
20 know, public residents, guests, members of the community
21 in North Myrtle Beach, do you generally trust them as
22 well to the extent that they are going to follow the
23 rules and regulation of the City?

24 A. Yes.

25 Q. So the reason I'm asking this is because there

1 was some testimony about -- you made a statement earlier
2 that you assumed he would turn the property over to a
3 homeowners association.

4 What was the basis for that assumption?

5 **A. We dealt with a lot of subdivisions. As I said,**
6 **as the City grew, and we had more and more subdivisions**
7 **than in the old days, and that's what I understood, that**
8 **the developer at some point would turn the development,**
9 **whether subdivision or PUD or whatever over to an HOA**
10 **once they got a certain percentage of the lots or units**
11 **sold.**

12 Q. Did you ever receive any complaints about
13 entities such as Mr. Powell's not turning over the
14 development into an HOA?

15 **A. No, sir. We never had any issues with any of**
16 **that.**

17 Q. Turning to the other four cabana houses, so not
18 including the one in this litigation, but the four other
19 cabana houses, I believe you were asked a question
20 regarding whether you had conducted any enforcement, and
21 your testimony was that you did not recall any
22 enforcement actions taken against those other cabana
23 houses.

24 Did I summarize that accurately?

25 **A. That's right, yes.**

1 Q. Did you ever receive any complaints about zoning
2 violations with those other cabana houses?

3 A. Not that I recall, no, sir.

4 Q. Had you received a complaint, how would you have
5 responded?

6 A. Well, obviously we would look at the specifics of
7 the complaint and go try to find out whether it was a
8 legitimate complaint or not.

9 Q. So fair to say you would have conducted an
10 evaluation and done an independent assessment?

11 A. That is a better way to say it, yes, sir.

12 Q. You were asked some questions on the restriction
13 on the limitation in the zoning ordinance to be just
14 projects within North Myrtle Beach.

15 Do you recall that?

16 A. Yes.

17 Q. Is it fair to say that projects within North
18 Myrtle Beach potentially could aid the economy of North
19 Myrtle Beach?

20 A. Yes.

21 Q. Similar, on the topic here with HOAs, the
22 restriction for HOAs, you testified that R-4 is a resort
23 residential district, correct?

24 A. Correct.

25 Q. Is it fair to say that the limitation and

1 restriction for a cabana house to be operated and owned
2 by a HOA is designed to promote that residential
3 district and that residential character of the
4 neighborhood.

5 **A. Yeah, I don't know that I would use the word**
6 **promote. But, yes, to be in harmony with the area, just**
7 **like the special exception says, yes.**

8 Q. Perhaps maintain?

9 **A. Yes.**

10 Q. Okay. And, ultimately, would you agree that
11 supports or maintains the general welfare of the
12 R-4 district?

13 MR. TAMASITIS: Object to the form.

14 **A. Yes.**

15 MR. RICARD: Thank you, Mr. Blust. I don't
16 have any further questions for you, but sit tight
17 because opposing counsel may.

18 MR. TAMASITIS: You're good. Thank you. We
19 really appreciate the time, sir.

20 THE WITNESS: Thank you.

21 (The deposition was concluded at 2:25 p.m.)

22 - - -

23

24

25

1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF CHARLESTON)

4 I, Nancy Ennis Tierney, Certified Shorthand Reporter
5 and Notary Public for the State of South Carolina at
6 Large, do hereby certify that the witness in the
7 foregoing deposition was by me duly sworn to testify to
8 the truth, the whole truth and nothing but the truth in
9 the within-entitled cause; that said deposition was
10 taken at the time and location therein stated; that the
11 testimony of the witness and all objections made at the
12 time of the examination were recorded stenographically
13 by me and were thereafter transcribed by computer-aided
14 transcription; that the foregoing is a full, complete
15 and true record of the testimony of the witness and of
16 all objections made at the time of the examination; and
17 that the witness was given an opportunity to read and
18 correct said deposition and to subscribe the same.

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

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

Witness my hand, I have hereunto affixed my official
seal this 20th day of May, 2022, at Charleston,
Charleston County, South Carolina.

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23
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25

Nancy Ennis Tierney, CSR (IL)
My Commission Expires:
June 12, 2024

1 ATTESTATION

2 In Re: City of North Myrtle Beach v. SUN TRS
Ocean Club, LLC, et al.
3 Case No.: 2021-CP-26-07489
Deposition of: Paul Blust
4 Date Taken: April 26, 2022
Taken Before: Nancy Ennis Tierney, CSR (IL)
5

6 I have read the transcript of my deposition and find
that no changes are necessary.

7
8 _____
Paul Blust

9 Having read the transcript of my deposition, I wish
to make the following corrections:

10 Page Line:

11 Page Line:

12 Page Line:

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Paul Blust

22 Sworn to and subscribed before me this ____ day of
_____, 2022, in _____ County, South
23 Carolina.

24 _____
Notary Public
State of South Carolina
25 My Commission Expires: _____

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APPEARANCES

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For Links Golf and
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1	INDEX	
2	Stipulations:	4
3	Examination by Mr. Tamasitis:	4
4	Examination by Mr. Ricard:	29
5	Certificate of Reporter:	39

6

7

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9

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12

EXHIBITS

13	Defendant's 1, Subpoena and Notice of Deposition:	9
14	Defendant's 2, Quit-Claim Deed:	15
15	Defendant's 3, Links Resort Amenities:	24

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1 STIPULATIONS

2 It is stipulated by and between counsel for
3 the respective parties that all objections are
4 reserved until the time of trial, except as to
5 the form of the questions.

6 This deposition is being taken pursuant to
7 the South Carolina Rules of Civil Procedure and
8 all applicable rules.

9 - - - -

10 The reading and signing of this deposition is
11 waived by the deponent and counsel for the
12 respective parties.

13 Whereupon,

14 KENNETH LLOYD MCKELVEY, being duly sworn and
15 cautioned to speak the truth, the whole truth, and
16 nothing but the truth, testified as follows:

17 EXAMINATION

18 BY MR. TAMASITIS:

19 Q Sir, could you please state your full name for the
20 record.

21 A Kenneth Lloyd McKelvey.

22 Q And how do you spell the last name?

23 A M-C-K-E-L-V-E-Y, V as in Victor.

24 Q Sir, my name is John Tamasitis and I represent Sun
25 TRS Ocean Club, LLC, Sun TRS Carolina Pines, LLC and

1 Sun TRS Carolina Pines RV, LLC, in a lawsuit brought
2 against them by the City of North Myrtle Beach
3 related to a zoning ordinance issue related to --
4 and that's pertaining to a cabana house owned by Sun
5 TRS Ocean Club.

6 We subpoenaed the Links Golf and Racket Club,
7 the homeowners association, for its deposition.
8 Have you ever had your deposition taken before?

9 A I have.

10 Q When was that?

11 A It's been probably five, six, maybe seven years ago
12 was the last one.

13 Q And what type of case was that?

14 A I was a -- seem like the last one I did, I was a
15 witness to a traffic accident at Briarcliff Acres.
16 I just happened to be sitting at a red light and one
17 car was stopped, and when he was stopped, it was
18 kind of crazy, but you're still not supposed to hit
19 people in the back, and I think that was the last
20 time I had a deposition.

21 Q Okay. Well, what I'm going to do is I'm going to go
22 over some of the rules that govern these depositions
23 just as a refresher for you.

24 A Thank you.

25 Q And the Court requires that I provide some of these

1 rules as well, so first I need you to understand
2 that you're under oath. Please testify honestly.
3 I'd like you to do a couple of things for me today.
4 First, please answer with yeses or nos or I don't
5 knows when it's appropriate. I know in a lot of
6 normal conversations there's a lot of uh-huhs,
7 uh-uhs, we shake our head, nod, but the court
8 reporter is taking down everything you say. In
9 order to keep a clean record, it's easier if you
10 just give audible responses, yeses and nos, when
11 you're responding to my questions. Is that -- do
12 you understand that?

13 A Yes.

14 Q I also want you to understand that none of my
15 questions are intended to trick you, but I do ask
16 poor questions quite often, so if I ask a question
17 that confuses you or you don't understand, please
18 just ask me to clarify that question and I'll do my
19 best to rephrase it or repeat it. Okay?

20 A Okay.

21 Q If you need any clarifications, definitions, or
22 explanations of any of my words, questions, or
23 documents that are presented today during the course
24 of this deposition, please ask me those questions
25 rather than your attorney. All right?

1 A All right.

2 Q If you answer a question, I'll assume you understood
3 the question. Is that fair?

4 A Yes.

5 Q Finally, if you need to take a break at any time,
6 just let me know. This is not an interrogation. If
7 we need to take a water break, if you need to use
8 the restroom, just let us know and we'll take a
9 break off the record. I don't anticipate us being
10 entirely too long, but if you do need to take a
11 break, just holler. Okay?

12 A All right.

13 Q If you do take any breaks and engage in any off-the-
14 record private conversations with your attorney
15 about the substance of the testimony you're
16 presenting today, I can ask you questions about
17 that. It is one of the rare exceptions to the
18 attorney/client privilege, so just be aware of that
19 if you're having conversations off the record.
20 Okay?

21 A All right.

22 Q Are you under any disability, alcohol, drugs, or any
23 medications today that will affect your ability to
24 testify honestly?

25 A No.

1 Q You have been identified as the designated
2 representative for the Links Golf and Racquet Club
3 Homeowners Association. Obviously, I cannot depose
4 an association like I can an individual so our rules
5 allow me to send a list of topics to the
6 association's attorney and the association then
7 provides individuals to testify about those topics.
8 Do you understand that you're the association's
9 representative to testify on behalf of the
10 association today?

11 A Yes.

12 Q Do you understand that the association has
13 designated you as its corporate representative?

14 A Yes.

15 Q Do you understand that the deposition you give today
16 is not your own individual testimony, other than
17 some of the background questions I'm going to ask
18 you, but the testimony of the association and is
19 binding on the association?

20 A Yes.

21 Q Okay. So when I ask you a question, I'm asking the
22 question of the association, I'm not asking you
23 individually, except for some of these background
24 questions. Do you understand that?

25 A Yes, I do.

1 Q Okay. I'm going to hand you what we're going to
2 mark as Exhibit No. 1.

3 (Defendant's Exhibit No. 1 was marked.)

4 Q And this is the subpoena that I provided to your
5 attorney identifying the deposition that we're here
6 taking here today, and if you go to the fifth or
7 sixth page of this document, it lists some topics.
8 If you go another page, and one more. Have you seen
9 the topics that I provided to the association's
10 attorney that I plan to ask you questions about
11 today?

12 A Yes, I have seen this.

13 Q At the outset are there any topics identified that
14 you do not feel comfortable testifying on behalf of
15 the association today?

16 A I'm fine.

17 Q What did you do to prepare for today's deposition?

18 A I'm sorry?

19 Q What did you do to prepare for today's deposition?

20 A I didn't really do anything to prepare for the
21 deposition.

22 Q Did you talk to anyone other than your attorneys?

23 A Yes, I did talk with Susan Crow who was the general
24 manager while my company operated the Links for
25 several years.

1 Q And what was your company's name?

2 A It was Defender Resort Management originally.

3 Q Okay. And what did Defender Resort Management do?

4 A They were in property management, and specifically
5 timeshare property management.

6 Q So was it the property management company for the
7 Links?

8 A It was.

9 Q What year time frame was that?

10 A It was an operating subsidiary before it was
11 incorporated, and that was -- occurred in about
12 probably '81 or '82 prior and during the Links
13 construction, if you will. And then my acquisition
14 occurred in 1988 with one other individual.

15 Q Okay. And then how long did it manage the Links?

16 A I sold my company Defender Resort Management. My
17 original partner had moved on ten years prior to
18 that. In 2016 I sold the business to what is now
19 Capital Vacations.

20 Q And is Capital Vacations the current property
21 management company for the Links?

22 A Yes.

23 Q What is your date of birth?

24 A July 19, 1948.

25 Q And your current home address?

1 A 500 15th Avenue South, North Myrtle Beach, 29582.

2 Q Is that in Horry County?

3 A Yes, it is.

4 Q How long have you resided at that address?

5 A Probably '92, '93.

6 Q What is your current marital status?

7 A I'm married.

8 Q And what is your spouse's name?

9 A Rachel Morris McKelvey.

10 Q Does she reside with you?

11 A Yes, she does.

12 Q Do you have any children?

13 A Yes, I do.

14 Q How many?

15 A Four.

16 Q And what are their ages?

17 A Oh, goodness. My oldest is 52; Valerie, my

18 daughter, is 43; my son Jason is 41; my youngest,

19 Gage, is 27.

20 Q Do any of them reside in Horry County?

21 A No, they do not.

22 Q Do you have any relatives by blood or marriage in

23 Horry County?

24 A No, I do not.

25 Q The reason we ask that is in case we have to pick a

1 jury, we don't want to pick your relatives to be on
2 a jury. How far did you get in your education?

3 A I graduated from University of South Carolina.

4 Q What year?

5 A 1971.

6 Q Prior military service?

7 A No.

8 Q What is your current employment status?

9 A I suppose you would call me semi-retired. I -- I do
10 some consulting work and that's -- also I'm an owner
11 in a golf course in Spartanburg County so I'm up
12 there fairly often.

13 Q What golf course?

14 A It's called Palmetto Hills Golf Club. Used to be
15 called Heddles Hideaway.

16 Q How long have you been semi-retired?

17 A Since 2016.

18 Q Okay. And I know we discussed it a little bit but
19 we'll do it again. What were you doing in 2016 when
20 you retired?

21 A What was I doing?

22 Q Yeah. What was your employment?

23 A Oh, I was a CEO of Defender Resorts at the time.

24 Q And how long had you been the owner of Defender
25 Resorts?

1 A Well, it was 1988 is when we acquired it, so 1988 to
2 2016.

3 Q And who acquired Defender Resorts?

4 A Myself and a gentleman Phil Sproule. He was with me
5 until 2005, I think, and he since has passed away
6 about three years ago.

7 Q And what was Defender Resorts in the business of?

8 A Property management, timeshare property management
9 specifically.

10 Q And how many assets did it have in its portfolio?

11 A At the time that I sold we had 29 resorts under
12 management.

13 Q And was one of them the Links --

14 A Yes, it was --

15 Q -- Golf and Racquet Club?

16 A Yes, it was. Technically there's two Links there,
17 two corporations.

18 Q Okay.

19 A There's a Links which is the first 44 units and then
20 the balance of the units, the 112, is called Links
21 2. Just tax reasons it was done, I suppose, by the
22 developer at the time.

23 Q And it's my understanding that both of them are
24 joint owners in the cabana house; is that correct?

25 A Yes, best of my recollection they are. I'm not

1 really exactly sure how its titled, but they are
2 obviously joint owners in practicality anyway.
3 Q Okay. Here's some -- I'm going to give you some
4 definitions for today so it makes it easier for us
5 to discuss. When I use the term property, I'm going
6 to be talking about 200 11th Avenue South in the
7 city of North Myrtle Beach. And then the cabana
8 house would be the beach club that is located on the
9 property, okay?

10 A 211?

11 Q It's 200 11th Avenue South.

12 A Okay.

13 Q Located in the city of North Myrtle Beach, which is
14 where the cabana house is located. So when I use
15 the term property, that's what I'm referring to.
16 Okay?

17 A Right. Okay.

18 Q And if I use the term zoning ordinance or zoning
19 code, I'll use those interchangeably, that's
20 referring to Chapter 23 of the Code of Ordinances
21 for the City of North Myrtle Beach. All right?

22 A Okay.

23 Q Do you know when -- actually, let me do this.

24 MR. TAMASITIS: Let me mark this as Exhibit
25 No. 2.

1 (Defendant's Exhibit No. 2 was marked.)

2 Q Sir, I'll present to you that I've pulled this off
3 the Register of Deeds records for Horry County. By
4 looking at this document, Exhibit No. 2, this
5 quit-claim deed, can you identified when the Links
6 Association acquired the property?

7 A As I recall, the reason that this had to be done was
8 the property had been in the name of one of the
9 individuals that was the Defender Development
10 Corporation. He passed away. His name was B.C.
11 Inabinit, Jr., and I recall that this had to be done
12 in order to properly title it that we actually owned
13 the property. B.C. had a habit of just doing
14 everything out of his pocket and the problem was
15 that he had many, many businesses and sometimes he
16 would put it in their own name. And I'm pretty sure
17 that's why we had to do this.

18 Q And if we look at this Exhibit No. 2, this quit-
19 claim deed, it says here the grantor, which is the
20 seller, is Defender Development Corporation, Inc.
21 Do you see that?

22 A Yes, I see it.

23 Q Okay. Was that your company?

24 A No. No, that was not my company. However, when
25 B.C. passed away in 1983, I was his executor so I

1 was fairly closely connected to it throughout the
2 years.

3 Q And it appears here that based on Exhibit No. 2
4 Defender Development Corporation, Inc., deeded the
5 property to the Links Golf and Racquet Club
6 Homeowners Association, Inc. and the Links Golf and
7 Racquet Club II Homeowners Association, Inc., on
8 July 5th of 2018. Is that correct?

9 A Yes, that's correct.

10 Q And how long, if you know, did Defender Development
11 Corporation own the property?

12 A Just by the date here of 2018, it had to have been
13 probably from the time it was originally acquired
14 from whoever was the owner at that time back in --
15 in the -- probably the mid '80s would be my best
16 guess, maybe as late as early '90s, sometime during
17 that time period, and it was obviously placed in the
18 name of -- who was developing the Links at the time
19 was Defender Development Corporation, and so they
20 put it in the name of the corporation and it just
21 stayed there.

22 Well, about 2018, Defender Development
23 Corporation obviously as a developer wasn't -- had
24 anything to do with the Links because it sold it out
25 many, many years prior to that, and this instrument

1 simply got it out of the name of Defender
2 Development Corporation into the proper owner, the
3 homeowners association.

4 Q Based on your understanding of the chain of title,
5 B.C. Inabinit, Jr. deeded the property on February
6 28, 1983. Does that sound right to you?

7 A Oh, yes. 1983, yeah. What? February of '83?

8 Q In February 28 of 1983 the chain of title says that
9 B.C. Inabinit deeded the property to Defender
10 Development Property Corporation. Does that sound
11 right to you?

12 A Yes, it does.

13 Q Do you know when the special exception was acquired
14 for the cabana house?

15 A No, I do not.

16 Q Okay. Was it prior to July 5th of 2018?

17 A I wouldn't have any knowledge of it one way or the
18 other. I would surmise that it was because it's
19 obviously been used for its purpose right now.

20 Q And maybe that's a better question, is how long has
21 the Links Homeowners Association used the cabana
22 house?

23 A The entire time period. As a matter of fact, the
24 Links Association's contractor at the time built it.
25 And if you would have noticed many years ago,

1 because it changed now, it was actually built so
2 that it appeared like the units at the Links, same
3 kind of outside construction.

4 Q So was it prior to 1983 that it's been using the
5 cabana house?

6 A It probably was. It probably was -- as I said
7 before, in the late, late '70s or early '80s, as
8 B.C. and his partner had began constructing the
9 Links onsite. I'm talking about the condominiums
10 themselves.

11 Q Is the cabana house that's on the property now, is
12 that the only cabana house that's ever been utilized
13 by the association?

14 A Yes.

15 Q Let's discuss the rules governing the use of the
16 cabana house. Do you know who is allowed to access
17 the property in the cabana house?

18 A They have to be -- well, let me clarify. I don't
19 know what the rules are today, but the rules have
20 always been, with respect to the association, that
21 you have to be in residence on property. And
22 because it's got limited parking, obviously you've
23 got to check with the front desk at the Links in
24 order to take a vehicle over there. Or if you want
25 to be transported, that's where you get transported

1 from. There's a van that operates in the wintertime
2 about perhaps as much as three or four times a day;
3 weekends, probably six or seven times a day; in
4 season, literally is driving back and forth almost
5 all the time while it's daylight, I mean.

6 Q When you say you have to be in residence, are guests
7 allowed to use the cabana house?

8 A If they're in residence at the Links. You have to
9 be occupying a unit.

10 Q So you have to be an owner or a renter?

11 A Well, an owner or a renter or an exchanger. Because
12 it's timeshare, we also take exchangers.

13 Q Got it. So if there's a short-term rental of a
14 property in the Links, would those short-term
15 renters be able to use the cabana house?

16 A Yes, as long as they're in residence at the Links.

17 Q Okay. And you say in residence. That just means
18 they're occupying the location for the time?

19 A Yes, because we have some owners obviously that live
20 fairly close, and obviously there's not that much
21 parking there and availability so that's one of the
22 requirements is that you have to be in residence on
23 property in order to use the cabana.

24 Q Is there a fee for renters to use the cabana house?

25 A No.

1 Q Is there a fee for owners to use the cabana house?

2 A No.

3 Q Is there a fee for anyone to utilize the van that
4 transports folks to the cabana house?

5 A To the cabana house?

6 Q Yes.

7 A No.

8 Q Does the association track when and how many people
9 enter the cabana house?

10 A No. It never has to my best recollection.

11 Q You kind of touched on this, but what is the parking
12 situation at the cabana house?

13 A It only has -- I'm not sure exactly, but it's
14 probably in the neighborhood of 10 to 12 parking
15 spaces and there's 112 units so that's the reason we
16 have the van that goes pretty often.

17 Q And you said something about people having to in at
18 the front desk in order to see if they can drive
19 over there?

20 A Yes, because the parking is so limited.

21 Q So the folks at the Links do track who is parking at
22 the cabana house?

23 A That's correct. Yes.

24 Q Okay. And how do they do that?

25 A Because they issue them a parking pass if they want

1 to park at the -- at the cabana.

2 Q What are the restrictions that are in place
3 governing the use of the cabana house?

4 A The use itself is as I said before, is you just have
5 to be in residence at the Links and you're welcome
6 to use it whenever you want to.

7 Q Are you allowed to have parties there?

8 A No.

9 Q Those are the restrictions I'm talking about. So
10 what other types of restrictions are on there? No
11 parties.

12 A You really -- you're not allowed to take anything to
13 the cabana that you don't take back with you
14 whenever you leave it. You can't leave something at
15 the cabana. I do know that we lock it up. When I'm
16 -- was managing, it would be locked up at
17 approximately whenever sundown was officially or
18 when the sun was in fact going down and then it
19 would be reopened the next morning.

20 Q What are the hours of operation?

21 A If it's daylight, we generally -- in the season
22 especially, we normally try to get a maintenance man
23 to go over about there 6:00 or 6:30 to open it
24 because there are some people like to go early.

25 Q Does the association have someone that is onsite at

1 the cabana house during the day?

2 A No.

3 Q Are folks visiting the cabana house allowed to bring
4 food?

5 A As long as it's in their own container like a cooler
6 or something like that, sure.

7 Q Does the association ever host events at the cabana
8 house?

9 A Never have.

10 Q Why not?

11 A Because it's open to all 112 units. It's almost
12 like a, quote/unquote, public-owning. Public, I
13 mean, this is public that's at the Links. If you're
14 occupying the Links, you have every right to be
15 there so you can't really block it off for a
16 particular unit to use it for some kind of an event.

17 Q Right, but has the association ever had like a happy
18 hour or a party there for the association?

19 A Not in my recollection, no.

20 Q Is there a limit on an occupancy number at the
21 cabana house?

22 A No, there really isn't, because it's nothing there
23 except for bathrooms really. I mean, any tables and
24 anything there. It's just a -- it's a facility for
25 people they can take their beach chairs with them to

1 go on the beach or, you know, a cooler with their
2 drinks or sodas or whatever in it. That's about it.

3 Q This might sound like a very basic question, but
4 does the cabana house have beach access?

5 A Oh, yes.

6 Q Does it have like a vending center or refreshment
7 center there?

8 A We've tried that a couple of times. It doesn't
9 work.

10 Q Why not?

11 A Just doesn't make enough money to do anything.
12 Timeshare guys are not going to go over and pay \$2
13 for a Coca-Cola and get them out of the refrigerator
14 and take them with them.

15 Q Is the cabana house managed by a third party? So
16 the -- I guess the association hired, when you were
17 there, Defender to manage the association. Is it
18 also -- was it also your responsibility to manage
19 the cabana house?

20 A That's correct, yes.

21 Q Do you hire third-party maintenance crews?

22 A No. No, because the Links has a fairly good-sized
23 maintenance crew, so the maintenance crew was
24 charged with the maintenance of the property.
25 Housekeeping was charged with the housekeeping of

1 the property, et cetera.

2 Q How about landscaping?

3 A Same.

4 THE WITNESS: Can I get something to drink?

5 Water or anything is fine.

6 BY MR. TAMASITIS:

7 Q And I think you answered this, but who is Capital
8 Vacations Resort Management?

9 A That is the -- presently, and I think the name is
10 Capital Resort -- Capital Resort and Management, LLC
11 III or IV. We got several, but we all know it as
12 Capital Vacations.

13 Q Does the association advertise the cabana house as
14 one of its amenities?

15 A I know that it's on their website, just as for, I
16 guess you call it, like an amenity like a pool. I
17 recall we had -- there's two pools there, one big
18 pool and one that's enclosed. So we put that on and
19 the cabana and stuff like that for people that were
20 coming there, like exchangers that wouldn't really
21 know the property.

22 MR. TAMASITIS: This is Exhibit No. 3.

23 (Defendant's Exhibit No. 3 was marked.)

24 Q Sir, I'm handing you what we're going to mark as No.
25 Exhibit 3 and I pulled this off the Links Resort

1 website at the amenities pages. Is this the page
2 you were talking about?

3 A I thought I saw one that actually had a picture of
4 the cabana but I don't see it here.

5 Q And it could have very well been an issue with my
6 printing.

7 A I recognize the pictures. They're all pictures of
8 certain sections of the Links.

9 Q Yeah. And if you look at the first page here, in
10 the little blurb, it's the fourth sentence, states
11 "If you are planning a trip to the beach, we provide
12 a seasonal May through October shuttle to our beach
13 cabana available for all guests." So that's where
14 the association is making note of the fact that it
15 does have a cabana house?

16 A Yes, it is.

17 Q Does it advertise the cabana house anywhere else?

18 A I really wouldn't know. It's not one of my
19 responsibilities with Capital Vacations so I don't
20 know if they do or they don't.

21 Q While you were part of the property management for
22 the Links, do you know what the purpose was behind
23 advertising the cabana house?

24 A I -- well, when I was -- when I had Defender Resort
25 Management, the purpose of the advertising the

1 cabana house was that, obviously, if you were a
2 prospect coming, i.e. an exchange or renter coming
3 to the property, everybody that comes to Myrtle
4 Beach, first thing they think of obviously is beach.
5 The reason it's called Myrtle Beach. And that was
6 one of the ways we would overcome -- this is not
7 oceanfront obviously -- was that we had a cabana you
8 could go to enjoy the beach. You didn't have to
9 just -- you know, just go to someplace you didn't
10 know where you were going or whatever. It was -- it
11 was a way to try to overcome the lack of beach
12 access that we did not have onsite.

13 Q Do you know if the association advertises the cabana
14 house on Facebook?

15 A I saw a picture of -- and I don't know whether it
16 was Facebook or where it was. I think that Mr. Moss
17 sent me something that -- and I thought it had a
18 picture of the cabana house on there. I don't
19 recall specifically because I had not remembered
20 that they actually promoted the cabana house, but
21 obviously they do. Now, I don't know whether it was
22 Facebook or Trip Advisor or what. I don't know
23 where it was.

24 Q What other amenities does the Links have other than
25 the cabana house?

1 A Well, on the property itself, as I think I
2 mentioned, we have two swimming pools. There's a
3 gymnasium there, small gymnasium, horseshoe pits and
4 that kind of stuff. There's tennis courts.
5 Upstairs, not sure about currently but we used to
6 have a couple of pool tables upstairs in the
7 clubhouse.

8 Q Do you know how many short-term renters during the
9 peak season the Links has on an annual basis?

10 A No. I would just be speculating. I don't really
11 know.

12 Q Are there a lot of short-term renters at the Links?

13 A It depends on your -- your definition of a lot. We
14 never -- in my judgment, we were never,
15 quote/unquote, full of renters, obviously. Because
16 especially in season, you got a lot more owners than
17 anyone else. By owners I mean people that own one
18 week of timeshare and they're on their vacation.
19 They happen to own a week of timeshare to the Links
20 and they're there for their vacation. So especially
21 in the summertime, it's mostly owners. There's a
22 few renters, but obviously that's when people want
23 to be here, so it's pretty much owners. I'd say no
24 less than probably 70 and probably no more than 90
25 percent from mid May to early October are owners.

1 Q Let's do this. How many units are at Links I and
2 Links II total?

3 A Well, there's a total of 112 between the two Links.
4 Links I legally is for the first 44 units, and the
5 reason there's a Links II -- you didn't ask this,
6 sorry.

7 Q It's okay.

8 A Links I, that was an early timeshare, one of the
9 first in Myrtle Beach, and the developers and I too,
10 because I was their accountant, thought the way you
11 did it was you sold 50 weeks out of 52, so Links I
12 only sold 50 weeks in each unit. And we discovered
13 pretty early on that geez, you could sell 51. You
14 only had to keep -- in South Carolina you only had
15 to keep one week for maintenance. So we formulated
16 -- "we," the developers formed Links II so that we
17 could sell 51 weeks instead of 50.

18 Q And so that the total number -- out of that total
19 number, how many are time shares?

20 A They're all time shares.

21 Q All time shares. And under the rules, can you rent
22 out your time share?

23 A Yes.

24 Q And so when you were just talking about that 70
25 percent to 90 percent number, you were saying that

1 the 70 percent and the 90 percent of the owners were
2 occupied, that's part of the timeshare ownership?

3 A Correct, yes.

4 Q Do you know whether the cabana house or the property
5 have ever been involved in a zoning enforcement
6 action brought by the city?

7 A No, not to my knowledge.

8 Q Has the association ever been issued a cease and
9 desist letter by the city with respect to the
10 ownership or use of the cabana house?

11 A No. No.

12 Q Has the association ever been issued a citation by
13 the city with respect to the ownership or use of the
14 cabana house?

15 A Not to my recollection.

16 Q Do you know whether the city has been in contact
17 with the association regarding the lawsuit that
18 we're discussing -- that we're deposing you for
19 today?

20 A No.

21 MR. TAMASITIS: I have no further questions.
22 please answer any questions Mr. Ricard has.

23 EXAMINATION

24 BY MR. RICARD:

25 Q Good morning, sir. My name is Rhett Ricard. I

1 represent the City of North Myrtle Beach in this
2 case. I got just a couple of questions for you I
3 don't think will take too long. Think you testified
4 earlier that you don't know of a particular
5 occupancy limit to the cabana house. Is that your
6 testimony?

7 A Yes.

8 Q Okay. How many people would you say could fit
9 comfortably in the cabana house?

10 A In the cabana itself, not that many. I guess it all
11 depends on what you mean by fit comfortably because
12 there's no furniture on the property. We -- we have
13 on occasion had some vending machines there, but as
14 I stated earlier, that didn't work. We have on
15 occasion would have some chairs and couches there,
16 but that didn't seem to work very well either. My
17 recollection is there's really nothing in there
18 except some benches that are actually built inside
19 the units themselves where one can sit down, if you
20 will. There's not even any appliances there that I
21 know of.

22 Q So what do guests use the cabana house for, the
23 interior of it?

24 A Well, obviously if -- if they're on the beach and it
25 becomes inclement weather, they would go to the

1 cabana house waiting on the van to pick them up.

2 They also would go to the cabana house even in
3 normal times in order to be picked up. If one gets
4 too hot on the beach, they could certainly go to the
5 cabana house. They can -- certainly are welcome to
6 take their cooler inside and eat inside a lunch if
7 they wanted to. Don't know if very many do that or
8 not.

9 Q So when you said that not -- not that many could fit
10 in there, could you kind of ballpark that for me?
11 Are we talking five to ten? Are we talking 20 to
12 30? Are we talking more than 50? What -- as best
13 you can, ballpark it for me.

14 A Probably no more than 20, I would say.

15 Q I've seen the outside of the cabana house and it
16 appears to be somewhat of a two-story structure.

17 A Yes.

18 Q Is there a second floor?

19 A There is a second floor.

20 Q Okay. What's in the second floor?

21 A Same as on the first floor. We -- now, I'm not sure
22 what's there today. I haven't been in the cabana
23 house in ten years, at least, but we had some --
24 call it what you will. Built-in furniture and
25 that's only because, you know, it's situated so you

1 really can't put true upholstery furniture in there,
2 so we'd have some benches and things like that and
3 cushions that you could wipe off that are covered
4 with vinyl and that sort of stuff, just for -- for
5 people to be able to sit down if they wanted to sit
6 down.

7 We owned it -- throughout the years we put
8 refrigerators in there and they wouldn't last or
9 they'd get torn up or whatever because it's not very
10 well policed. Maintenance -- always had difficulty
11 getting maintenance to go up in there and do
12 anything on it because they'd got to get in their
13 truck, take their tools, go over. Same thing on
14 housekeeping. So it was always a little bit of a
15 problem keeping it, you know, well tidied up.

16 Q Okay. Are there any TVs inside the cabana house?

17 A No.

18 Q Are there any speakers inside the cabana house?

19 A I don't know the present time. We never had
20 speakers there while I was there.

21 Q Okay. Any speakers on the exterior of the cabana
22 house?

23 A No, no.

24 Q Why haven't you gone to the cabana house since, you
25 said, ten years or so?

1 A I just never had an occasion to go although it's
2 fairly close to my house. You know, the Links has
3 always had responsible management and so I had no --
4 and I would have no reason to go there as a tourist
5 or to use it for enjoyment or something. I live
6 right up the street, you know.

7 Q Okay. The shuttling services that are provided, can
8 you describe kind of the drop-off point? Is it on
9 -- is it inside the parking lot of the cabana house,
10 adjacent to it?

11 A No, it's inside the parking lot, which is
12 effectively behind the house itself.

13 Q Right. So all the turnaround and entry and exit
14 comes through that parking lot?

15 A Yes.

16 Q Has the Links ever shuttled guests to any other
17 location in North Myrtle Beach?

18 A We have on occasion dropped them -- if some party
19 wanted to go, say, down on Main Street because they
20 were having an event or something. I know on
21 occasion we've done things like that, because -- and
22 the city, when they put on one of their events, it's
23 -- it's well attended normally so parking is
24 difficult, so we would take people down on occasion
25 if the city will have musicians and stuff down on --

1 at the end of Main Street, so we've done that pretty
2 often.

3 Q Okay. What about to any other public access beach
4 points?

5 A Not to my knowledge, no.

6 Q How would a patron of the cabana house access the
7 door? Is there a key pad? Is there a card system?
8 Is there a key system? Help me understand how they
9 access physically.

10 A Well, when I managed the property, there was just a
11 simple doorknob, if you will. It had a padlock
12 which maintenance had the key to and they would lock
13 it up. They'd lock the dead bolt upstairs and
14 downstairs at night and then unlock them in the
15 morning.

16 Q Okay. So a guest couldn't go there and access it by
17 themselves without it having previously been opened
18 by one of the maintenance folks or somebody
19 affiliated with the Links management?

20 A That's correct. Matter of fact, we even -- over the
21 years it's got to where we just put a deadbolt on
22 the inside of it, just blank, there's nothing there,
23 so the only thing you can do, you can't even go
24 inside and lock it. You have to lock it from the
25 outside with a key.

1 Q Okay. When residents want to take the shuttle, do
2 they have to sign any forms to take the shuttle?

3 A In season we generally have a sign-up sheet that has
4 a general time. Unfortunately, in season, we can't
5 really keep up with it because you don't know how
6 long it's going to take to get there and get back.
7 It's brief, but there again, there's traffic and
8 there's no red light when you come out of Link's
9 property, so we would generally -- it's available,
10 but especially like June, July and August, we would
11 ask the guests to sign up so that the people that
12 had been waiting would be the first ones to be
13 served on the van.

14 Q Okay. Other than those months, would there be a
15 sign-up sheet?

16 A No.

17 Q And I can't remember if you said this before or not,
18 but was there some system to track who was parking
19 onsite at the cabana house?

20 A Yes. And I don't know about now, but we used to
21 have the signage over there, and the parking lot
22 would have to be policed because there's only, I
23 don't know, 10 or 12 spaces there. And you had to
24 go to the Links clubhouse and get a parking
25 certificate, if you will, to display on your vehicle

1 if you wanted to take your vehicle over to park
2 there. Same thing if you're parking onsite at the
3 Links, you have to have a parking pass.

4 Q Okay. So my next question concerns both those two
5 methods of transportation to the Links, both the
6 taking your own personal vehicle and taking a
7 shuttle bus. Does Links keep records of any of that
8 stuff, the sign-up sheets or the parking
9 certificates that are issued, any records that are
10 kept and maintained by the Links that would track
11 the number of people going to the cabana house?

12 A No, sir, I don't think so. It really was never a
13 problem except for in season, the number of people
14 that wanted to drive their car over there, because
15 as I say, there's limited parking. So we had to,
16 you know, at least restrict the parking. We tried
17 not to restrict the people that wanted to go to the
18 cabana, and for the most part it sort of worked
19 itself out. I think there may have been a few minor
20 occasions when people would try to have a reunion,
21 if you will, and if they said -- there were some
22 owners, their families owned a lot of units at the
23 Links at the same time, and that would become a
24 problem, especially if they wanted to have some sort
25 of a dinner or something, because the other people

1 would feel like they're barging on someone's own
2 time, so we tried to restrict that. I'm sure that
3 it did happen occasionally.

4 We got a complaint once in a while from that,
5 that they felt like it was some private function
6 going on there when it was supposed to be open to
7 anybody that was at the Links at the time that was
8 in residence, but it was very brief. Didn't happen
9 very often.

10 Q Okay. And the complaint would be from another owner
11 just wanting to be able to use the cabana house?

12 A Yes, yes. Felt like they -- they were -- you know,
13 they was being -- something was private over there
14 and there wasn't. I mean, it was private from the
15 standpoint it was private for the Links, but
16 everybody at the Links had just as much entitlement
17 as anyone else.

18 Q Any complaints from neighbors of the cabana house
19 about guests using the Links cabana house?

20 A I don't ever recall one.

21 Q Okay. So the sign-up sheets and the parking
22 certificates, those have all been thrown away? They
23 wouldn't have been kept?

24 A At the end of the day I'm sure they were generally
25 put in the trash. And the only thing we were trying

1 to do is in mid morning to mid afternoon in season,
2 try to at least have some control over how many
3 people were trying to get there at one time.

4 Q Just bear with me one moment, sir.

5 MR. RICARD: All right. Thank you, sir. I
6 don't have any further questions for you.

7 MR. TAMASITIS: Neither do I. You're done.

8 (This deposition was concluded 10:36 a.m.)

9 (*This transcript may contain quoted
10 material. Such material is reproduced as read or
11 quoted by the speaker.)

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22 MICHELE E. STARKEY, Notary
Public for South Carolina
My Commission expires September 17, 2031.

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF HORRY CA NO. 2021-CP-26-07489
3 _____ :
4 CITY OF NORTH MYRTLE BEACH, :
Plaintiff :
5 vs. :
6 SUN TRS OCEAN CLUB, LLC; SUN TRS :
CAROLINA PINES, LLC; and SUN TRS :
7 CAROLINA PINES RV, LLC, :
Defendants :
8 _____ :

9

10

11 DEPOSITION OF: Tidewater Plantation Community Association,
Inc.'s 30(b)(6) designee CATHERINE S. WEIS

12

DATE: Monday, May 15, 2023

13

TIME: 4 p.m. to 4:35 p.m.

14

LOCATION: 2000 Spinnaker Drive, North Myrtle Beach
South Carolina, 29582

15

16

17

Volume: 1
Pages: 1-29
Exhibits: 5

18

19

Christine E. Borrelli, RPR, RMR

20

21

22

23

24

25

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14 * * * * *

15 I N D E X

16 WITNESS DIRECT CROSS REDIRECT RECROSS

17 Catherine S. Weis

18 By Mr. Tamasitis 3

19 By Mr. Ricard 23

20 EXHIBIT PAGE:

21 Defendant's Exhibit 1, Notice with Attached Subpoena .. 6

22 Defendant's Exhibit 2, Limited Warranty/Indenture Deed 10

23 Defendant's Exhibit 3, Rules and Regulations Manual ... 11

24 Defendant's Exhibit 4, Website Information 17

25 Defendant's Exhibit 5, Our Neighborhoods Website 19

STIPULATIONS

3 It is stipulated by and between counsel for the
4 respective parties that all objections are reserved until the
5 time of trial, except as to the form of the question.

6 This deposition is being taken pursuant to Rule 30
7 of the South Carolina Rules of Civil Procedure to be used for
8 all purposes allowed.

9 The reading and signing of this deposition is
10 reserved by the deponent and counsel for the respective
11 parties.

12 * * * * *

13 Tidwater Plantation Community Association, Inc.,
14 30(b)(6) designee CATHERINE S. WEIS, having first been duly
15 sworn by the Notary, testifies as follows:

16 DIRECT EXAMINATION BY MR. TAMASITIS:

17 Q. Morning, Ms. Weis. My name is John Tamasitis, and I
18 represent Sun TRS Ocean Club, LLC, Sun TRS Carolina Pines,
19 LLC, and Sun TRS Carolina Pines RV, LLC, in a lawsuit brought
20 against them by the City of North Myrtle Beach related to a
21 zoning issue and a cabana house. We have subpoenaed the
22 Tidewater Plantation Community Association for its deposition.
23 Can you please state your full name for the record?

24 A. Catherine S. Weis.

25 Q. And, Ms. Weis, have you ever had your deposition taken



1 before?

2 A. No.

3 Q. Okay. So what I'm going to do is I'm going to go through
4 some ground rules today, and the court has some rules I have
5 to provide, and I also have some things I want to cover just
6 so we have a clear record for the court reporter.

7 A. Sure.

8 Q. Please understand that you're under oath and that
9 everything you say today will be taken down by our court
10 reporter. I'd like you to do a couple of things. First,
11 please answer with a yes or a no or I don't know when
12 appropriate other than nodding your head or saying uh-huh or
13 uh-uh, and that's just so we have a clean record.

14 A. Sure.

15 Q. It's easy for her to take down yeses and nos. It's much
16 more difficult to take down head nods. I also want you to
17 understand that none of my questions are intended to trick
18 you, but sometimes I do often ask poor questions. If I ask a
19 question that confuses you or you don't understand, please ask
20 me to repeat or rephrase the question. Okay?

21 A. Okay.

22 Q. And if you need any clarifications, definitions, or
23 explanations of any of my questions or words that I use or
24 documents presented during the course of this deposition,
25 please ask me rather than your attorney. Okay?

1 A. Okay.

2 Q. All right. If you need -- if you answer a question, I
3 will assume you understood it; is that fair?

4 A. Yes.

5 Q. Okay. Finally, if you need to take a break at any time,
6 just let me know.

7 A. Okay.

8 Q. If you need to use the restroom, if you just need a
9 mental break, that's fine. This is not an interrogation. I'm
10 going to go try to be brief today, but if you do need a break,
11 just take one, and just let me know. Okay?

12 A. Okay.

13 Q. All right. Are you under any disability, alcohol, drugs,
14 or any medications today?

15 A. No.

16 Q. Okay. You have been identified as a designated
17 representative for the Tidewater Plantation Community
18 Association. Obviously, I cannot depose an association like I
19 can an individual. So our rules allow me to send a list of
20 topics to your attorney and then the association will provide
21 individuals to testify about each topic. Do you understand
22 that you're the association's representative today to testify
23 on behalf of the association?

24 A. I do.

25 Q. Do you understand that the association has designated you

1 as its corporate representative?

2 A. Yes.

3 Q. Do you understand that the testimony you give today is
4 not your own individual testimony, but it's the testimony of
5 the association and is binding on the association?

6 A. Yes.

7 Q. Okay. So when I ask you a question, I'm asking a
8 question of the association, not you in your personal
9 individual capacity, except for some background questions I'm
10 going to ask you. All right?

11 A. Okay.

12 MR. TAMASITIS: Let me hand you what we're going to
13 mark as Exhibit Number 1.

14 (Defendant's Exhibit 1, Notice with Attached
15 Subpoena, marked for identification)

16 MR. TAMASITIS: And for Sean, who is watching, this
17 is a copy of the subpoena and the Notice of Deposition
18 and topics that I provided.

19 Q. (By Mr. Tamasitis) Have you seen the topics that I have
20 provided to the association's attorneys that I plan to ask
21 questions about today?

22 A. I have.

23 Q. At the outset, are there any topics identified that you
24 do not feel comfortable testifying to on behalf of the
25 association?

1 A. No.

2 Q. Okay. What did you do to prepare for today's deposition?

3 A. Well, I went through our convenance, and I pulled out
4 everything that had to do with our beach cabana, and then I
5 went to our rules and regs and I got all our rules and regs
6 that are in relation to the beach cabana, and I also have a
7 copy of our deed for the beach cabana.

8 Q. And who provided you that information?

9 A. I provided all of it except the deed. Sean provided it
10 to me.

11 Q. Okay, great. So let me go through some real quick
12 background questions. I hate asking this one, but what is
13 your date of birth?

14 A. March 20, 1948.

15 Q. What is your current home address?

16 A. 5004 Bucks Bluff Drive, North Myrtle Beach 29582.

17 Q. Is that in Horry County?

18 A. It is in Horry county.

19 Q. Have long have you resided at that address?

20 A. Almost 11 years. In July it will be 11 years.

21 Q. And what is your current marital status?

22 A. I'm married.

23 Q. Okay. What is your spouse's name?

24 A. Timothy Charles Weis.

25 Q. What is his occupation?

1 A. Well, we're both retired.

2 Q. Do you have any children?

3 A. Oh, yes.

4 Q. How many?

5 A. Two.

6 Q. Okay. What are their ages?

7 A. Let's see. I think my oldest will be 54 in September, so
8 he's 53. And the youngest is 51.

9 Q. Do both of them live in Horry County?

10 A. No, the oldest lives in North Carolina. The youngest in
11 Maryland.

12 Q. Do you have any relatives by blood or marriage in Horry
13 County?

14 A. No.

15 Q. The reason why ask that is in case we have to pick a
16 jury, we obviously --

17 A. Sure.

18 Q. -- don't want to pick one of your relatives. Really
19 quickly on your education, how far did you go in school?

20 A. Well, it's interesting. I got an MBA from Loyola
21 University in Maryland, but I got it without getting the
22 undergraduate degree. So it's a little bit of a story, but I
23 got that MBA.

24 Q. What year?

25 A. What year? I think I graduated in '88.

1 Q. And --

2 A. My employer put me through there, Citibank.

3 Q. Oh, okay. Other than the association, are you involved
4 in any other civic organizations?

5 A. No, this keeps me busy.

6 Q. Can you give me a quick rundown of your employment status
7 and history for the last ten years?

8 A. For the last then years, I've been retired.

9 Q. Okay. And in your current position right now, what is
10 your title?

11 A. I am the president of the homeowner's association. I
12 have been on the Tidewater board -- this is my eighth year on
13 the board, my seventh year as president.

14 Q. Have you been on any boards of any other homeowner's
15 associations?

16 A. No.

17 Q. Okay. And what did you do prior to retiring?

18 A. I worked in the credit card industry. It started off
19 with a small local bank in Maryland. And Citibank came to
20 town, and they recruited me, and I went to work for them and
21 worked there for 17 years. And then a couple other places,
22 AT&T Capital, and then a company called Metrus Companies, and
23 then I went to work for Mastercard, and I retired from
24 Mastercard.

25 Q. In what year did you retire?

1 A. 2010.

2 Q. I'm going to use some definitions today. When I say
3 "property," I'm referring to 5710 North Ocean Boulevard --

4 A. Right.

5 Q. -- in North Myrtle Beach. When I say "cabana house" or
6 "beach club," it's the building that's located --

7 A. Right.

8 Q. -- on that property. Okay? And then if I say -- if I
9 use the term "zoning ordinance" or "zoning code," I may use
10 them interchangeably, that's the zoning ordinance for the City
11 of North Myrtle Beach?

12 A. Okay.

13 MR. TAMASITIS: We are going mark this as Exhibit
14 Number 2. Sean, this is the Limited Warranty and
15 Indenture Deed.

16 (Defendant's Exhibit 2, Limited Warranty/Indenture
17 Deed, marked for identification)

18 Q. (By Mr. Tamasitis) And Mrs. Weis, I'm going to ask you
19 some questions about this -- related to this document, but do
20 you recognize this document?

21 A. I do.

22 Q. And can you tell me what it is?

23 A. It's the deed for the beach cabana for Tidewater.

24 Q. And this is when Tidewater purchased the beach cabana?

25 A. Yes. I think it's 1997, wasn't it? And -- yes.

1 Q. And who did the association purchase the property and the
2 beach cabana from?

3 A. Southern Land & Golf.

4 Q. Was Southern Land & Golf the developer of Tidewater --

5 A. Yes.

6 Q. -- Plantation?

7 A. They're still the owner of the golf course.

8 Q. And it's my understanding that Tidewater Plantation was
9 actually the first cabana house in North Myrtle Beach; is that
10 correct?

11 A. I don't know that.

12 Q. Okay. Do you know if the association was the impetus for
13 the City creating the cabana house special exception to the
14 zoning ordinance?

15 A. I don't know that.

16 Q. What involvement, if you know, did the association have
17 in drafting the cabana house special exception for the zoning
18 ordinance?

19 A. I have no idea.

20 Q. Is this -- the property we're referring to today, is this
21 the only cabana house ever owned by Tidewater?

22 A. I believe so.

23 MR. TAMASITIS: I'll mark this as Exhibit Number 3.

24 Sean, this is the Property Owner's Rules and Regulations
25 Manual.

1 (Defendant's Exhibit 3, Rules & Regulations
2 Manual, marked for identification)

3 Q. (By Mr. Tamasitis) Mrs. Weis, do you recognize the
4 document I just provided to you?

5 A. Yes.

6 Q. And what is it?

7 A. The Tidewater Property Owner's Rules and Regulations
8 Manual.

9 Q. Okay. And if you can just flip through this for me,
10 please, I'm going to ask you some questions about it.

11 A. Oh, it's not the same page as my page.

12 Q. Okay. Do you know who created this document?

13 A. Yes. We have a committee, a Rules and Regulations
14 Committee, and they report up to the board. And from the very
15 beginning when -- I'm not sure. I think that it was first
16 put -- it may have been put together before this day. But in
17 2015, the developer turned over the association -- turned over
18 the property to the association. And I know the Rules and
19 Regulations Committee did a whole thing then. I'm not sure if
20 they -- I imagine they developed it prior to that when the
21 developer was still in charge, but I'm not certain.

22 Q. And when you're referring to "the property," you're
23 referring to the property where the cabana house is located?

24 A. No. I'm referring to Tidewater Association, the
25 Tidewater community.

1 Q. Okay, great. And we've established already that
2 Tidewater Plantation Community Association has owned the
3 property since 1997; is that right?

4 A. Yes.

5 Q. Okay. If you look through this, is this a fair and
6 accurate copy of the Property Owner's Rules and Regulations
7 Manual?

8 A. It looks like it is. It looks like it's the same thing I
9 have here. We update it periodically and get them registered
10 with the county. And I'm sure this must be the latest
11 version, is it not?

12 Q. What is the date on this one?

13 A. Revised October 20, 2022. So it certainly is the latest
14 version, yeah.

15 Q. Okay. Let's discuss the rules governing the use of the
16 cabana house.

17 A. Okay.

18 Q. Who was allowed to access the property and the cabana
19 house?

20 A. Any resident who has -- is an owner here.

21 Q. How about any of the owner's guests?

22 A. The guests are, too, if they're registered.

23 Q. What do you mean by "registered"?

24 A. Well, if you have people visiting, we ask that you
25 register, and they're to be beach -- allowed at the beach

1 cabana, we ask that you register them with the management
2 company, and most certainly put them in -- our access control
3 system is called Gatehouse. And you designate a person -- for
4 example, all of my kids, they're not only permanent guests,
5 but they're beach house guests so that they're already in the
6 system. Now, we have had -- well, you didn't ask me that so
7 I'll just --

8 Q. No. You can go ahead.

9 A. We have an access gate at the beach cabana as well as our
10 additional -- our additional auxiliary park. We have an
11 access gate, you have to have an RFID on your car to get in
12 there. And prior to us having the access gate, we used to
13 always have a guard located over there in the summertime, and
14 they would check people in. We don't bother having the guard
15 there anymore because they have everything on camera. They
16 have a whole bank of cameras in their guard shack, and they
17 monitor the beach house. But because it requires an RFID to
18 open the gate, we don't require the -- it was a temporary
19 guard we hired every summer, and we haven't been doing that.
20 We didn't do it last year, really, for the first time.

21 Q. Going back to the registered guests, are renters of
22 properties in Tidewater Plantation allowed to be registered
23 guests?

24 A. No.

25 Q. No? Is there a specific rule that states that?

1 A. Yes. Renters are allowed to use -- long-term renters are
2 allowed to use facilities like our tennis courts or fitness
3 club, one of our pools, the community pool. Renters don't
4 have RFIDs on their vehicles. They wouldn't be able to get
5 into the beach cabana --

6 Q. And that includes --

7 A. -- unless they were a guest of somebody else.

8 Q. Okay. So long-term renters don't get the RFID?

9 A. No. Well, let me clarify that. Long-term rentals
10 meaning like -- for example, we have a rule that you have
11 to -- for single-family homes -- has to be no less than three
12 months, long-term renters. No, they don't get an RFID. I
13 stand by my statement.

14 Q. What if someone rented for two years?

15 A. I think that they do get RFIDs if they're renting for two
16 years. I'd have to double check that.

17 Q. But there is a cutoff somewhere?

18 A. (Witness nodding).

19 Q. Is that a yes?

20 A. Yes, I'm sorry.

21 Q. That's okay. What restrictions are in place governing
22 the use of the cabana house?

23 A. Well, it's open certain hours of the day, and in the
24 summertime, it's longer. It's usually 6:00 in the morning
25 until about midnight. The guards go over and make sure it's

1 open, make sure it's closed at night when they do their
2 rounds. As I said, there are cameraed. So they're watching
3 it anyway on their bank of cameras. Residents can go there
4 and have dinner. We have happy hours there. We have lots of
5 things there. And the only restrictions are really that
6 people who are not residents or residents' guests cannot use
7 the cabana.

8 Q. And what is the reason for that restriction, do you know?

9 A. Well, it's really because it's a Tidewater amenity, and
10 it's just not big enough to handle a lot of other people.

11 Q. And I should have done this before, if you turn to
12 page 26 on Exhibit 3 under Subsection F, it has "Beach Cabana
13 House." Are these the general rules governing the beach
14 cabana house?

15 A. Yes.

16 Q. And you said something about happy hours. Are food and
17 drinks served at those events, during those events?

18 A. Sure. Well, people usually bring food to share, and they
19 brings their own drinks. It's not served by us. They bring
20 their own drinks.

21 Q. Okay. Is there any fee associated --

22 A. No.

23 Q. -- with using the cabana house? Does the cabana house
24 for Tidewater have beach access?

25 A. Yes.

1 Q. It does?

2 A. Well, it's public. It's actually North Myrtle Beach's
3 access. We have a gate that goes to the public access, right
4 out to the beach.

5 Q. And is the cabana house managed by the association, or is
6 there a third party hired to manage it?

7 A. Well, when I say the association manages it, we have a
8 management company, First Service Residential. And within
9 that, we have a maintenance crew, and they take care of the
10 maintenance and cleaning and so forth.

11 Q. And are the security guards hired by First Service
12 Residential as well?

13 A. The security guards are a hired by the association.
14 That's Allied Security. Just like the management company, the
15 security guards report to the association.

16 Q. Does the association advertise the cabana house?

17 A. No.

18 Q. Okay.

19 A. Now, people who are selling their homes, their real
20 estate agents, or they themselves, may promote the cabana
21 because it's a wonderful amenity, but we don't personally, as
22 an association, advertise it.

23 (Defendant's Exhibit 4, Website information,
24 marked for identification)

25 Q. (By Mr. Tamasitis) All right. I'm going to hand you

1 what has been marked as Exhibit Number 4.

2 Sean, this is the TidewaterVilla.com website.

3 MR. O'CONNOR: Gotcha.

4 Q. (By Mr. Tamasitis) I'll represent to you that I pulled
5 this off of the TidewaterVilla.com/oceanresort website.

6 A. What is Tidewater Villa?

7 Q. That's what I wanted to ask you a question about. And I
8 pulled this on May 10, 2023. Are you familiar with this
9 website?

10 A. No. Name of the website is Tidewater.com --

11 Q. Yes, ma'am.

12 A. -- oceanresorts? I'm not familiar with it.

13 Q. And is that, in the bottom right-hand corner, a photo of
14 the Tidewater Plantation --

15 A. It is.

16 Q. -- cabana house?

17 A. Uh-huh.

18 Q. And if you go to the second full sentence -- it's "Ocean
19 resort features of our Tidewater Villa." That second full
20 sentence says, "The Tidewater Plantation actually
21 owns/operates" -- I think it's supposed to say "in" --

22 A. Uh-huh.

23 Q. -- "oceanfront property called a cabana, but is only
24 accessible to the property owners themselves." So that's
25 consistent with your --

1 A. That's true.

2 Q. -- previous assessment; correct?

3 A. Uh-huh.

4 Q. Okay. And I think I might have interrupted you. You
5 said that some of the homeowners will advertise?

6 A. I said we don't advertise it at all, but I'm sure -- I
7 know that I have seen -- and I'm sure when people are selling
8 their homes, they promote the fact that we have this wonderful
9 amenity. It is the most popular amenity we have.

10 Q. So it's a selling point; is that fair to say?

11 A. That's what I'm saying, yes.

12 MR. TAMASITIS: This will be marked as Exhibit
13 Number 5.

14 (Defendant's Exhibit 5, Our Neighborhoods Website,
15 marked for identification)

16 MR. TAMASITIS: Sean, this is the Our Neighborhoods
17 website.

18 MR. O'CONNOR: Gotcha.

19 Q. (By Mr. Tamasitis) And I will apologize. I could not
20 for the life of me figure out a way to get these photos to
21 populate. Shockingly, the one that did populate was the
22 private beach cabana photo.

23 A. Well, wasn't that convenient.

24 Q. Yes. But I will represent to you that I pulled this from
25 the TidewaterPlantation.org website on Our Neighborhoods. Are

1 you familiar with this website?

2 A. I'm very familiar with it. We're not using it anymore.

3 Q. And why are you not using it?

4 A. Well, just because we moved over to First Services
5 Website Connect, and -- this still exists. And the public,
6 like yourself, can get into this without signing in and see
7 amenities, and we left it that way. And, as a matter of fact,
8 the only updating we do at all for this is our monthly
9 newsletter, and that's only because my husband, who happens to
10 sell the advertising for the newsletter, likes to tell his
11 clients, You want to take a look at them, you know, go to
12 this website, and they can see it without signing in.

13 But the new website that we're trying to move
14 everyone over to requires you to set up an account and sign
15 in. So this is very dated. And if you could have pulled up
16 all the pictures, a lot of them are very dated. But you
17 wouldn't even know that because you don't know the people in
18 them, so ...

19 Q. So this is the old website --

20 A. Yes.

21 Q. -- for the homeowner's association?

22 A. Yes.

23 Q. Okay. And when did that change?

24 A. Well, we just moved over to the new website in the past
25 year. I would say it hasn't even been a full year yet. We're

1 still trying to get people to move over. And we're not going
2 to, like, eliminate this because, like I said, the public can
3 still look at it, and it still sells Tidewater, so that's
4 fine.

5 Q. That was going to be my next question, what was the
6 purpose of having this website be front facing and not having
7 a login?

8 A. And I suppose the purpose -- and I wasn't here when it
9 was first built, but I suppose the purpose was to promote our
10 neighborhood and our community and all the amenities.

11 Q. Okay. And then on the second page, like I said, the
12 private beach cabana is promoted on there?

13 A. Uh-huh.

14 Q. Is that yes?

15 A. Yes, sorry.

16 Q. Are there any brochures that are handed out to
17 prospective property purchasers?

18 A. No, not anymore. I mean, back in the day when we bought
19 our property, there was. We bought or property in 1998 and
20 didn't built on it for a while. But that was when the
21 developer still was in control and selling. We don't have any
22 brochures now, other than you walk into the office, there may
23 be a stack of the most current newsletter. And if you want to
24 call that promotion, that's about it.

25 Q. Okay. Turning to a different topic, has the cabana house

1 ever been involved in a zoning ordinance enforcement action
2 brought by the City that you're aware of?

3 A. Not that I'm aware of.

4 Q. Has the association ever been issued a cease and desist
5 letter by the City?

6 A. Not that I'm aware of.

7 Q. Has the association been issued a warning from the City
8 with respect to ownership or use of the cabana house?

9 A. No.

10 Q. Has the City been in contact with the association
11 regarding this lawsuit?

12 A. No.

13 Q. And I don't know if I have asked you this already, does
14 Tidewater have any events at the cabana house?

15 A. Yes. Like I said, we have happy hours. That's the only,
16 so to speak, sponsored one. When I say "sponsored one," we
17 have a lot of committees. One of our committees is the
18 Recreation Committee, and they have various events. And from
19 May to about October, the first Friday of every month, we have
20 a happy hour, and it goes from 6:00 to 8:00. People -- like I
21 said before, people bring dishes to share and whatever they're
22 going to drink on their own. And it's a way to meet people
23 and, you know, sometimes there's a game or two. But like we
24 had Cinco de Mayo, and there was the pinata, you know? That
25 was about it.

1 Q. And is that broadcasted, like, over the newsletter?

2 A. Well, we'll send email blasts out, and we put it in the
3 newsletter. And other events -- really, I can't think of any
4 others at the beach cabana. Other events, sometimes people
5 have to sign up for them because they need a count because it
6 might be at our amenity center. But for the beach, it's
7 usually just the happy hours.

8 Q. Are there any questions that I have asked that you want
9 to change your answer to or that you have had some time to
10 think about?

11 A. I don't think so. I wasn't around here in 1997. We
12 bought our property in '98, and I didn't really get involved
13 until about 2011. So, things happened before then. I'm
14 not -- you know, I'm not completely aware of that.

15 Q. Okay, great. Well, I don't have any further questions.
16 So if Mr. Ricard does, please answer his questions.

17 A. Sure.

18 CROSS-EXAMINATION BY MR. RICARD:

19 Q. I just have a couple, ma'am. Again, my name is Rhett
20 Ricard. I represent the City of North Myrtle Beach in this
21 case. Does the association shuttle any guests or residents of
22 Tidewater to the cabana house?

23 A. Shuttle them?

24 Q. Correct.

25 A. No. There's been lots of discussion about that back --

1 it sort of comes up at every -- almost every year, but we
2 don't have any service like that.

3 Q. Okay.

4 MR. O'CONNOR: Would you able to move the microphone
5 closer to counsel so I can hear his questions?

6 Q. (By Mr. Ricard) Does the association keep any metrics on
7 how many guests or residents use the cabana house on a daily
8 or monthly basis?

9 A. I'm sure we could. We don't track it, I'll say that
10 right up front. But I'm sure if we needed to know a count, we
11 could probably get it from our access control system because
12 people going in with their vehicles, the RFID raises the gate.
13 But even then, there could be four or six people in the car,
14 and you wouldn't know. So I guess the answer is no, really.

15 Q. Okay. Does the association maintain those RFD --

16 A. RFID.

17 Q. -- RFID accesses?

18 A. They're maintained for a short period of time. It's not
19 kept forever.

20 Q. Okay. Do you know how long they're kept for? And if you
21 don't, that's fine.

22 A. I don't, and I don't think it's very long. I was just
23 having a discussion about that for another reason, not at the
24 beach cabana, and there wasn't any record.

25 Q. Okay. The happy hours that you said -- I think you used

1 the term "sponsored." What all do you mean by the term
2 "sponsored"?

3 A. Well, that it is something that the association has
4 invited residents to join in. It's free, but it is put on by
5 our recreation committee. So it is advertised via email blast
6 and our newsletter. Anybody can just go over. It doesn't
7 require signing up, again, as long as you're a resident, an
8 owner.

9 Q. Does the association pay for anything associated with
10 those happy hour events?

11 A. Actually, no, not for the happy hour events. Again --
12 well, I guess there could be. See, the recreation committee
13 has a small subsidy every year. They get a small subsidy from
14 the association. And most of their events they actually
15 charge, you know, so they can pay the bands and this and that.
16 For the happy hours at the beach, there's really nothing to
17 pay for because everybody brings the food and brings their own
18 drinks.

19 Q. If you had to ballpark, kind of on average, how many
20 people attend those happy hours?

21 A. Well, the first one of the season was last May 5th, and
22 we had 70 people, 72, I think were there.

23 Q. Do you recall from last year how many people attended?

24 A. I think the most I've ever seen -- I don't think it quite
25 got up to 100. I think the most I've ever seen was 100, and

1 sometimes we've only had 40. It depends. It depends on
2 weather. It depends on the time of year.

3 Q. Just bear with me. Okay?

4 A. Sure.

5 Q. Do you know the -- is there any capacity limits to the
6 cabana house that you're aware of?

7 A. Well, I think there is some capacity. I'm not aware of
8 what it is in terms of what the building will hold, but I'm
9 not clear on what that is.

10 Q. Okay. Is 72 to 100 people even approaching the capacity
11 limits for the cabana house?

12 A. I don't know.

13 Q. Would that be the responsibility of the recreation
14 committee to look into?

15 A. Yes, and it's probably the responsibility of the
16 facilities director to let us know if that's an issue.

17 Q. What other amenities does Tidewater have other than the
18 cabana house?

19 A. We have five swimming pools. We have tennis and pickle
20 ball. We have a fitness center. And we have an amenity
21 center in which have we hold a lot of events, like parties,
22 for example, New Year's Eve, St. Patrick's day parties, that
23 kind of thing.

24 Q. How are those events attended size-wise? Could you give
25 a comparison of numbers?

1 A. Well, we're actually going to be renovating that amenity
2 center, and it's because of the size. When we have a dinner
3 dance, we can't have more than about 110 people in there when
4 you have a band and also food and everything. And so we are
5 enlarging -- we're going to renovate the amenity center to
6 make it almost double that amount. And so I guess that
7 answers your question, right now. If I were to have a
8 community meeting and everybody came, you could fit chair --
9 for people just sitting in there and standing in the back, you
10 might be able to fit 200 people, but not for a dinner dance.

11 Q. Okay. How often are dinner dances held?

12 A. We probably have about six a year.

13 Q. Those amenities that you just described, would you say
14 that they are all popular, or not so much?

15 A. I think that they're all pretty popular. The most
16 popular one we have is the beach cabana. And the tennis
17 courts are very popular, but it's a small -- when I say
18 "small," when you think about 1,100 units here and over 2,000
19 people, it's a small group of people, small percentage of
20 people that use it, but they're completely used up and filled,
21 so that's very popular. And all our swimming pools are well
22 attended.

23 Q. What accounts for your assessment that the cabana house
24 is more popular than the other amenities you described?

25 A. Well, we did a needs assessment in 2019, and there might

1 have been some done prior to that, but the most recent one was
2 2019. And the questions asked about the various amenities and
3 how much people use them. The amenity center was the most --
4 I mean, the beach cabana was the most used one.

5 Q. So that was like a survey?

6 A. Yes.

7 Q. Okay. So it was self-reporting by residents?

8 A. Yes.

9 MR. RICARD: Okay. Ma'am, I don't think I have any
10 other questions for you. Thank you.

11 MR. TAMASITIS: Sean?

12 MR. O'CONNOR: Yes?

13 MR. TAMASITIS: Do you have any?

14 MR. O'CONNOR: Say again?

15 MR. TAMASITIS: Do you have any questions?

16 MR. O'CONNOR: No. I do not have any questions.

17 MR. TAMASITIS: Ma'am, you're all done.

18 COURT REPORTER: Attorney Ricard, would you like a
19 copy of this transcript as well?

20 MR. RICARD: Yes.

21

22 (Deposition concluded at 4:35 p.m.)

23

24

25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF HORRY)

4 I, Christine E. Borrelli, Registered Merit Reporter
5 and Certified Court Reporter, a Notary Public, in and for the
6 State of South Carolina-at-Large, do certify that the
7 deposition of Tidewater Plantation Community Association,
8 Inc.'s 30(b)(6) designee CATHERINE S. WEIS, taken on Monday,
9 May 15, 2023, was stenographically reported by me; that the
10 transcript produced by me is a true and accurate record of the
11 proceedings; that I am neither counsel for, related to, nor
12 employed by any of the parties to the above action; and
13 further that I am not a relative or employee of any attorney
14 or counsel employed by the parties thereto, nor financially or
15 otherwise interested in the outcome of the action.

16 Witness my hand this 17th day of May, 2023.

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Christine E. Borrelli
Notary Public for South Carolina
My Commission Expires 8/12/2032



June 18, 2007

Ben Powell
PO Box 750
North Myrtle Beach, SC 29597

Dear Mr. Powell,

The North Myrtle Beach Board of Zoning Appeals met on June 14, 2007 to hear and decide on two applications submitted by you for special exception #SE3-07 and #SE4-07. Special exception #SE3-07 was to create an amenity area for storage of RVs and boats for your new subdivision Seabrook Plantation and special exception #SE4-07 was for an oceanfront cabana house for Seabrook Plantation in the R-4 (Resort Residential) district to be located at 1814 North Ocean Boulevard.

This letter is notification to you that the Board voted to approve both of these requests for special exception. The specific finding of fact on the RV and boat storage area was that this property abuts commercially zoned property and it is very well screened from the proposed lots that will be platted upon recording of a final plat. The specific findings of fact for the oceanfront cabana was that the design of the building is similar to a single-family house, the use of the building will be according to the limitations contained in the Zoning Ordinance and the parking meets and exceeds the minimum requirement of the code.

If you have any questions on either of these two cases please call me at 280-5565.

Sincerely,

Paul Blust
Zoning Administrator

Respondent Ex 5
Carolina Pines RV Park Reservations and Guest
List Summary Excel Spreadsheet

Page Number 2616

*(refer to native format produced in OneDrive
email to Court of Appeals)*

Prepared By: McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A.

DEED TO REAL ESTATE

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

KNOW ALL MEN BY THESE PRESENTS,

That it, PAN, LLC, in the State aforesaid for and in consideration of the sum of THREE MILLION DOLLARS 00/100 (\$3,000,000.00) to it paid by NMB Oceanclub, LLC, 1006 6th Avenue South, North Myrtle Beach, SC 29582, in the State aforesaid, (Receipt whereof is hereby acknowledged) have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said NMB Oceanclub, LLC (hereinafter referred to as "Grantee"), its Successors and/or Assigns the following described property to wit:

ALL AND SINGULAR, all that certain piece, parcel or lot of land containing one (1) lot on Ocean Boulevard, North Myrtle Beach, South Carolina, as is shown and represented as Block 18-A on a map of Blocks 18, 18-A and 19, Tilghman Estates, prepared by C.B. Berry, R.L.S., dated July 19, 1979 and recorded in Deed Book 663 at Page 847, records of Horry County, South Carolina.

TMS # 144-08-11-005

Being the same lands and premises as were conveyed to Grantor by Deed from Tilghman Estates, a South Carolina General Partnership, dated April 28, 1973, as amended dated March 28, 2005 and recorded in Deed Book 2884 at Page 1189 of the public records of Horry County, South Carolina.

TMS: 144-08-11-005

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its Successors and/or Assigns forever.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at Lot 18-A Tilghman Estates, North Myrtle Beach, SC 29582, was transferred by PAN, LLC to NMB Oceanclub, LLC on August 19, 2009.
3. Check one of the following: The deed is:
(a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ☐ exempt from the deed recording fee because (See Information section of affidavit);

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
(a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 3,000,000.00 ~~##~~
(b) ☐ The fee is computed on the fair market value of the realty which is _____
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____
6. The deed recording fee is computed as follows:
(a) Place the amount listed in item 4 above here: \$0.00
(b) Place the amount listed in item 5 above here: \$0.00
(If no amount is listed, place zero here.)
(c) Subtract line 6(b) from Line 6(a) and place result here: \$0.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 0.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as grantee.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 19th
day of August, 2009

Notary Public for
My Commission Expires: 12/3/2014

PAN, LLC

By: PMB, Inc., Member
By: Paul M. Bendik, President

Ben P. Powell, Jr., Member

And it does hereby bind itself and its Successors and/or Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its Successors and/or Assigns, against it and its Successors and/or Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by grantor(s) this 21st day of August, in the year of our Lord Two Thousand Nine and in the two hundred and thirty-fourth year of the Sovereignty and Independence of the United States of America.

PAN, LLC

By: PMB, Inc., Member

By: Paul M. Bendik, President

Ben P. Powell, Jr., Member

Witness #1

Witness #2/Notary

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 21st day of August, 2009 by PMB, Inc., Member by Paul M. Bendik, President and Ben P. Powell, Jr., Member of PAN, LLC.

Notary Public for SC

My Commission Expires: 12/13/2014

(SEAL)

Pl. 663 pg. 846
Jan. 2, 80 19377

STATE OF SOUTH CAROLINA FILED
HORRY COUNTY
COUNTY OF HORRY 1980-1-24 3:28
JAN -27 PM 3:28
RESTRICTIVE COVENANTS

WHEREAS, Charles T. Tilghman, M.W. Tilghman, Catherine M. Tilghman and Mary Elizabeth Tilghman Dent are the owners of certain properties situate in Horry County, South Carolina, which is more fully described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, said owners have heretofore conveyed to Sea Cloisters Corporation certain properties adjoining the within described property on two sides; and

WHEREAS, a part of the consideration for the sales of adjoining properties to Sea Cloisters Corporation was the restriction of use of the within described property.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the undersigned owners do hereby impose the following conditions, restrictions and covenants upon the within described property:

1. Said property shall be used only for recreational purposes and the improvement of said property shall be limited to a clubhouse for recreational purposes.
2. These restrictions shall run with the land and shall be binding upon the undersigned owners, their heirs and assigns and may be amended or modified only with the written consent of Sea Cloisters Corporation, its heirs or assigns.

WITNESS our hands and seals this 31st day of December, 1979.

Shelby Hardwick
Shelby Hardwick

Charles T. Tilghman
CHARLES T. TILGHMAN

Shelby Hardwick
Shelby Hardwick

M.W. Tilghman
M.W. TILGHMAN

Shelby Hardwick
Shelby Hardwick

Catherine H. Tilghman
KATHERINE H. TILGHMAN

Shelby Hardwick
Shelby Hardwick

BOOK 663 PAGE 846

Mary Elizabeth Tilghman Dent
MARY ELIZABETH TILGHMAN DENT

846

STATE OF South Carolina)
COUNTY OF Horry)

PERSONALLY appeared before me Deborah M. Vinson and
made oath that she saw the within named Charles T. Tilghman sign,
seal and as his act and deed, deliver the foregoing Restrictive
Covenants, and that she with Shelby Hardwick witnessed the
execution thereof.



SWORN to before me this
31st day of December, 1979.

Shelby Hardwick (LS)
Notary Public for:
My Commission Expires: January 13, 1988

STATE OF South Carolina)
COUNTY OF Horry)

PERSONALLY appeared before me Deborah M. Vinson and
made oath that she saw the within-named M.W. Tilghman sign, seal
and as his act and deed, deliver the foregoing Restrictive
Covenants, and that she with Shelby Hardwick witnessed
the execution thereof.



SWORN to before me this
31st day of December, 1979.

Shelby Hardwick (LS)
Notary Public for:
My Commission Expires: January 13, 1988

FILED
COUNTY
3 1981 - 2 PM 3:28
JAMES B. RICHARDSON
CLERK OF COURT

BOOK 4663 PAGE 847

847

STATE OF South Carolina)
COUNTY OF Horry)

PERSONALLY appeared before me Deborah M. Vinson and
made oath that she saw the within-named Katherine M. Tilghman
sign, seal and as her act and deed, deliver the foregoing
Restrictive Covenants, and that she with Shelby Hardwick
witnessed the execution thereof.



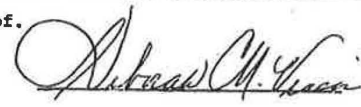
SWORN to before me this
31st day of December, 1979.

Shelby Hardwick (LS)
Notary Public for:

My Commission Expires: January 13, 1988

STATE OF South Carolina)
COUNTY OF Horry)

PERSONALLY appeared before me Deborah M. Vinson and
made oath that she saw the within-named Mary Elizabeth Tilghman
Dent sign, seal and as her act and deed, deliver the foregoing
Restrictive Covenants, and that she with Shelby Hardwick
witnessed the execution thereof.



SWORN to before me this
31st day of December, 1979.

Shelby Hardwick (LS)
Notary Public for:

My Commission Expires: January 13, 1988

BOOK 66 PAGE 418

848

ALL AND SINGULAR all that certain piece, parcel or lot of land, situate, lying and being in Little River Township, County and State aforesaid, and being more particularly known and designated as Block 18A, Tilghman Estates as is shown on a map of Blocks 18, 18A and 19 Tilghman Estates prepared by C.B. Berry, RLS #2075, dated July 10, 1979, and recorded in the Office of the Clerk of Court for Horry County in Plat Book 67 at page 153, and being described as follows:

Beginning at an iron at the right of way of Ocean Boulevard, which iron is located at the northwestern corner of Block 19, and running along Block 19 as shown on said plat South 18 degrees 31 minutes East for a distance of 230 feet to an iron; thence turning and running along the Strand area of the Atlantic Ocean South 71 degrees 29 minutes West for a distance of 87.75 feet to an iron; thence turning and running along Block 18 as shown on said plat North 18 degrees 31 minutes West for a distance of 230 feet to an iron; thence turning along the right of way of said Ocean Boulevard North 71 degrees 29 minutes East for a distance of 87.75 feet to the point of commencement.

BOOK 66J PAGE 849

849

RE-RECORDED TO
CORRECT LEGAL DESCRIPTION

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
RESTRICTIVE COVENANTS

WHEREAS, PAN, LLC, a SC limited liability company, is the owner of certain property situate in Horry County, South Carolina, which is more fully described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, said owner has entered into a Settlement Agreement with Sea Cloisters I Homeowners Association, Inc. and Sea Cloisters II Homeowners Association, Inc. (hereinafter the "HOAs") regarding the use of that certain property described in the attached Exhibit "A"; and

WHEREAS, pursuant to the terms of that Settlement Agreement, PAN, LLC, has agreed to impose restrictive covenants regarding the use of the within described property. These restrictive covenants shall be in addition to those certain restrictive covenants regarding the use of the within described property found in the Horry County Register of Deeds Office at Deed Book 663 at page 846, and recorded again in Deed Book 665 at Page 569.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the undersigned owner, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby impose the following conditions, restrictions and covenants upon the within described property:

I. Any improvement constructed on the within described property shall have the following minimum setbacks: ten feet (10') from each side, thirty-five feet (35') from the front boundary adjacent to the street, and twenty-five feet (25') from the rear boundary adjacent to the Beach.

2. Any building constructed on the within described property shall not exceed ten thousand (10,000) square feet.

3. Any building constructed on the within described property shall have no roofline higher than the highest roofline of the HOAs, excluding cupolas or other ornamental features not to exceed another ten feet (10') in height.

4. These restrictions shall be for the benefit of and appurtenant to each of the condominium units of the HOAs, shall be enforceable by any owner(s) of any such unit or by either HOA, shall be permanent, shall run with the land described herein, and shall be binding upon the undersigned owner, its successors and assigns.

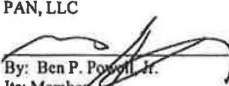
5. Despite any language that could be construed to the contrary, including any restriction contained herein or any restriction contained in the restrictive covenants found in Book 663 at page 846, or Book 665 at Page 569, the HOAs, their owners and their invitees shall have no right of use of the within described property, except the right to maintain an existing well and piping on the said property under the terms of a well easement granted by the undersigned owner to the HOAs, which well easement the undersigned owner has the option to terminate under certain terms and conditions.

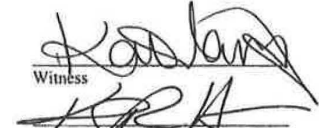
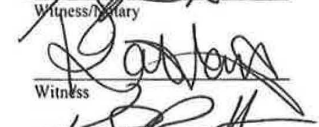
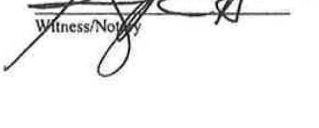
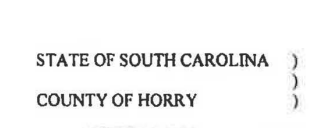
WITNESS our hands and seals this the 23rd of Oct, 2007.

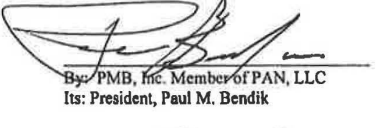

Witness

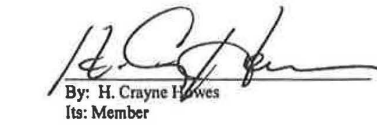
Witness/Notary

PAN, LLC


By: Ben P. Powell, Jr.
Its: Member


Witness

Witness/Notary

Witness

Witness/Notary

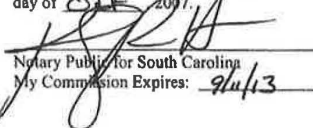

By: PMB, Inc. Member of PAN, LLC
Its: President, Paul M. Bendik


By: H. Crayne Howes
Its: Member

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witnesses and made oath that she saw the within named Ben P. Powell, Jr., as Member of PAN, LLC, a SC limited liability company, sign, seal and as the company's act and deed, deliver the foregoing Restrictive Covenants, and that she with the other witnesses witnessed the execution thereof.

SWORN to before me this 23rd
day of Oct, 2007.

Notary Public for South Carolina
My Commission Expires: 9/6/13


Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that she saw the within named Paul M. Bendik, President of PMB, Inc., as Member of PAN, LLC, a SC limited liability company, sign, seal and as the company's act and deed, deliver the foregoing Restrictive Covenants, and that she with the other witnesses witnessed the execution thereof.

[Signature]
Witness

SWORN to before me this 23rd
day of Oct, 2007.
[Signature]
Notary Public for South Carolina
My Commission Expires: 9/11/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that she saw the within named Crayne Howes, as Member of PAN, LLC, a SC limited liability company, sign, seal and as the company's act and deed, deliver the foregoing Restrictive Covenants, and that she with the other witnesses witnessed the execution thereof.

[Signature]
Witness

SWORN to before me this 23rd
day of Oct, 2007.
[Signature]
Notary Public for South Carolina
My Commission Expires: 9/11/13

[SEE ATTACH EXHIBIT A.]
EXHIBIT A

ALL AND SINGULAR all that certain piece, parcel or lot of land, situate, lying and being in Little River Township, County of Horry and State of South Carolina, and being more particularly known and designated as Block 18A, Tilghman Estates as is shown on a map of Blocks 18, 18A and 19 Tilghman Estates prepared by C.B. Berry, RLS #2075, dated July 10, 1979, and recorded in the Office of the Clerk of Court for Horry County in Plat Book 67 at page 153, and being described as follows:

Beginning at an iron at the right of way of Ocean Boulevard, which iron is located at the northwestern corner of Block 19, and running along Block 19 as shown on said plat South 18 degrees 31 minutes East for a distance of 230 feet to an iron; thence turning and running along the Strand area of the Atlantic Ocean South 71 degrees 29 minutes West for a distance of 87.75 feet to an iron; thence turning and running along Block 18 as shown on said plat North 18 degrees 31 minutes West for a distance of 230 feet to an iron; thence turning along the right of way of said Ocean Boulevard North 71 degrees 29 minutes East for a distance of 87.75 feet to the point of commencement.

TMS# 144-08-11-005

\$

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

DEED IN LIEU OF FORECLOSURE

KNOW ALL MEN BY THESE PRESENTS, That NMB OCEANCLUB, LLC [hereinafter called "Grantor"], in the State aforesaid for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars to it paid by **NMBOC HOLDING COMPANY, LLC** [hereinafter called "Grantee"] in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and released; and by these presents does grant, bargain, sell, alien, convey and release, unto the said **NMBOC HOLDING COMPANY, LLC**, its Successors and Assigns, all of Grantor's right, title and interest in and to all those certain tracts or parcels of land together with al fixtures and improvements thereon lying, being and described as follows (the "Premises"):

SEE EXHIBIT "A" ATTACHED HERETO.

Grantee's address: c/o 4605 B Oleander Drive, Suite 202
Myrtle Beach, SC 29577

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, its Successors and Assigns forever.

And Grantor does hereby bind themselves and their Heirs, Executors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its Successors and Assigns, against them and their Heirs, Executors and Assigns, and persons whomsoever lawfully claiming, or to claim the same or any part thereof.

The Grantor acknowledges that this is an absolute conveyance and that there are no collateral leases, options or agreements to re-convey the Premises between the Grantor and Grantee, either

oral or written. The Grantor further acknowledges that the Grantee has not exerted duress, coercion or undue influence on the Grantor in connection with the granting of this Deed in Lieu of Foreclosure, and the Grantor freely and fairly made this conveyance and is fully aware of the consequences of the execution and delivery of this Deed in Lieu of Foreclosure. The Grantor certifies that the acceptance of this instrument by the Grantee will not force the Grantor into insolvency. The Grantor further certifies that the granting of this Deed in Lieu of Foreclosure is not a preference for bankruptcy purposes or a fraudulent conveyance.

Notwithstanding the above, however, the Grantor and the Grantee acknowledge and agree that **NMBOC HOLDING COMPANY, LLC**, as successor to Waccamaw Bank ("Lender") holds a lien against the Premises created by that certain Mortgage dated June 28, 2006 and recorded in Mortgage Book 4600 at Page 1201, records of Horry County, South Carolina (the "Mortgage"). It is the express intention of each of the parties that the lien held by the Lender against the Premises created by the Mortgage will remain at all times a valid and continuous lien against the Premises and that there shall be no merger of title and estate conveyed by this Deed in Lieu of Foreclosure with the title and estate held under and pursuant to the Mortgage. Further, it is the intention of Grantor to transfer absolute title to the above described Premises to the Grantee free of any equity of redemption by the Grantor.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the other, including neuter. Such words of inheritance shall be applicable as required by the gender of the Grantee.

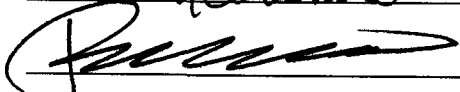
[Signatures appear on the following page]

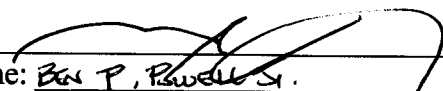
WITNESS THE EXECUTION HEREOF by Grantor this 25th day of June, 2012.

Signed, Sealed and Delivered

NMB OCEANCLUB, LLC, a South Carolina limited liability company

in the Presence of:

By: 
Name: BEN P. RUSSELL SR.
Title: MANAGER

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 25th day of June, 2012, by

Ben P. Russell Sr. as Manager of NMB OCEANCLUB, LLC, as his or her act and deed, and as the act and deed of the limited liability company.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/29/2012

EXHIBIT "A"

Legal Description of Property

ALL AND SINGULAR, that certain piece, parcel or lot of land containing one (1) lot on Ocean Boulevard, North Myrtle Beach, South Carolina, as is shown and represented as Block 18-A on a map of Blocks 18, 18-A and 19, Tilghman Estates, prepared by C.B. Berry, R.L.S., dated July 19, 1979 and recorded in Deed Book 663 at Page 847, records of Horry County, South Carolina.

This being the same property conveyed to NMB Oceanclub, LLC by Deed of PAN. LLC, dated August 21, 2009 and recorded August 24, 2009 in the Office of the Register of Deeds for Horry County, South Carolina in Deed Book 3416 at Page 1954.

TMS # 144-08-11-005

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) **AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit, and I understand such information.
2. The property identified as Block 18-A, bearing Horry County Tax Map Number 144-08-11-005, and was transferred by NMB OCEANCLUB, LLC to NMBOC HOLDING COMPANY, LLC on June 28, 2012.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X exempt from the deed recording fee because (See Information section of affidavit) **Exemption #13 below**
(If exempt, please skip items 4-7, and go to item 8 of this affidavit)

If exempt under the exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale, and was the purpose of this relationship to purchase the realty? Check Yes _____ No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
- (b) _____ The fee is computed on the fair market value of the realty which is _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is : _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____.
- (b) Place the amount listed in item 5 above here: -0- .
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$0.

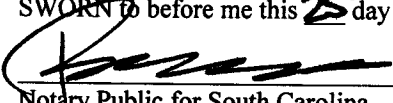
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

NMB OCEANCLUB, LLC

By: 
Name: BEN P. EDWARDS, MEMBER

SWORN to before me this 25 day of June 2012


Notary Public for South Carolina

My Commission Expires: 7/29/2017

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 30;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (11) transferring realty in a merger or consolidation from a constituent corporation to the continuing or new corporation;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791 (a) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

PIN 35501040048

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, That NMBOC HOLDING COMPANY, LLC
[hereinafter called "Grantor"], in the State aforesaid for and in consideration of the sum of One Hundred
One Thousand Five Hundred and No/100 (\$101,500.00) Dollars to it paid by **NMBOC HOLDING
COMPANY II, LLC** [hereinafter called "Grantee"] in the State aforesaid, the receipt whereof is hereby
acknowledged, has granted, bargained, sold, aliened, conveyed and released; and by these presents does
grant, bargain, sell, alien, convey and release, unto the said **NMBOC HOLDING COMPANY II, LLC**,
its Successors and Assigns, all of Grantor's right, title and interest in and to all those certain tracts or parcels
of land together with al fixtures and improvements thereon lying, being and described as follows (the
"Premises"):

SEE EXHIBIT "A" ATTACHED HERETO.

Grantee's address: 605 Briarwood Drive, Suite C
Myrtle Beach, SC 29572

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the
said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said
Grantee, its Successors and Assigns forever.

And Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend
all and singular the said premises unto the said Grantee, its Successors and Assigns, against it and its
Successors and Assigns, and persons whomsoever lawfully claiming, or to claim the same or any part
thereof.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the other, including neuter. Such words of inheritance shall be applicable as required by the gender of the Grantee.

WITNESS THE EXECUTION HEREOF by Grantor this 28 day of April, 2017.

Signed, Sealed and Delivered

NMBOC HOLDING COMPANY, LLC, a
South Carolina limited liability company

in the Presence of:

Alison M. Turner
Name: Alison M. Turner

By: [Signature]
Name: H. CRAYNE HOWES
Title: MANAGER

Susan J. Howes Michelle Kinkley
Name: Susan J. Howes Michelle Kinkley

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 28 day of April, 2017, by H. CRAYNE HOWES as MANAGER of NMBOC HOLDING COMPANY, LLC, as his or her act and deed, and as the act and deed of the limited liability company.

[Signature] (L.S.)
Notary Public for South Carolina
Name: Robert S. Guyton
My Commission Expires: 7/19/22

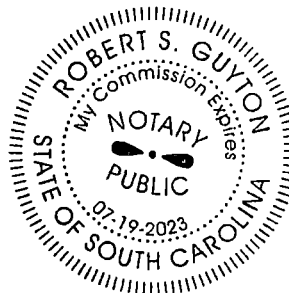


EXHIBIT "A"

Legal Description of Property

***ALL AND SINGULAR**, that certain piece, parcel or lot of land containing one (1) lot on Ocean Boulevard, North Myrtle Beach, South Carolina, as is shown and represented as **Block 18-A** on a map of Blocks 18, 18-A and 19, Tilghman Estates, prepared by C.B. Berry, R.L.S., dated July 19, 1979 and recorded in Deed Book 663 at Page 847, records of Horry County, South Carolina.*

***DERIVATION:** This being the same property conveyed to NMBOC Holding Company, LLC by Deed of NMB Oceanclub, LLC, recorded November 5, 2012 in the Office of the Register of Deeds for Horry County, South Carolina in Deed Book 3618 at Page 1791.*

TMS No.: 144-08-11-005

NMBOC HOLDING COMPANY, LLC

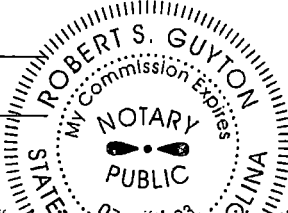
By: [Signature]

Name: H. Clayton Howes
mgr

SWORN to before me this 28 day of April, 2017

Notary Public for South Carolina

My Commission Expires: 7/19/23



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 30;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (11) transferring realty in a merger or consolidation from a constituent corporation to the continuing or new corporation;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791 (a) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

35501040048

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That NMBOC HOLDING COMPANY II, LLC
[hereinafter called "Grantor"], in the State aforesaid for and in consideration of the sum of ONE MILLION
TWO HUNDRED THOUSAND and No/100 (\$1,200,000.00) Dollars to it paid by **NMB OCEAN CLUB**
PARTNERS, LLC [hereinafter called "Grantee"] in the State aforesaid, the receipt whereof is hereby
acknowledged, has granted, bargained, sold, aliened, conveyed and released; and by these presents does
grant, bargain, sell, alien, convey and release, unto the said ^{Sapphire} ~~SAPPHIRE~~ **HOLDINGS, LLC**, its Successors
and Assigns, all of Grantor's right, title and interest in and to all those certain tracts or parcels of land
together with al fixtures and improvements thereon lying, being and described as follows (the "Premises"):

SEE EXHIBIT "A" ATTACHED HERETO.

AND SUBJECT those certain membership rights in the use of the Premises, vested in those
individuals set forth in Exhibit "B" attached hereto.

Grantee's address: P.O. Box 71150
Myrtle Beach, SC 29572

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the
said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said
Grantee, its Successors and Assigns forever.

And Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend
all and singular the said premises unto the said Grantee, its Successors and Assigns, against it and its
Successors and Assigns, and persons whomsoever lawfully claiming, or to claim the same or any part
thereof.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any

reference to one gender shall include the other, including neuter. Such words of inheritance shall be applicable as required by the gender of the Grantee.

WITNESS THE EXECUTION HEREOF by Grantor this 31ST day of August, 2017.

Signed, Sealed and Delivered

NMBOC HOLDING COMPANY II, LLC,
a South Carolina limited liability company

in the Presence of:

Eg
Name: Edward Stickles

By: [Signature]
Name: BEN P POWELL JR
Title: MEMBER MANAGER

[Signature]
Name: Robert S. Guyton

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 31ST day of August, 2017, by Ben P. Powell Jr. as Member MANAGER of NMBOC HOLDING COMPANY II, LLC, as his or her act and deed, and as the act and deed of the limited liability company.

[Signature] (L.S.)
Notary Public for South Carolina

Name: Robert S. Guyton
My Commission Expires: 7/19/23

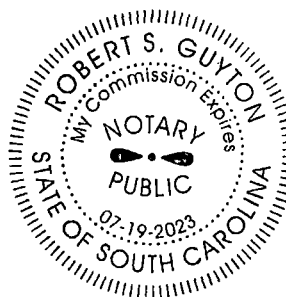


EXHIBIT "A"

Legal Description of Property

***ALL AND SINGULAR**, that certain piece, parcel or lot of land containing one (1) lot on Ocean Boulevard, North Myrtle Beach, South Carolina, as is shown and represented as **Block 18-A** on a map of Blocks 18, 18-A and 19, Tilghman Estates, prepared by C.B. Berry, R.L.S., dated July 19, 1979 and recorded in Deed Book 663 at Page 847, records of Horry County, South Carolina.*

***SUBJECT** to that certain Easement and Memorandum of Agreement recorded May 23, 2014 in Deed Book 3735 at Page 3182, records of Horry County, South Carolina.*

***DERIVATION:** This being the same property conveyed to NMBOC Holding Company II, LLC by Deed of NMBOC Holding Company, LLC, recorded May 3, 2017 in the Office of the Register of Deeds for Horry County, South Carolina in Deed Book 4007 at Page 938.*

TMS No.: 144-08-11-005

EXHIBIT "B"

Individuals Holding Membership Rights in the Premises

Mark Fleischner	Lot 121 Seabrook Plantation
Francis Lucey Jr.	Lot 18 Seabrook Plantation
Peggy Taylor	Lot 13 Seabrook Plantation
Ellen Reece	Lot 69 Seabrook Plantation
Kenneth Johnson	Lot 61 Seabrook Plantation
Dina D'Amelio	Lot 12 Seabrook Plantation
Megan Twomey	Lot 102 Seabrook Plantation
Whaley Management	Lot 97 Seabrook Plantation
Richelle Mucci	Lot 15 Seabrook Plantation
John Kirby	Lot 43 Seabrook Plantation
Karl Mannain	Lot 54 Seabrook Plantation
David Johnson	Lot 71 Seabrook Plantation

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

NMBOC HOLDING COMPANY II, LLC

By: _____

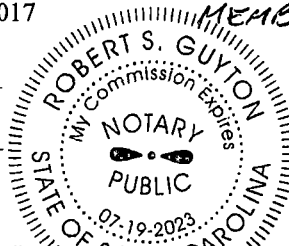
Name: BEN P. HOWELL JR.

MEMBER MANAGER

SWORN to before me this 31st day of August, 2017

[Signature]
Notary Public for South Carolina

My Commission Expires: 7/19/23



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 30;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (11) transferring realty in a merger or consolidation from a constituent corporation to the continuing or new corporation;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791 (a) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

2646

WITNESS My Hand and Seal this 30th day of August, 2017

Signed, Sealed and Delivered
in the Presence of:

Kateyn M Freeman

Witness #1 Signature Kateyn M Freeman

Kateyn M Freeman

Witness #1 Print Name

Amy L. Bedard

Witness #2 Signature (Can be the Notary Public)

Amy L. Bedard

Witness #2 Print Name

Jessica Wald

Sapphire Holdings, LLC

By: Jessica Walden

Its: Sole Member

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF HORRY

Personally appeared before me Kateyn Freeman, the undersigned witness and made oath that (s)he was present and saw the within named Grantor(s) sign, seal and as his/her/their act and deed, deliver the within-written Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof, and that the subscribing witness is not a party to our beneficiary of the transaction.

SWORN to before me this
30th day of August, 2017

Kateyn M Freeman

Witness (Same person as Witness above)

Amy L. Bedard

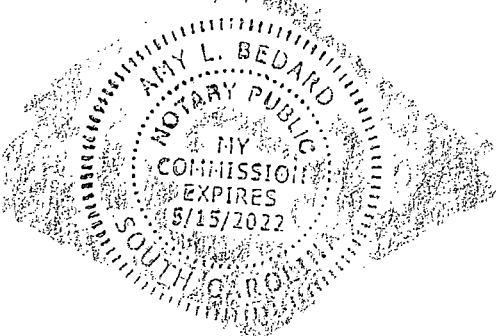
Notary Public

For the State of South Carolina

My Commission Expires: 08/15/2022

Amy L. Bedard

Notary Printed Name



35501040048,

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that **NMB OCEAN CLUB PARTNERS, LLC**, a South Carolina limited liability company (the "Grantor") for and in consideration of the premises and the sum of TWO MILLION FIVE HUNDRED THOUSAND AND 00/100 (\$2,500,000.00) DOLLARS to it in hand paid at and before the sealing of these presents by **SUN TRS OCEAN CLUB, LLC**, a Michigan limited liability company, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto the said **SUN TRS OCEAN CLUB, LLC** (the "Grantee(s)"), his/her/its heirs, successors and assigns, forever in fee simple, the following described property to wit:

SEE EXHIBIT "A" ATTACHED HERETO.

Grantee's Address: 27777 Franklin Road, Suite 200
 Southfield, Michigan 48034

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his/her/its heirs, successors and assigns forever in fee simple.

AND the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, said premises unto the said Grantee, his/her/its heirs, successors and assigns, against itself and its successors and assigns, and any persons whomsoever lawfully claiming or to claim the same or any part thereof.

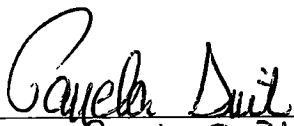
[signatures appearing on next page]

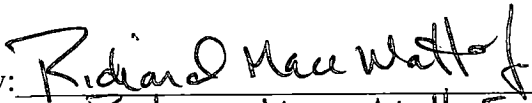
Mail after recording to: Harbor City Title Insurance
Agency, Inc., 6201 Fairview Road, Suite 325,
Charlotte, NC 28210; File No. 1902 2039

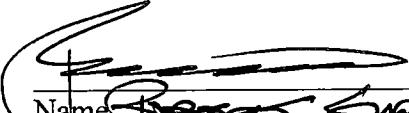
WITNESS the Grantor's Hand and Seal this 3rd day of May, 2019.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

NMB OCEAN CLUB PARTNERS, LLC, a South
Carolina limited liability company


Name: Pamela Smith

By: 
Name: Richard Maca Watt Jr
Title: Member


Name: Reeta S. Gopal

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 2nd day of May, 2019, by Richard H. Watts, Jr. as Member of NMB OCEAN CLUB PARTNERS, LLC, as his or her act and deed and the act and deed of the limited liability company.

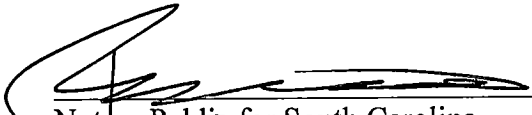
 (SEAL)
Notary Public for South Carolina
Name: Reeta S. Gopal
My Commission Expires: 7/19/23

EXHIBIT "A"

Legal Description of Property

ALL AND SINGULAR, all that certain piece, parcel or lot of land containing One (1) lot on Ocean Boulevard, North Myrtle Beach, South Carolina, as is shown and represented as BLOCK 18-A on a map of Blocks 18, 18-A and 19, Tilghman Estates, prepared by C.B. Berry, R.L.S., dated July 10, 1979 and recorded in the Office of the Register of Deeds for Horry County in Plat Book 67 at Page 153.

DERIVATION: This being the same property conveyed unto NMB Ocean Club Partners, LLC by Deed of Sapphire Holdings, LLC recorded September 1, 2017 in Deed Book 4039 at Page 2299, and by Quit-Claim Deed of Sapphire Holdings, LLC, executed on May 1, 2019 and recorded simultaneously with this Deed, in the public records of Horry County, South Carolina.

TMS No.: 144-08-11-005

STATE OF SOUTH CAROLINA

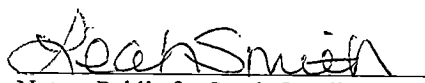
AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF HORRY

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is identified as Block 18-A Tilghman Estates, bearing Horry County Tax Map Number 144-08-11-005, was transferred by **NMB OCEAN CLUB PARTNERS, LLC** to **SUN TRS OCEAN CLUB, LLC**, on May 3, 2019.
3. Check one of the following: *The DEED is*
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ EXEMPT from the deed recording fee because (Exemption # _____)
(Explanation if required _____.)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **\$2,500,000.00**.
(b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
(a) \$ 2,500,000.00 the amount listed in item 4 above
(b) \$ 0.00 the amount listed in item 5 above (no amount place zero)
(c) \$ 2,500,000.00 subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: **\$9,250.00**
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR COUNSEL.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

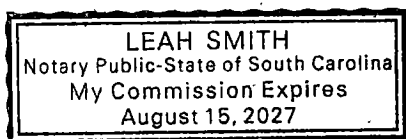
Sworn to before me this
3rd day of May, 2019.



Notary Public for South Carolina

My Commission Expires: August 15, 2027


ROBERT S. GUYTON





TECHNICAL REVIEW COMMITTEE MINUTES

Thursday, May 17, 2018 – 9:45 A.M.

Planning Development Conference Room

PRE-APPLICATIONS:

Ocean Drive Presbyterian Church – 410 6th Ave South – 1st Pre-Application

Attending Customer Representatives:	Woody Fox & Phil Averett, <i>Church Representatives</i>
Staff Comments	
Public Works:	- Submit scaled sketch plan with dimensions, include curbing in sketch, but engineered drawings are not required. Submit drawings with permit application. - Revise driveway servicing accessible parking to one-way in. This would only involve repainting the driveway – remove two arrows currently at drive entrance, and replace with a single arrow in middle of drive pointing into property.
Zoning:	- Must leave island of some size at end of parking aisle; have discretion on width.
Building:	No comments.
Fire:	No comments.
Planning:	- No formal site plan application necessary.

Boardwalk Billy's Parking Lot – 1303 Wyndal Dr – 1st Pre-Application

Attending Customer Representatives:	Henry O'Boyle, <i>Owner</i>
Staff Comments	
Public Works:	- Need details on parking lot materials within site plan submittal; dust-free surface required. - Rear drive aisle needs to be 22' width minimum; may lose a couple of parking spaces.
Zoning:	- Cap on maximum allowed parking (99 spaces). - Need to submit a table showing the various uses (Boardwalk Billy's/Doc Holidays/Marina), the parking required per use, and the parking provided in the various lots. - Need tree survey. - Wheelstops required (concrete or landscape timbers).
Building:	No comments.
Fire:	No comments.
Planning:	- Need site plan submittal with dimensioned site plan, application and other required forms. Will provide brochure package to owner at email address: BoardwalkBilys@gmail.com

Ocean Club at Tilghman Beach – 1814 N Ocean Blvd – 1st Pre-Application

Attending Customer Representatives:	Ben Oates & Mace Watts, <i>Club Representatives</i>
Staff Comments	
Public Works:	- Impact fees may be required; these fees may be extensive for a restaurant use. - DHEC regulates signage on beach; need critical area permit from OCRM.
Zoning:	- Private beach club use not allowed in R-4. To come into compliance, must convert to a restaurant with 60% food sales. - In R-4, all restaurant signage must be on building; 100 SF limit. - Need to have a site walk-through to determine requirements for restaurant conversion (scheduled for Monday 5/21 at 10am).
Building:	- Need to have a site walk-through to determine requirements for restaurant conversion (scheduled for Monday 5/21 at 10am).
Fire:	- Need to have a site walk-through to determine requirements for restaurant conversion (scheduled for Monday 5/21 at 10am).
Planning:	- Need plan submittal package showing conversion to restaurant use. - Alternative remedy may be to pursue a zoning ordinance text amendment allowing private beach club use in R-4 by right. Process can take up to three months.

NEW APPLICATIONS:

PR18B06: Jimmyz Hibachi: 2,778 SF Restaurant @ 1350 Hwy 17 S – 1st Full Application (2 Pre-apps)

Attending Customer Representatives:	David Norris, <i>DN Engineering Inc.</i> ; Joel Carter, <i>Carter Architecture</i> ; Robert Shelley, <i>Owner</i> ; Jimmy, <i>Owner</i> ; Contractor
Staff Comments	
Public Works:	- Need to consider taps/meters needed for restaurant and possible irrigation system. - Irrigation system needs a plan showing the peak zone and monthly flow. - Impact fees only calculated for dining area (inside and outside building) and irrigation system. - When submitting SCDOT encroachment permit, include all work in ROW (including city's work connecting to water system). - "Do not enter" signs required at both ends of one-way driveway on both sides of driveway (four signs required total; two signs face Highway 17, two signs face internally to site). - Move restaurant sign away from Highway 17 by approximately 2' to avoid sight triangle issues
Zoning:	- Curb protection required for required landscape areas; will email plan highlighting areas where curb protection is still needed - Parking requirements are one space per 100 SF; revise data on plan to reflect these requirements. 6 spaces mitigated by providing the two required cross-accesses
Planning:	- Provide for cross access to property line instead of future access easement; can stripe for parking in meantime (comment from previous review 2/8/18)

Building:	- Need DHEC paperwork indicating environmental clearance submitted with nuisance abatement plan; this letter can be stapled directly to the plan (comment from previous review 2/8/18)
Fire:	No comments

OLD APPLICATIONS:

PR18R16: 925 S Ocean Blvd – Single-Family Residence w/8 Sleeping Areas – 2nd Application

Attending Customer Representatives:	Internal Staff Review
Staff Comments	
Public Works:	- Stormwater calculations: Define pre vs. post-development stormwater (unclear in calculations) - Show grades/elevations on site plans
Zoning:	- Complete zoning form verifying sleeping area number
Building:	- Employees cannot park in Ocean Blvd.
Fire:	No comments.
Planning:	No comments.

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

CITY OF NORTH MYRTLE BEACH,
Plaintiff,

vs.

SUN TRS OCEAN CLUB LLC AND SUN
TRS CAROLINA PINES, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2021-CP-26-07489

**PLAINTIFF'S ANSWERS TO
DEFENDANTS SUN TRS OCEAN
CLUB LLC AND SUN TRS CAROLINA
PINES LLC'S FIRST SET OF
INTERROGATORIES TO THE CITY OF
NORTH MYRTLE BEACH**

Plaintiff, City of North Myrtle Beach ("NMB" or "Plaintiff"), answers Defendants Sun TRS Ocean Club LLC and Sun TRS Carolina Pines LLC's (collectively "Defendants") First Set of Interrogatories to Plaintiff as follows:

GENERAL OBJECTIONS

1. NMB objects to each and every interrogatory to the extent that the interrogatory purports to seek attorney-client communications, attorney work-product, or any other privileged communication on the ground that such interrogatories are beyond the scope of discovery permitted under the South Carolina Rules of Civil Procedure.

2. By responding to these interrogatories, NMB does not intend to waive the attorney-client privilege, the work-product doctrine, or any other privilege, objection, or limitation upon discovery as to that interrogatory or any other discovery request.

3. NMB objects to each and every interrogatory to the extent that the interrogatory seeks to impose obligations inconsistent with, incongruent with, or in addition to those required by the South Carolina Rules of Civil Procedure.

4. NMB reserves the right to supplement and/or amend its answers to these interrogatories as information is obtained through discovery in this matter.

5. These answers to interrogatories are made without waiver of, and with preservation of:

a. all questions of competency, relevancy, confidentiality, materiality, privilege, and admissibility or other issues related to evidentiary concerns;

b. the right to object on any ground at any time to a demand or request for further discovery; and

c. the right at any time to revise, correct, supplement, or clarify any of the responses contained herein.

6. All documents produced and references to same shall be subject to the terms of the Confidentiality Order entered by the Court, if one is filed.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of all persons known to the Plaintiff and/or Plaintiff's attorneys to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses, and who has possession of such statements. This should include but is not limited to persons who were witnesses to any alleged improper uses of the Property, or who have personal knowledge of the circumstances surrounding any such alleged improper uses, persons who investigated or have knowledge of the substance of investigations of use of the Property, and persons with personal knowledge of information relevant to the Plaintiff's claims in this litigation.

ANSWER:

- a) Ben Caldwell
Zoning Administrator
c/o Plaintiff's counsel

Ben Caldwell has knowledge regarding the history of the subject property, the Zoning Ordinances and their application to the subject property, complaints received about the subject property, and current and ongoing Zoning Ordinance violations the Defendants are committing in their ownership and use of the subject property.

- b) Jim Shortle
President, Sea Cloisters I HOA, Inc.
843-274-5301

Jim Shortle has knowledge regarding the history of the subject property and the current and ongoing Zoning Ordinance violations the Defendants are committing in their ownership and use of the subject property.

- c) Michael Stephenson
President, Sea Cloisters II HOA, Inc.
804-337-0539

Plaintiff anticipates Mr. Stephenson has knowledge regarding the history of the subject property and the current and ongoing Zoning Ordinance violations the Defendants are committing in their ownership and use of the subject property.

- d) Arnett Vereen
1705 Madison Drive
North Myrtle Beach, SC 29482

Plaintiff anticipates Mr. Vereen has witnessed certain events ongoing at the subject property, that are inconsistent with the applicable Zoning Ordinances.

- e) Chris Martucci
current address unknown

Plaintiff anticipates Mr. Martucci has information relative to Defendants' use of the property that was inconsistent with applicable Zoning Ordinances.

- f) Troy Bittner
current address unknown

Plaintiff anticipates Mr. Bittner has information as to Defendants' use of the property that was inconsistent with applicable Zoning Ordinances.

- g) Paul Blust
Former Zoning Administrator for the City of North Myrtle Beach
C/O undersigned counsel

Mr. Blust has information relative to communication between him, in his official capacity, and representatives of Defendants, concerning use and/or potential use of the property, including proposed uses that are prohibited pursuant to the applicable Zoning Ordinances.

- h) All individuals or entities referenced in Defendants' production of documents.

- i) All individuals or entities identified as witnesses on behalf of Defendants.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to its claims or any Sun Defendant's defenses in this case.

ANSWER: See documents produced in response to Defendants' Requests for Production 1 through 16.

3. Set forth an itemized statement of all damages which Plaintiff claims to have been proximately caused by the Sun Defendants' ownership or use of the Property.

ANSWER: Plaintiff asserts Defendants have been and continue to be in possession of and exercise use of the subject property in violation of the applicable Zoning Ordinances, thereby damaging Plaintiff's ability to ensure the subject property is in substantial harmony with the area in which it is located and is not injurious to the adjoining properties.

4. List the names and addresses or any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of the case.

ANSWER: As of the date of these Answers, Plaintiff has not retained an expert to use in the trial of this case, but reserves the right to do so in accordance with the South Carolina Rules of Civil Procedure and the Court's instructions.

5. For each person known to the Plaintiff or his attorneys to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Sun Defendants of the important facts known to or observed by each witness, or provide a copy of any written or recorded statements related to same received from such witnesses.

ANSWER: See Answer to Interrogatory #1.

6. List the date of each complaint, the identity and contact information of each complainant, and the substance of each complaint the Plaintiff has received related to use or ownership of the Property since the special exception described in Plaintiff's Complaint was first approved.

ANSWER: See documents produced to Defendants' Requests for Production 13 and 15.

7. Identify the name and contact information for each person involved in the drafting of Section 23 of the Zoning Ordinance, including any amendments thereto since the "cabana house" terms were adopted in it.

ANSWER: Plaintiff objects to this Interrogatory on the basis of relevance, overly broad, and unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, and limitations on the parties' resources. Additionally, to the extent this Request seeks to identify individuals and/or documents protected by the

deliberative process privilege, this Request is also denied on this ground as well. Notwithstanding the objections set forth above, Plaintiff has made efforts to identify responsive names and contact information, but has not been able to obtain such information at this time. Plaintiff reserves the right to supplement this response should Plaintiff be able to identify responsive information in the future.

8. Identify and provide the contact information for every employee or agent of the Plaintiff that has corresponded or attempted to correspond with any employee or agent of either Defendant with regard to the Property.

ANSWER: Plaintiff objects to this Request on the basis of relevance, overly broad, and unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, and limitations on the parties' resources. Additionally, Defendants would likewise be in possession of or otherwise have the requested information.

9. List every "cabana house" in North Myrtle Beach, identify the owner of each such "cabana house," and the "project in North Myrtle Beach" used by the "cabana house," and specify if the owner of the "cabana house" is a homeowners' association.

ANSWER: Not including the Cabana House subject to the pending litigation, the following is a list of the other cabana houses in North Myrtle Beach:

- A. Barefoot Resort Cabana House – 4611 S. Ocean Blvd., North Myrtle Beach, SC 29582 – Owner: Barefoot Resort Residential Owners Association, Inc.
– Project: Barefoot Resort & Golf
- B. Beachwalk Cabana House – 4106 N. Ocean Blvd., North Myrtle Beach, SC 29582 – Owner: Beachwalk Villas HPR – Project: Beachwalk Villas

C. Links Cabana House – 200 11th Avenue South, North Myrtle Beach, SC
29582 – Owner: The Links Golf & Racquet Homeowners Association –
Project: The Links

D. Tidewater Cabana House – 5710 N. Ocean Blvd., North Myrtle Beach, SC
29582 – Owner: Tidewater Plantation Community Association, Inc. –
Project: Tidewater Plantation

10. Identify all zoning enforcement activities, including cease and desist letters, warnings, citations, hearings, and litigation initiated against any owner or user of a “cabana house,” other than the Sun Defendants, because such owner was not a homeowners’ association, or because the project using the “cabana house” was not located in North Myrtle Beach.

ANSWER: Plaintiff is unaware of any enforcement activities conducted against the owners or users of cabana houses in the R-4 Residential District, other than the Defendants, as Plaintiff is and has been unaware of any conduct relative to other cabana houses that violates the Zoning Ordinance as does the acts and/or omissions of Defendants.

11. Please explain why the City of North Myrtle Beach informed Sun Acq, LLC, and thereby Sun TRS OC, that all prior use of the “cabana house” at issue was lawful and consistent with the applicable zoning ordinances as of March 19, 2019 (see attached letter from P. Blust, Zoning Administrator for the City of North Myrtle Beach), if the owner at that time was not a homeowners’ association.

ANSWER: Plaintiff was unaware the prior owner of the subject property was not a homeowners’ association.

12. Please identify all sources of authority that delegate to the City of North Myrtle Beach the authority to enact zoning ordinances that restrict or limit ownership of property zoned as a “cabana house” to homeowners’ associations, including but not limited to any state or federal statute, regulation or policy.

ANSWER: Plaintiff objects to this Interrogatory on the basis of overly broad and calls for the Plaintiff to make a legal conclusion. Subject to and without waiving this objection, Plaintiff responds as follows: (1) Section 29 of Title 6 of the South Carolina Code; and (2) *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1927).

13. Please identify all sources of authority that delegate to the City of North Myrtle Beach the authority to limit use of “cabana houses” to “projects in North Myrtle Beach.”

ANSWER: Plaintiff objects to this Interrogatory on the basis of overly broad and calls for the Plaintiff to make a legal conclusion. Subject to and without waiving this objection, Plaintiff responds as follows: (1) Section 29 of Title 6 of the South Carolina Code; and (2) *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1927).

14. Please identify any other efforts employed by the City of North Myrtle Beach to enjoin or restrain the use of “cabana houses” in the City of North Myrtle Beach.

ANSWER: None, because Plaintiff is unaware of any violations of its Zoning Ordinances at other cabana houses that require such action.

15. Please identify any other uses of real property in the Zoning Ordinances that limit ownership to certain forms of real property ownership, and/or the use is limited to certain types or classes of persons or entities by the Zoning Ordinances.

ANSWER: Plaintiff objects to this Request on the basis of relevance, overly broad, is obtainable from some other source that is more convenient, less burdensome, or less

expensive (i.e. the Sun Defendants may refer to the Zoning Ordinances themselves), and is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, and limitations on the parties' resources.

16. Please identify any other types or classes of persons, legal or jural, that the Zoning Ordinances prohibit from owning or using certain real property.

ANSWER: Plaintiff objects to this Request on the basis of relevance, overly broad, is obtainable from some other source that is more convenient, less burdensome, or less expensive (i.e. the Sun Defendants may refer to the Zoning Ordinances themselves), and is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, and limitations on the parties' resources.

17. Please explain how the Zoning Ordinances' restricting ownership of properties zoned as "cabana houses" exclusively to "homeowners' associations" furthers "the general purpose of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, property, and general welfare" for the City of North Myrtle Beach.

ANSWER: This requirement supports the homogeneous and harmonious use of the property alongside adjacent properties, all of which are, after all, located within a residential district. Specifically, the restriction supports the homogeneous and harmonious use because the subject property is located between adjoining, beach-front condominium developments with their own respective homeowner's associations. These adjoining properties share the same name (Sea Cloisters I and Sea Cloisters II), they are essentially mirror-images in their design and layout, and the two homeowner's associations coordinate with and mutually-support each other. Requiring there to be a

stretch of three homeowner's associations, rather than allowing for a commercial enterprise engaging in non-residential, commercial uses of the property at best, or creating a nuisance at worst, between such close homeowner's associations, is reasonable and has a tendency to promote the general welfare of the adjoining properties and the R-4 residential district specifically and the City generally.

18. Please explain how the Zoning Ordinances' limitation of the use of properties zoned as "cabana houses" exclusively to "projects in North Myrtle Beach" furthers "the general purpose of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, property, and general welfare" for the City of North Myrtle Beach.

ANSWER: Plaintiff herein incorporates by reference its Answer to Interrogatory #17, and supplements with the following: This requirement operates to encourage and support local, private developments and their corresponding homeowner's associations (as opposed to non-local, corporate enterprises) by providing them with a private beach club and access point to the beach. It also encourages investment in the City rather than in projects outside of the City. Ultimately, this requirement is reasonable and has a tendency to promote the general welfare of the adjoining properties and the R-4 residential district specifically and the City generally.

19. Please explain how the Zoning Ordinance's requirement that "[a] cabana house shall be owned and maintained by a homeowners' association with a maintenance agreement submitted and approved by the planning department" furthers "the general purpose of guiding development in accordance with existing and future needs and

promoting the public health, safety, morals, convenience, order, appearance, property, and general welfare” for the City of North Myrtle Beach.

ANSWER: Plaintiff herein incorporates by reference its Answers to Interrogatory #17 and #18, and supplements with the following: This requirement supports the aesthetics of the residential district, because it encourages the upkeep and slightly landscaping, which is reasonable and has a tendency to promote the general welfare of the adjoining properties and the R-4 residential district specifically and the City generally.

20. When the City of North Myrtle Beach issued the March 19, 2019 letter to Sun Acq, LLC, was the City aware of the following facts:

- a. The owner at the time, NMB Ocean Club Partners, LLC, was not a homeowners’ association;
- b. The property was being used as a private beach club that had members who did not reside in the City of North Myrtle Beach;
- c. That Sun TRS OC intended to use the cabana house as an amenity for registered guests of Carolina Pines RV Resort.

ANSWER: Plaintiff was unaware of all of these alleged facts.

Respectfully submitted,

/s/ Cheryl D. Shoun

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Attorneys for Plaintiff

CITY OF NORTH MYRTLE BEACH

March 24, 2022

Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Plaintiff's Answers to Defendant's Interrogatories and Plaintiff's Responses to Defendant's Request for Production to their respective email address on March 24, 2022 as follows:

Richard H. Willis, Esquire
Williams Mullen
1230 Main Street, Suite 330
Columbia, SC 29201

VIA EMAIL ONLY: rwillis@williamsmullen.com


Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 577-9440



Carolina Pines RV Resort

April 23, 2020 · 🌐



Picture yourself here at Myrtle Beach. 🏖️ You can take a quick shuttle from the resort straight to Carolina Pines Beach Club at Tilghman Beach for a full day of sun, sand and water with yet another pool and private beach access.

We're looking forward to opening our fantastic amenities and all reservations again! Will we see you at Carolina Pines this summer?



👍❤️ 137

51 Comments 8 Shares

👍 Like

💬 Comment

NMB 🏠 Share



Carolina Pines RV Resort was live.

May 18, 2021 · 🌐



The Beach Club is open and shuttles are running to and from Comfort Station A 7 days a week now! From 9:30am-4:30pm.



121

64 Comments 7 Shares



Like



Comment



NME Share



Carolina Pines RV Resort

October 3, 2019 · 🌐



Bring on the South Carolina fall weather! Enjoy the Carolina Pines Beach Club this fall with access to North Myrtle Beach while you still can! 🍂🌴



👍❤️ 78

23 Comments 21 Shares

👍 Like

💬 Comment

NM 🏠 Shares



Carolina Pines RV Resort

April 8, 2021 · 🌐

...

BEACH CLUB SHUTTLES TO RESUME!

Journey over to our clubhouse in North Myrtle Beach on the weekends (Fridays, Saturdays and Sundays) starting Friday, April 9th.

The first shuttle leaves Carolina Pines at 9:30am and the last shuttle leaves the Beach Club house at 4:30pm.

*Note: the Beach Club shuttle begins service at noon on Saturday, April 10th. (The different start time is for 4/10/21 only.)

Service will begin 7 days a week in mid-May. Stand by for a specific date!



MMB SUP 0000



Carolina Pines RV Resort

April 24, 2021 · 🌐

...

Did you know Carolina Pines will take you to the beach?

Our complimentary Beach shuttle service will take you to our private Beach Club house, about 15 minutes away from the resort.

Shuttles leave Carolina Pines every half hour starting at 9:30am. The final shuttle will come back at 4:30pm.

Right now, the service is available on Fridays, Saturdays, and Sundays. The shuttle will run 7 days a week beginning May 15th!



214

41 Comments 17 Shares



Carolina Pines RV Resort

July 10, 2019 · 🌐



Our newest addition, the Beach Club, is waiting for you! Sit oceanfront, take a dip in the pool or enjoy an afternoon snack before being shuttled back to your Carolina Pines home away from home.



184

101 Comments 34 Shares



Like



Comment



Share



Carolina Pines RV Resort

July 12, 2020 · 🌐

...

We're just 15 minutes from the beach and we've got a shuttle to take you there! Spend the day relaxing at the Carolina Pines Beach Club at Tilghman Beach.



232

 Like

 Comment

 Share

120 Comments 17 Shares



Carolina Pines RV Resort

June 20, 2019 · 🌐



Who's ready for the beach club?! #CPshuttle 🚚



👍❤️ 95

34 Comments 8 Shares

👍 Like

💬 Comment

NMB 🔄 Share



Carolina Pines RV Resort

May 27, 2021 · 🌐

...

Beach Club Shuttle update

Guests can take a ride to the Carolina Pines Beach Club in North Myrtle Beach 7 days a week starting at 9am each day! The shuttle leaves every half hour from the Comfort Station in the A section of the Resort.

- Return trips on Monday through Wednesday will leave the Beach Club every half hour, with the final shuttle leaving at 5:30pm.
- Return trips on Thursday through Sunday will leave the Beach Club every half hour, with the final shuttle leaving at 6:30pm.



132

👍 Like

💬 Comment

🔗 Share

34 Comments 11 Shares



Carolina Pines RV Resort

July 23, 2019 · 🌐



Don't you want to spend a day sitting and playing right here? Catch the shuttle to hang out at our Beach Club at North Myrtle Beach!



👍❤️ 87

40 Comments 15 Shares

👍 Like

💬 Comment

NM 📧 Share 52



Carolina Pines RV Resort

August 18, 2021 · 🌐

...

Enjoy the pool and hot tub at our Beach Club. And you can't forget the beach on the other side of that bridge, of course! 🏖️ 🌊



👍❤️ 110

22 Comments 9 Shares

👍 Like

💬 Comment

🔄 Share



Carolina Pines RV Resort

August 8, 2021 · 🌐



B.E.A.C.H.

Best Escape Anyone Can Have!



👍❤️ 58

6 Comments 2 Shares

👍 Like

💬 Comment

🔗 Share

NMIS-501-60070



Carolina Pines RV Resort

March 11, 2020 · 🌐



Just minutes away from the beach and the boardwalk. Carolina Pines is a different kind of resort.

📺 Learn more today, carolinapinesrvresort.com



👍❤️ 91

27 Comments 5 Shares

👍 Like

💬 Comment

NM 🚐 Share



Carolina Pines RV Resort

December 2, 2019 · 🌐



Path to paradise. 🚐: FB friend, Nikki S.



👍❤️ 99

5 Comments 3 Shares

👍 Like

💬 Comment

🚐 Share