

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2019-CA-3579-O

ORLANDO APOPKA AIRPORT  
ASSOCIATION, INC., a Florida corporation,

Plaintiff,

vs.

ASS MONKEY, LLC,  
a Florida limited liability company,

Defendant.

\_\_\_\_\_ /

DEPOSITION OF:	DAVID KOTICK
DATE:	THURSDAY, OCTOBER 21, 2021
TIME:	8:02 A.M. - 11:37 A.M.
TAKEN BY:	THE DEFENDANT
PLACE:	FAIRFIELD INN AND SUITES 3420 LAKE LYNDY DRIVE ORLANDO, FLORIDA 32817
STENOGRAPHICALLY REPORTED BY:	EVELYN RONDON

A P P E A R A N C E S:

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Appearing on behalf of the Plaintiff

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Appearing on behalf of the Defendant

ALSO PRESENT: Laura Smed, paralegal appearing with  
Christian Smed, and Laurence H. Albrecht, managing member of  
Ass Monkey, LLC.

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between  
the counsel for the respective parties and the deponent that  
the reading and signing of the deposition transcript be  
reserved.

1 P R O C E E D I N G S

2 \*\*\*\*\*

3 COURT REPORTER: Would you raise your right  
4 hand, please?

5 Do you solemnly swear or affirm that the  
6 testimony you're about to give in this cause is the truth  
7 and the whole truth and nothing but the truth?

8 THE WITNESS: I do.

9 DAVID KOTICK,  
10 having first been duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. SMED:

14 Q. Good morning. My name is Attorney Christian Smed.  
15 I'm here on behalf of the defendant in this lawsuit Ass  
16 Monkey, LLC, its principal, Laurence Albrecht, who I believe  
17 you have some familiarity with. And I'll refer to Ass  
18 Monkey, LLC, as ASM, some sort of acronym that takes a  
19 little bit less of out of you.

20 Would you please state your name?

21 A. My name's David Kotick, K-o-t-i-c-k.

22 Q. And your current address, please?

23 A. 11607 Swift Water Circle, Orlando, Florida.

24 Q. Are you currently employed?

25 A. Yes, I am.

1 Q. And who is your current employer?

2 A. Department of the Navy.

3 Q. And are you familiar with the Orlando Apopka  
4 Airport?

5 A. Yes, sir.

6 Q. And with Orlando Apopka Airport, I'll try to refer  
7 to it as OAA to keep things as they may be usually.

8 Have you ever had your deposition taken before?

9 A. I don't recall.

10 Q. Do you own any of the units or lots at the OAA?

11 A. I do.

12 Q. How many lots do you own?

13 A. I own two units.

14 Q. And which unit numbers are those?

15 A. Unit 12 and Unit 13.

16 Q. And is there a -- and is the OAA formed as a  
17 condominium --

18 A. Yes, it is.

19 Q. -- to your knowledge?

20 Is there a board of directors for the condominium?

21 A. Yes, there is.

22 Q. And so you're familiar with the Orlando Apopka  
23 Airport Association, correct --

24 A. Yes, correct.

25 Q. -- that would be the governing body?

1                   And are you on the board of directors?

2           A.       Yes, I am.

3           Q.       How long have you been a member of the board of  
4 directors?

5           A.       The complete time is approximately ten years, not  
6 continuous.

7           Q.       Okay. And are you currently a member of the board  
8 of directors?

9           A.       Yes, I am.

10          Q.       Are you currently an officer on the board of  
11 directors?

12          A.       Yes, I am.

13          Q.       What is your position with the board of directors  
14 of the association?

15          A.       President.

16          Q.       And how long have you been president? How many --  
17 are they one-year terms or more?

18          A.       They are a one-year term, but the president in  
19 2019 resigned and I was asked to assume that position in  
20 2019 till today.

21          Q.       So have you been president for any terms prior to  
22 that time during your approximate ten-year tenure?

23          A.       Only from mid 2019 to present.

24          Q.       Okay. Are you familiar with this litigation that  
25 we're here to talk about this morning?

1           A.       Yes, sir.

2           Q.       Do you understand that the OAA Association is the  
3 plaintiff in this lawsuit?

4           A.       Yes.

5           Q.       And do you understand that ASM is the defendant in  
6 this lawsuit?

7           A.       Yes, sir.

8           Q.       Does the OAA have an Architectural Review Board?

9           A.       Yes, it does.

10          Q.       And when this litigation was initiated by the  
11 association, you initially filed a verified pleading that  
12 was signed by yourself, correct?

13          A.       When I was involved with the initial phase, Jim  
14 Heekin was president.

15          Q.       Do you know if you ever sent -- do you understand  
16 what a pleading is or a legal document? A legal lawsuit  
17 is --

18          A.       Yes, I have signed.

19          Q.       You signed off on that saying that this is true  
20 and correct --

21          A.       Yes.

22          Q.       -- to the best of my knowledge?

23          A.       Correct.

24          Q.       And are you aware that the initial verified  
25 complaint that you signed was amended?



1 A. Yes.

2 Q. And that was not verified, you did not sign that?

3 A. I don't recall.

4 Q. Do you know why it wouldn't be verified?

5 A. I don't recall if I signed it or I didn't sign it.

6 Q. Now, I just spoke about the amended complaint,  
7 that would be the pending lawsuit. I'm going to have this  
8 amended complaint and the exhibits thereto --

9 MR. SMED: And, Mr. Van Alstyne, I'm going to  
10 number it as 120 in the way -- the manner that you like --

11 MR. VAN ALSTYNE: Sure.

12 MR. SMED: -- we were on 118 last time so if I  
13 could please -- can I have it marked as 120.

14 (Defendant's Exhibit 120 marked for identification.)

15 BY MR. SMED:

16 Q. I'm going to give you what's been marked as  
17 Exhibit 120.

18 A. Thank you.

19 Q. If you could take a quick look at that and tell me  
20 if you have read the amended complaint, and where the -- I  
21 have it marked with blue tabs for other reasons, but that  
22 would start the exhibits.

23 A. Without going through every single page, I believe  
24 I have seen this.

25 Q. Okay. And my question was: Have you read it?

1 Does that mean that you read it?

2 A. Not this particular copy. I believe I have  
3 seen --

4 Q. Another copy?

5 A. -- a copy of this, yes.

6 Q. Okay. Are you familiar with these allegations  
7 contained therein?

8 A. Yes.

9 Q. Are you able to say right now that you believe  
10 that the allegations contained therein are true and correct  
11 to the best of your knowledge?

12 A. Yes, sir.

13 Q. Were you -- when you read it, were you also able  
14 to read the exhibits, which start with the declaration,  
15 articles of incorporation and bylaws?

16 A. Yes. I have read those.

17 Q. And do you understand the term, "governing  
18 documents," as it relates to the condominium?

19 A. I believe I do.

20 Q. And those would include the declaration, correct?

21 A. Correct.

22 Q. The bylaws?

23 A. Yes.

24 Q. Now, we talked about an ARB, and the ARB has some  
25 guidelines, correct?

1           A.       Correct.

2           Q.       Would those ARB guidelines be part of the  
3 governing documents to your knowledge?

4           A.       They're guidelines.

5           Q.       Does that mean they're simply mere suggestions?

6           A.       They're guidelines. I don't know if the word  
7 "suggestion" is the right word, but they're guidelines I  
8 think is the best way to represent them.

9           Q.       In order to adopt an ARB guideline, does it need  
10 to be voted on by the board? A specific guideline or rule?

11          A.       So if the guidelines are significantly changed and  
12 not for clarification, it would need to be voted on by the  
13 body of the association for any type of change. If we're  
14 clarifying something within the guidelines, then that could  
15 be a board decision to clarify something that might be in  
16 the guidelines.

17          Q.       And when you said who needs to vote to pass it,  
18 were you referring to the entire association as being  
19 defined by all the members constitute the association?

20          A.       Yes. If you're changing the declaration or you're  
21 changing the bylaws, then you would need association vote.

22          Q.       And we were talking about the guidelines. Do they  
23 require a unit owner vote as well?

24          A.       No.

25          Q.       So if it's not ministerial, you need a vote of the

1 board of directors to adopt those rules; is that correct?

2 A. If it's clarification, yes, the board can adopt  
3 clarification to the document as long as they're not  
4 changing the rules of the association.

5 Q. And if they're changing the rules or the  
6 guidelines, the board of directors has to vote on that?

7 MR. VAN ALSTYNE: Object to form.

8 THE WITNESS: What did you say?

9 MR. SMED: You can answer.

10 THE WITNESS: I didn't hear what he said.

11 MR. SMED: Object to form. His objection is  
12 noted and now you can --

13 THE WITNESS: Can you ask that again?

14 MR. SMED: Can you read that one back, please.

15 (Requested portion read back.)

16 THE WITNESS: If you're changing the rules of  
17 the association, that's by the association, not the board.  
18 If you're clarifying the guidelines set forth in the  
19 architectural review -- architectural document, the board  
20 can clarify what's in the guidance document.

21 BY MR. SMED:

22 Q. If you wanted to expand the ARB guidelines, add a  
23 new -- let's say drainage wasn't an issue -- but you wanted  
24 to add drainage to those guidelines, would that need to be  
25 voted on by the board to include that in the guidelines?

1           A.       If it were a significant change, then the body at  
2 large would have to vote. If it were a minor change to the  
3 guideline, the board could vote on that minor change.

4           Q.       Isn't it true that the board votes when they do a  
5 final approval of an applicant's architectural review form  
6 and projects?

7           A.       They do.

8           Q.       Is there any situation where after someone has  
9 basically done their project and made it through the review  
10 process, that their project could be adopted without a vote  
11 by the board or the unit owners?

12          A.       Depends on history. When the developer owned the  
13 association he had control, he had units built, he was the  
14 decision-maker. In recent years the association approves  
15 the plans and resolves any issues and then grants approval  
16 to continue with the build. If there's a major change to a  
17 structure, then it's requested that we go through the  
18 process again per the declarations and bylaws to approve  
19 that major structural change.

20          Q.       If a unit owner makes an application with the  
21 Architectural Review Board on the form application, are they  
22 entitled to an up or down vote in 30 days?

23          A.       I believe it's suggested that the board return an  
24 opinion within 30 days.

25          Q.       Does the 2018 version of the ARB guidelines

1 require that you submit any drawings or plans or  
2 architectural sketches along with the application?

3 A. I would have to look at the 2018 version.

4 Q. Okay. Same question as to the 2016 version, are  
5 you --

6 A. Same comment. I'd have to look at it.

7 Q. Are you aware that the 2016 version is -- or the  
8 2018 version, which one ASM is being sued under?

9 A. It would have been when he started his  
10 construction. Whichever one was in play at that time.

11 Q. So you don't specifically know if it's 2016, '18,  
12 or otherwise?

13 A. I would need to look at them.

14 Q. Now, I'm going to --

15 MR. SMED: I'd like to have this marked as 121.

16 (Defendant's Exhibit 121 marked for identification.)

17 BY MR. SMED:

18 Q. I'm going to show you something that's entitled --  
19 thank you. All right. We'll just keep it a little handy.

20 I'm going to show you a document that's Exhibit  
21 121.

22 A. Okay.

23 Q. Can you tell me what that is, please, if you know?

24 A. It looks like a copy of the form that's filled out  
25 if you wish to run for the board -- you intend to run for

1 the board of directors for the association.

2 Q. And on there do you verify that you read Florida  
3 Statutes Chapter 718 as well as the condo documents,  
4 including the declaration and bylaws?

5 A. I have read them in the past, correct.

6 Q. Did you read them in January 2021?

7 A. I believe I have read them every year, whether it  
8 was January or not, I do not know.

9 Q. Now, aside from the ARB guidelines, are there  
10 other rules that have been passed by the association at any  
11 time to your knowledge where, in fact, all the members of  
12 the association -- all the unit owners were required to  
13 participate and vote on a specific issue?

14 A. The time that I have been on the board, I do not  
15 believe I have ever seen that.

16 Q. So to your knowledge are there other rules that  
17 myself or a unit owner could look at that govern the OAA  
18 other than the architectural guidelines?

19 A. The bylaws, the -- again, you're saying "rules"  
20 and "guidelines." The guidance document is the guidance  
21 document, the rules come from the bylaws and the  
22 declarations. Is there anything in addition to that creates  
23 a rule? Not to my knowledge.

24 Q. Okay. And I believe you testified that there's  
25 been no amendments, to your knowledge, to the -- well,

1 strike that. Actually, strike that.

2 Are there any other rules that you could tell me  
3 about that may have been passed prior to your tenure in the  
4 board that still remain in full force and effect and  
5 enforceable against the unit owners?

6 A. Not to my knowledge.

7 Q. So is it your understanding that the guidelines  
8 are not part of the governing documents; the declaration,  
9 articles of incorporation, and the bylaws -- rules, they're  
10 not -- excuse me, they're -- let me rephrase that.

11 Are the architectural review guidelines, when  
12 they're passed or adopted, do they become part of the  
13 governing documents, to your knowledge?

14 A. No, they do not become part of the governing  
15 documents. Their source is the governing documents. If you  
16 go to the governing documents, their guidelines are derived  
17 from the governing documents.

18 Q. Would you consider the ARB guidelines to be a  
19 restrictive covenant against the unit owners?

20 A. Explain. I don't quite understand the question.

21 Q. If you don't understand the question or don't  
22 know, just --

23 A. Yeah. I don't understand the question.

24 Q. Are the unit owners, each of them, including the  
25 board, are they subject to the enforcement of all the ARB



1 guidelines?

2 A. Yes. The board has no special privilege.

3 Q. I'm sorry. Say that again.

4 A. The board has no special privileges. They're  
5 subject to the same guidelines.

6 Q. Are the ARB guidelines recorded in the public  
7 records?

8 A. I do not know.

9 Q. Do you know how the declaration governs -- or  
10 excuse me, do you know how the declaration defines what the  
11 governing documents are? If it's different than you told me  
12 that it's simply the declaration and the bylaws, do you know  
13 if the declaration lists any other documents or records  
14 which would be part of the governing documents?

15 A. May have reference to state documents.

16 Q. Have you been involved in any other lawsuits while  
17 you were on the board, the association, between any other  
18 third party?

19 A. Define "lawsuit."

20 Q. I'm just going to ask the questions and you can  
21 tell me if you don't know what a lawsuit is or just don't  
22 know.

23 But have you been involved in any other lawsuits  
24 where you've sued or you've sued someone or you've been  
25 sued?

1           A.       I have not been sued, to my knowledge.

2           Q.       Have you been involved in any other, I'll call it  
3 presuit negotiations or discussions, that would be prior to  
4 filing --

5           A.       Yes.

6           Q.       -- a lawsuit.

7                   Were you able to resolve that suit?

8           A.       Yes.

9           Q.       Without the necessity of filing an actual --

10          A.       Yes.

11          Q.       -- complaint?

12                   Now, based on your understanding of the documents,  
13 do you have a right to enter a unit owner's premises for any  
14 purpose?

15          A.       I believe the documents describe the conditions  
16 for entry into a unit.

17          Q.       And isn't it true that that's limited to  
18 maintenance and operations?

19          A.       I believe those are some of the categories, yes.

20          Q.       Do you know if you have a right of entry to  
21 inspect the property, such as Ass Monkey's, by virtue of  
22 your authority under the governing documents?

23          A.       Under the documents I have not felt that I can  
24 enter Ass Monkey's property, nor have I.

25          Q.       Do you know when the construction was commenced?

1 MR. VAN ALSTYNE: Object to form.

2 THE WITNESS: I do not know the exact date when  
3 it commenced.

4 BY MR. SMED:

5 Q. Would you agree that it commenced prior to the end  
6 of May 2018?

7 A. I don't know the date. I can give you the year.  
8 2018 is correct.

9 Q. As the president, do you keep yourself apprised of  
10 the ongoings at the airport?

11 A. I try to, yes.

12 Q. Do you take action to, let's say, patrol the  
13 airport just to take a look at the hangars, see what  
14 everybody else is doing, look at construction sites  
15 specifically?

16 A. Personally, I do not.

17 Q. So do you know the first time that you heard about  
18 construction on Lots 27 and 28?

19 A. It was informed to me -- someone told me, another  
20 tenant, another unit owner, said there was construction  
21 going on.

22 Q. Who was that?

23 A. I don't remember. Somebody most likely in that  
24 area.

25 Q. Did they -- did you visit the property to take a

1 look at it after you heard the complaint or allegation?

2 A. I did not enter the property. I -- my Unit 12 and  
3 13 is rear-facing to that property, so by walking one hangar  
4 over I could look at that property, and I did see that  
5 construction had commenced, yes.

6 Q. In what stage was construction when you saw it?

7 A. I believe the footers had just been poured, the  
8 below-ground cement.

9 Q. So no slab so to speak, but the footers?

10 A. I believe that's what I saw, yes.

11 Q. Did you see any materials or construction vehicles  
12 or things of that nature on the property prior to viewing  
13 the site with the footers?

14 A. I don't recall. I remember seeing equipment on  
15 and around the area, but I don't remember its relationship  
16 to the footer.

17 Q. The individual who told you that there was  
18 construction going on there, did he have a complaint with  
19 the construction or was it generally just telling you that  
20 construction had been started?

21 A. Yes. They were concerned because the footer left  
22 a significant gap between two hangars. Not sure what was  
23 going on there.

24 Q. Okay. And did he have any other complaints? Is  
25 that on the side that has, like, approximately a 9-foot

1 setback or so?

2 A. I believe that would have been the west side that  
3 has approximately a 9-, 9-and-a-half-foot setback, correct.

4 Q. During construction did the project disturb the  
5 rights of any other unit owners?

6 A. I believe I had one complaint personally phoned in  
7 to me that storage and materials were on someone's lot,  
8 other than what was indicated to me by Joel Kagan, the ARB  
9 principal at the time.

10 Q. So it was a different lot than they had on the  
11 application?

12 A. I don't remember ever seeing a full application,  
13 but the lot on the -- my direction's straight -- south side  
14 of the property, I believe, had material stored on it, and  
15 that owner informed me of those materials maybe.

16 Q. So you're telling me you've never seen a full  
17 application by ASM --

18 A. A complete application --

19 Q. -- for to the Architectural Review Board?

20 A. That is correct. I've seen elevation drawings,  
21 I've seen pieces of an application, I've never seen a full  
22 and complete application.

23 Q. What piece of the application was completed and  
24 what portion was not?

25 A. The pieces I recall seeing were some very hard to

1 read elevation drawings, plan view displays, I believe I've  
2 seen some insurance documents, et cetera, but I'd have to  
3 look at them.

4 Q. Were these small documents or were they the large,  
5 you know, architectural --

6 A. The diagrams that I saw were actually placed on  
7 the table where the board meeting was, and they were  
8 probably 8-by-14 in size and they were copies.

9 Q. Did you ever talk with -- are you familiar with  
10 who David Larson is?

11 A. I do not know David Larson. I know he is a  
12 builder at the airport.

13 Q. Did you speak with him regarding any issues  
14 pertaining to ASM building its project?

15 A. I believe David Larson was present when the  
16 drawings were present in the board meeting and spoke with  
17 him.

18 Q. And did you have those plans prior to the meeting?

19 A. I did not.

20 Q. Did anyone else on the board?

21 A. I do not know.

22 Q. Did Joel Kagan have them to your knowledge?

23 A. Not to my knowledge. I do not know.

24 Q. Did Joel Kagan speak with you regarding the  
25 construction prior to that meeting? I assume you're talking

1 about the meeting that occurred on or about June 5th?

2 A. I believe that's the meeting where the document  
3 showed up.

4 Q. And do you recall, for that meeting, the board as  
5 an action basically directed ASM to go to Specialty  
6 Management and get an application and fill it out and give  
7 them the proper documents?

8 A. There may have been a question on where to get the  
9 documentation to complete, which we would have referred to  
10 Specialty Management.

11 Q. Do you know what year or version of the  
12 application and ARB guidelines were given so ASM when they  
13 had their meeting with Matt Jordan at Specialty?

14 A. I don't remember the date.

15 Q. If it wasn't 2016 or 2018, if it was a prior  
16 version, should ASM be bound by it? Should the terms of it  
17 be able to be enforced against ASM?

18 A. I don't understand the question.

19 Q. You said that the project -- you had -- we got to  
20 one complaint with disserving the rights of other unit  
21 owners. Were there any other complaints?

22 A. The two that I recall we've spoken about, one  
23 dealing with initial construction, one dealing with storage.

24 Q. And you talked about the 9-foot setback. What is  
25 your understanding that the guidelines require with regard

1 to setbacks?

2 A. I believe the guidelines are 3-and-a-half-feet on  
3 the sides, 5 feet in the rear, without looking at the  
4 documents.

5 Q. And do you know if that comports or is consistent  
6 with the City of Apopka's building codes?

7 A. I believe city codes are 5 feet in the rear, 5  
8 feet on the side.

9 Q. So in that case it conflicts; one is 3 -- or  
10 3-foot 3 inches, and the other was 5 feet, so which governs?

11 A. The guidelines with the developer specify 3.5  
12 feet.

13 Q. But when it's a conflict with the City, does the  
14 ARB guidelines still prevail?

15 A. I would believe they would.

16 Q. Do you know if the 27-28 project is in compliance  
17 with the current building codes?

18 A. I do not know.

19 Q. Do you know if for Units 27 and 28 they received  
20 their certificate of occupancy from the City of Apopka?

21 A. I believe I have seen that, yes.

22 Q. And during that process they would have had  
23 various inspections, correct?

24 A. I believe so. I do not know the City process. I  
25 believe so.



1 Q. Did you know that they were going to take a look  
2 at the structural aspects of the building to determine  
3 whether they were a safety issue or not?

4 A. I believe the ARB chair requested that the City  
5 look at that during construction based on concern of safety,  
6 yes.

7 Q. Do the ARB guidelines concern themselves with  
8 structural integrity or --

9 A. They concern themselves with safety.

10 Q. And if the City signed off on the CO, is it fair  
11 to assume that the building is safe as we sit here?

12 MR. VAN ALSTYNE: Object to form.

13 THE WITNESS: I'm not quite sure what that  
14 means, but -- can you explain what "object to form" means?

15 MR. VAN ALSTYNE: I can't really explain it.  
16 It's the only objection I can make.

17 THE WITNESS: Okay. Rephrase or restate the  
18 question. Sorry.

19 BY MR. SMED:

20 Q. I was asking you if it was current with the  
21 building codes and wanted to know if the building, as you  
22 know it now, is safe?

23 A. I would believe that the City would sign it off  
24 based on safety items like wind effect and so forth. Is it  
25 safe for the presence of airplanes, I would say that there

1 are further restrictions or guidance to make the building  
2 safe in and around airplanes.

3 Q. Can you elaborate on that? What else makes a --  
4 is necessary to make a building safe, you know, in a working  
5 airport?

6 A. Sure. In a working airport you have -- just like  
7 you do in the automotive industry, you have student pilots  
8 like you would have student drivers. There have been  
9 reported at many airports that are doing flight training,  
10 loss of control of aircraft, and at Apopka Airport we have  
11 had several airplanes deviate from the path and immersed  
12 itself into a hangar. We try to keep hazards on the front  
13 of the building or the structure, away from airplanes. An  
14 example might be a power source on the front of the  
15 building.

16 If an aircraft, which has typically gas tank and  
17 wings, were to hit a power source, could be problematic. So  
18 there would be guidance when it came to placement of certain  
19 items in your construction that might more reflect a safe  
20 airport environment that the City would not care about.

21 Q. So the way I'm understanding is the guidelines  
22 provide for safety, but do they have specifics on that  
23 issue? Do the guidelines say, you cannot have a power  
24 source or electrical meter, I guess, adjoining the  
25 taxiway -- I'll call it the front of the building --

1 adjoining the taxiway, does it say that in the guideline?

2 A. Specific language, I do not believe the guidelines  
3 say that.

4 Q. Do you know if the building of ASM's project  
5 caused a hike in the premiums for any of the association's  
6 insurances?

7 A. I do not know the current rate we're paying for  
8 insurance.

9 Q. Did you ever hear something at a board meeting  
10 that the rates were going to increase because of ASM's --

11 A. I do not recall hearing that at a board meeting.

12 Q. So with regard to structural, you said that it has  
13 to be rated for wind, obviously. Is there something -- is  
14 there some other type of structural integrity that the City  
15 doesn't inspect or permit for --

16 A. Oh, I don't know what the City's specific  
17 checklist is for an inspection.

18 Q. Do you know if they would check the girders when  
19 they go up the main --

20 A. I do not know what the City does.

21 Q. Have you ever been out to a construction site on  
22 the airport property with an employee of the Building Code  
23 Department for the City of Apopka?

24 A. I do not believe so.

25 Q. Do you recall when the association's attorney --

1 her first name, I believe, is Asham -- when she wrote her  
2 first letter to ASM regarding potential issues and to cease  
3 work?

4 A. I do not recall the date; I do recall the letter.

5 Q. Do you remember what that letter said?

6 A. It was a letter, I believe -- without it being in  
7 front of me -- stating that the board had not received an  
8 entire package and they were proceeding at their own risk at  
9 that point, and advised to submit a full package and stop  
10 construction until the board received that package.

11 Q. Now, in the declaration and bylaws, the  
12 declaration specifically, they use various terms to describe  
13 a building process, and I want to just ask you a couple  
14 questions to see if I can understand these terms.

15 One is improvement; do you know what the  
16 difference between an improvement and an alteration is?

17 A. As far as the declaration defines them, I would  
18 have to look at the declaration again.

19 Q. Okay. Let's look at the declaration, it's on --  
20 it's on Page 11 of -- it's Exhibit 1D, so if you go to the  
21 blue things and see a D, I probably pointed it out there.  
22 If you could read Section 5(2)(B), which I believe mentions  
23 improvements.

24 A. I'm not sure. It says the responsibility of the  
25 unit owner shall include but not limited to --

1 Q. That's correct. That's in Paragraph 1.

2 MR. VAN ALSTYNE: You want him to read (2)(B)?

3 MR. SMED: 5(2)(B).

4 MR. VAN ALSTYNE: The highlight.

5 THE WITNESS: Thank you. Sorry. Sodding,  
6 landscaping, except the portions to be maintained and  
7 repaired by the association.

8 BY MR. SMED:

9 Q. Do you see where it says: Improvements made to  
10 the unit? You didn't mention that.

11 A. Yeah. Maintenance, repair, replacement,  
12 restoration is sole and personal expense. All improvements  
13 made to the unit, including without limitation, all building  
14 improvements; sodding, landscaping, except the portions  
15 specifically to be maintained and repaired by the  
16 association.

17 Q. And my question was is do you understand or what  
18 is the difference between an improvement and an alteration?  
19 If you don't know alteration, I can direct you to that.

20 A. Yeah, direct me to alteration.

21 Q. We're going to go back to 1(C), and it's  
22 Section 5 --

23 A. 2(A)?

24 Q. I'm sorry. It's Section 5(2)(C).

25 A. Yeah. Paraphrasing, the alteration would be a

1 significant modification of the structure.

2 Q. And improvement?

3 A. Improvement would be in line with what is listed:  
4 Sodding, landscaping, et cetera.

5 Q. And improvements to the unit?

6 A. Improvements to the unit would be typical -- what  
7 they have listed: Sodding, landscaping.

8 Q. And so as you just read, if there's a conflict  
9 between these two provisions, do you understand which  
10 provision is to prevail under that language?

11 A. Yeah. I think there needs to be an interpretation  
12 of whether it's an improvement or an alteration. The  
13 alteration specifies some items here as well along with  
14 major improvements -- major changes. Sorry.

15 Q. My question is is the first one -- what you're  
16 saying seems to be that improvements in Section 5(2)(B),  
17 that if minor type -- whatever, it's minor-type actions as  
18 opposed to 5(2)(C), which is more substantial, but Section  
19 2(C), isn't it entitled alteration and improvement as well?

20 A. It is entitled that, yes.

21 Q. And do you know -- can you explain to me what the  
22 difference -- we're going into some of these where you said  
23 there's a list, but can you tell me what the difference --  
24 or do you have an idea about what a change versus a  
25 modification would be?

1 A. As defined by the documents or defined by me?

2 Q. As defined by the documents as you know them.

3 A. Could you point me to where those words were used?

4 Q. I mean, it's in the two sections that I just had  
5 you read. I'm just looking to see if you know if there's --  
6 let's do it this way: Is there a difference between a  
7 change and a modification, in your opinion?

8 A. Yes.

9 Q. And what is that distinction?

10 A. In my definition, a modification takes something  
11 that exists already and modifies it or creates something  
12 alternative to that, where a change creates something.

13 Q. What about modification versus an addition?

14 A. An addition would be starting from nothing and  
15 adding something.

16 Q. So if you had one hangar and you added another  
17 hangar to it, that would be an addition?

18 A. Yeah. If you add it, that's an addition, correct.

19 Q. If it was a modification or an addition, would  
20 that include new construction? The term "new construction"?

21 A. I don't follow the question.

22 Q. Is ASM's project that's completed, was it new  
23 construction?

24 A. I would say it was an addition to a current  
25 structure.

1           Q.       Okay. So if he basically applied for an addition  
2 as opposed to an alteration, he probably got it right,  
3 correct?

4           A.       I don't know what he applied for.

5           Q.       But if you -- I gave the hypothetical with his  
6 buildings and you said that would be an addition.

7           A.       Yes. I believe I would define that as an addition  
8 to the building.

9           Q.       So if you were applying through the ARB  
10 guidelines -- and we're going to do the same thing, so to  
11 speak, in what other ways are you say proper -- but you  
12 would also feel comfortable filling it out as an addition?

13          A.       If it were on my property, I would say as defined  
14 by the description, it's an addition. If it were an  
15 addition on a piece or property or a unit that had nothing  
16 on it before, you would have to have new construction to  
17 facilitate the new addition.

18          Q.       Do you know if the governing documents reference  
19 an Architectural Review Board?

20          A.       I'd have to look through them to see if it  
21 directly states that.

22          Q.       Do you know -- I asked you the governing  
23 documents: Do you know if the declaration discusses an  
24 Architectural Review Board or Architectural Control  
25 Committee?



1           A.       I would have to go through them to see if it has  
2 those specific words.

3           Q.       Could we go do Exhibit 1-E?

4           A.       E as in Echo?

5           Q.       Yes, sir. And I'll note that you should be in the  
6 bylaws. Page 49.

7           A.       Yeah. I believe I'm... Are you asking me about  
8 Section 1?

9           Q.       Article 10. I just want -- just Section 1.

10          A.       Section 1 states that as provided by these bylaws,  
11 the association shall appoint an Architectural Control  
12 Committee.

13          Q.       And it also says the association shall appoint an  
14 Architectural Control Committee as provided in the  
15 declaration, correct?

16          A.       Yes, it does.

17          Q.       Do you know if it does so within the declaration?

18          A.       I would have to review the declaration again.

19          Q.       Now, is the association -- does the association's  
20 authority exceed publishing rules and regulations governing  
21 the use of the common areas? Meaning, going to do the  
22 entire condominium property or limited common elements?

23          A.       I don't understand what you're asking.

24          Q.       I'm asking you if the board has the authority to  
25 govern the common areas?

1       A.       Yes, it does.

2       Q.       And does it have authority to govern other areas  
3 such as the entire condominium property or the limited  
4 common areas?

5       A.       The other areas outside of the common area are  
6 defined by these documents that I believe are sitting in  
7 front of me, the bylaws. It's the board's responsibility to  
8 follow these.

9       Q.       Okay. And if I could go to 1-G -- and before you  
10 read it, I'll ask a question.

11      A.       I don't see where G is, sorry.

12      Q.       Let me make sure I got it right.

13      A.       Ends with E. C, D, E, F -- E.

14      Q.       In the declaration it's Page 25. Sorry if the  
15 blue thing fell off.

16      A.       Okay.

17      Q.       And my question to you is: Is when the unit  
18 owners and association membership is required to vote, what  
19 percentage of a vote do you need to pass the rule or  
20 amendment to the --

21      A.       The declarations is on an entire membership. I  
22 believe it's 75 percent.

23      Q.       And isn't it true that the unit owners -- or when  
24 I say association members I just mean all the unit owners,  
25 you know, they comprise of the association itself, it's all

1 the individuals and unit lot owners. So the question I have  
2 is: You said for amendments it's 75 percent to amend the  
3 declaration and bylaws. Are the unit -- and going back a  
4 little bit -- are the unit owners required to vote on any  
5 other rules or guidelines?

6 A. So guidelines are different than rules. If  
7 there's a rule change within the documents, yes, it requires  
8 a membership vote. Guidelines can be specified as guidance  
9 from the board.

10 Q. So they would have to be -- just simply voted on  
11 by the board and that would give that --

12 A. If it's guidance or clarification of these items  
13 in these bylaws and declarations, yes, the board can specify  
14 guidance and clarification of these rules and regulations  
15 specified in these documents.

16 Q. With regard to applying for an application to  
17 build with the Architectural Review Board, does the board  
18 regularly vote to approve or disapprove of any applicant's  
19 project?

20 A. The board typically approves it based on the  
21 recommendation of the committee chair, whether to approve or  
22 ask for additional information.

23 Q. Does the ARB Committee -- does it have the sole  
24 discretion to decide if they submit the application to the  
25 board for approval or modification?

1           A.       I --

2           Q.       You have an application -- let me try to set this  
3 up.

4                    You have an application, they go to Matt Jordan.  
5 Matt Jordan sets them up with that, they submit everything  
6 to Matt Jordan, he passes it over Mr. -- I'll call him  
7 Mr. Adam -- is it Barney? Mr. Adam Barney?

8           A.       He's the ARB chair today, yes.

9           Q.       Now, he's the ARB chair. Thank you.

10                   Does Adam solely control whether a particular  
11 application comes up for a vote?

12           A.       So Adam is a unique case so I don't know if that's  
13 the best example, but Adam is both a board member and ARB  
14 chair. I'd like to change your example a little bit to a  
15 non-board member, maybe to Mr. Kagan who's not on the board.  
16 Joel, as a nonvoting member of the board, cannot approve or  
17 disapprove. He would feed that up to the board for a final  
18 decision.

19           Q.       But if you're on the board you can make -- I'm a  
20 little -- now I'm a little confused -- you can make that  
21 decision?

22           A.       You can make a vote. You have a vote.

23           Q.       You have a right to raise a motion or --

24           A.       That is correct. You're a voting member in that  
25 case. Maybe I misunderstood your question. In the case

1 where you're a board member and ARB chair, you have a vote.  
2 If you're not a board member you do not have a vote as to  
3 whether it's approved, denied, have a recommendation.

4 Q. So if it was Mr. Kagan and he was not a member of  
5 the board of directors and he received everything, does he  
6 have the sole discretion and authority to determine whether  
7 he submits it to the board to see if a motion --

8 A. He must submit it to the board if he's asking --  
9 if a unit owner is asking for a decision, which you would be  
10 if you were submitting a package, they're entitled to an  
11 answer, so the committee or any committee should forward  
12 that request to the board.

13 Q. And that's usually done on the form, the form has  
14 a space for it?

15 A. It's usually done in a board meeting.

16 Q. Are you familiar with the Architectural Review  
17 Board's application form?

18 A. I have seen it, yes.

19 Q. It's one page, correct?

20 A. I believe it's one or two pages, correct.

21 Q. And the top is to be filled out by the applicant?

22 A. Uh-huh.

23 Q. And is there, to your knowledge, a lower section  
24 that's to be filled by -- I'll say the ARB or the board?

25 A. Yes, the board has final signature.

1 Q. And in all cases when you do have that vote for  
2 approval or disapproval, it's done on that form, correct?

3 A. Yes.

4 Q. Do you know if Laurence ever got an up or down  
5 vote on his project?

6 A. I do not believe we voted because we still, I  
7 believe, are waiting for the entire submission package.

8 Q. Do you know specifically what you're waiting for?

9 A. I would have to go back to notes. As we mentioned  
10 earlier, there's a few things I recall.

11 Q. So in theory, he never got a -- did he get a -- so  
12 there was basically no vote and you're waiting for  
13 something, so theoretically if he got that to you, whatever  
14 those might be, his project could be approved?

15 A. What information he did furnish, we gave  
16 conceptual information back as to ideas that would give him  
17 a better understanding of what is acceptable and what is not  
18 acceptable. If he addresses those items to the satisfaction  
19 of the committee and the board, he would get a vote. I  
20 don't know that he has answered those questions or addressed  
21 those issues that we have sent back as concern items based  
22 on the preliminary information.

23 Q. And when you say, "sent back," how did you send  
24 them back? Is that through writing or how was that  
25 communicated to him?

1           A.       I believe most our correspondence is done through  
2 Matt Jordan's company. If not, direct by the committee.

3           Q.       And to your knowledge, was the correspondence sent  
4 to him on more than one occasion?

5           A.       I don't recall. I believe there was also physical  
6 meetings that took place where verbal exchanges were made as  
7 well.

8           Q.       Has there ever been a proposal to attempt to amend  
9 the declaration and reduce the 75 percent vote threshold  
10 lower to, let's say, 60?

11          A.       Has there been a formal proposal? Not to my  
12 knowledge.

13          Q.       Do you ever remember being involved in any -- I'll  
14 call it a planning session -- where people sort of bring  
15 their lists and their aspirations for whatever period and  
16 they asked to reduce that in order to "get things done"?

17          A.       A planning session? There has been general  
18 discussion in board meetings, I believe. There has never,  
19 to my knowledge, been a specific planning meeting --

20          Q.       All right.

21          A.       -- to address that.

22          Q.       Now, I'll start with Kagan, but did Mr. Kagan --  
23 isn't it true that he prepared an Architectural Review  
24 Board, let's say, committee notes or minutes that he could  
25 provide to the board prior to the meetings on the issue of

1 architectural review?

2 A. He has prepared ad hoc notes to be sent to the  
3 board, yes.

4 Q. And he did that on a regular basis?

5 A. Ad hoc, not a regular.

6 Q. When you say, "ad hoc," I mean --

7 A. If there was nothing to be discussed he did not  
8 send something that said nothing to be discussed. So if  
9 there was something that he felt needed a decision by the  
10 board, he would give us a document.

11 Q. Thank you. If the ARB Committee submits an  
12 application for a project to vote for the board, can the  
13 board turn down that approval if that's what's recommended?

14 A. I believe we have the right to do that, yes.

15 Q. Have you done it, to your knowledge?

16 A. Not to my knowledge, we've never rejected that the  
17 ARB chair has recommended for approval.

18 Q. Has there been times when the board has been  
19 concerned about its rights to enforcement or the manner in  
20 which it has the authority to pass rules?

21 A. Have there been discussions at board meetings  
22 regarding the same, yes.

23 Q. And has there been referrals or action taken for a  
24 board member to communicate, let's say, with outside counsel  
25 on those issues?



1           A.       I believe so.

2           Q.       Per the declaration, do you know what, if any,  
3 rules, or the authority to make rules, are reserved to the  
4 membership?

5           A.       I think we just looked at that section and  
6 discussed the membership vote for a change to the  
7 declaration being 75 percent of the members.

8           Q.       And they wouldn't have to vote on, let's say, the  
9 approval -- the approval of somebody's project?

10          A.       I'm not clear on what you're asking.

11          Q.       Would the unit owners have to vote -- let me step  
12 back. If you -- if the AR -- try this again.

13                 If a project comes up for a vote and it's approved  
14 by the ARB, are any -- is -- would that rule be one that is  
15 reserved for the membership? Do you know of any rules that  
16 when a vote was taken not only was it put to the unit  
17 owners, it would have actually been put to any mortgagees  
18 holding a mortgage on any of the units?

19          A.       I don't know.

20          Q.       Are you familiar with or do you have an  
21 understanding within how your -- the workings of the board,  
22 on what you might call as the day-to-day operations of the  
23 board or the association? Do you understand -- I'm wanting  
24 to know what constitutes a day-to-day operation of the  
25 association?

1       A.       I don't quite understand what you mean,  
2 day-by-day.

3       Q.       I mean, one might be mowing the lawn.

4       A.       Yes. We have an understanding of the contracts  
5 and obligations that the board has set forth to maintain and  
6 operate the airport.

7       Q.       And those tasks taken by the ARB, they wouldn't be  
8 day-to-day operations, would they?

9       A.       I wouldn't consider them day-by-day.

10      Q.       If there's a conflict between the bylaws and the  
11 declaration, do you know if one trumps the other?

12      A.       I do not know.

13      Q.       Has somebody's building project after their  
14 application been approved without a board vote starting with  
15 a motion and a second and -- you know, the final vote?

16      A.       I would have to look at the minutes to see if  
17 there was actually a motion called or -- again, this goes  
18 back over a ten-year period -- or whether it was discussed  
19 and resolved, we had a discussion. I don't know.

20      Q.       But generally per your prior answers, the board  
21 would have to vote on the building projects to simplify  
22 that?

23      A.       Yes.

24      Q.       Thank you. Do you know any of the distinctions  
25 between the 2018 version of the ARB guidelines and the 2016

1 version of the ARB guidelines?

2 A. I know there's a revision history inside the front  
3 cover that would stipulate what's been changed between the  
4 variant issues that you just mentioned. I don't know what  
5 they are without looking at the revision history.

6 Q. And so to go back a little bit and be clear on  
7 something, to your knowledge, ASM was not provided with a  
8 vote and a return of the board section of the form to  
9 apprise them of such?

10 A. Say that again.

11 Q. There's an application that I could show you  
12 that's entitled "Architectural Review Form." This is the  
13 one -- at the bottom seems like it's for the board to fill  
14 out.

15 A. Yes, correct.

16 Q. To your knowledge, was that form ever filled out  
17 and given to ASM?

18 A. I don't believe it's the responsibility of the  
19 board to fill out such form. I believe most of this has to  
20 be filled out by the owner and then submitted as part of the  
21 ARB process.

22 Q. On the bottom of this it says: To be completed by  
23 the OAA, correct?

24 A. You said the form, so, yes. If we're talking  
25 about the bottom -- the bottom, given that the top is

1 completely filled out and given to the board by the ARB  
2 through the ARB process, the board would sign that.

3 Q. It says: To be completed by OAA. So do you take  
4 that to mean the board or the architectural --

5 A. Let me see what you're reading. Where are you  
6 reading?

7 Q. At the very end, the short part.

8 A. Yes. I take that as being completed by the ARB  
9 chairperson where it asks for them to sign and date, and  
10 then the board could review that section and sign and date.  
11 So to be completed by the OAA, I would take as by the  
12 committee of the board of directors supporting the board of  
13 directors and the board of directors to complete that  
14 section.

15 Q. So to your knowledge, did the ARB chairperson fill  
16 this out in the space provided and provide it to the board?

17 A. To my knowledge, I had never seen that form as  
18 complete, which means it was never submitted to me.

19 Q. Are you familiar with the five or six letters that  
20 David Larson, on ASM's behalf, submitted to the board, to  
21 the association?

22 A. I have seen letters from David Larson over the  
23 course of this event. I don't know the quantity of them.

24 Q. And what was -- what was David doing wrong that he  
25 somehow couldn't submit a simple application?

1           A.       I don't know. As I recall, there was discussion  
2 about e-mail addresses and so forth in one of the  
3 correspondence and I guess there were letters, there were  
4 e-mails.

5           Q.       And isn't it true that this architectural review  
6 form doesn't require the submission of plans and drawings  
7 and architectural-type specs?

8           A.       It's part of the ARB guidance document, which does  
9 specify what should be addressed.

10          Q.       I'm going to show you what's been marked as  
11 Exhibit 122, Defendant's, and ask you if you have seen the  
12 form and seen it in its current form as filled out?

13          A.       I don't recall if I saw this. I see it's dated  
14 2018, but I don't recall if I've seen this.

15                   (Defendant's Exhibit 122 marked for identification.)

16 BY MR. SMED:

17          Q.       So you saw on here how it's made out, the owner is  
18 Ass Monkey, LLC, correct? Did you see that?

19          A.       I believe so.

20          Q.       It's crossed out, but it's dated 6/6/18. The  
21 remainder of it was filled out even though it's obviously  
22 not the most detailed form. So do you know -- you've never  
23 seen this form, but do you know if it was ever submitted to  
24 the board by the committee chairperson for consideration?

25          A.       Yeah. I don't recall if I've seen that, it's

1 going back three or four years. I don't recall. If I saw  
2 it, I don't recall if it was submitted.

3 Q. What do you think -- what would happen if an  
4 individual submitted an application from a prior iteration  
5 of the architectural guidelines with this form, let's say  
6 from 2012, if they submitted that, would that be sufficient?

7 A. I don't quite understand. They started  
8 construction 2012, is that what you're saying?

9 Q. No. Quite simply, it's my position that after the  
10 meeting in June 2018, the day after when they went to see  
11 Mr. Jordan, he did what he was told to give him an  
12 application, but he actually gave him the 2012 ARB  
13 guidelines. And there are iterations that I could confuse  
14 myself even more with, you know, between 2012 and '15, and  
15 '16 and '18, but you never saw this on the board come  
16 across --

17 A. I don't recall.

18 Q. How many people are currently on the ARB  
19 Committee?

20 A. Currently, it's a committee of one.

21 Q. Do you think that there should be more than one on  
22 that committee?

23 A. Personally, depending on workload, would believe  
24 it would evolve if there were a necessity either to have  
25 expertise or quantity -- or the capability to handle the

1 quantity of influx of applications I could see it expanding  
2 for either of those two cases, expertise or volume. In this  
3 particular environment we're in today, I believe a committee  
4 of one is sufficient.

5 Q. Doesn't it give a lot of power to one individual?  
6 I mean, they could basically decide whether they give it to  
7 the board or not?

8 A. Correct.

9 Q. Do you know of any specific instances when that's  
10 occurred?

11 A. I do not.

12 Q. Now, I'm going to hand you -- I think it'll be  
13 123.

14 (Defendant's Exhibit 123 marked for identification.)

15 BY MR. SMED:

16 Q. I'm going to hand you what's been marked as  
17 Defendant's 123. It's a architectural guideline for 2016.  
18 Could I -- could you turn to Tab B and please read that.

19 A. These guidelines do not replace the those  
20 standards and compliance set by city/county building  
21 departments and other governmental -- or government  
22 agencies, e.g. OSHA, for permitting and usage. If any  
23 contradiction arises, the permitting governing body takes  
24 precedent.

25 Q. And if you could read on Section C, Page 6.

1           A.       The highlighted or the whole paragraph? There's a  
2 highlighted section.

3           Q.       Just where it starts "New hangar construction," I  
4 believe.

5           A.       Sure. New hangar construction, interior  
6 modifications and/or structural changes are examples of  
7 development that requires City of Apopka permitting and  
8 approval to proceed. The city and county, where applicable,  
9 authorities govern the compliance and safety standards  
10 necessary to construct or modify facilities as applicable.  
11 During construction official inspections take place that  
12 lead to a certificate of occupancy or other applicable  
13 approvals. Owner's responsible to obtain all necessary  
14 permits. Authority permitting process is separate and  
15 distinct from obtaining Orlando Apopka Airport architectural  
16 review and approval.

17          Q.       Thank you. And as we discussed previously, you  
18 understand that ASM has received its certificate of  
19 occupancy?

20          A.       I believe it has received its certificate of  
21 occupancy, yes.

22          Q.       Do you know of any issues of conflict right now  
23 between ASM or -- excuse me, the association -- and the  
24 Building Department of the City of Apopka with regard to any  
25 issues?



1           A.       I'm not aware of any discussions between the City  
2 and the association in regards to 27/28.

3           Q.       Do you have any issues with regard to structural  
4 integrity and determining whether it's sufficient under the  
5 Apopka code?

6           A.       I don't know what their process is. I'm assuming  
7 that the City has a proces for gauging structural integrity.

8           Q.       Who was in control of drainage?

9           A.       When you say control of drainage --

10          Q.       On the property. Who has authority to regulate  
11 the drainage on the property?

12          A.       So drainage can be divided in two parts the storm  
13 -- or three parts: The storm water drainage, the sewer, and  
14 the drainage that comes off of the hangar.

15          Q.       Well, I'm talking about the -- off the hangar,  
16 and, you know, obviously the drainage into the taxiway.

17          A.       Yeah. So the airport has a storm water drainage  
18 plan blessed by the City that locates collectors in the  
19 center of each taxiway. The guidelines refer to moving that  
20 water from a hangar property or a unit owner's property to  
21 the airport collection system which, again, is in the center  
22 of the taxiway so all water runoff from the unit must go  
23 forward either through Butler System or direct onto an apron  
24 to reach the airport collection system.

25          Q.       Okay. So it's my understanding that you -- if I

1 heard you correctly, the City is aware that treatment or  
2 whatever drainage system --

3 A. From the airport perspective, that is correct.

4 Q. Was that system, to your knowledge, considered by  
5 the City when they -- when he passed his drainage inspection  
6 and then got his CO?

7 A. I don't know. I don't know what the City did.

8 Q. Do you have any -- "do you," when I say that I  
9 mean the association -- does the association have any issues  
10 with drainage on his property right now?

11 A. I believe we do.

12 Q. And what problems are those?

13 A. The concern from neighboring properties is, I  
14 believe, it discharges directly to the side which could  
15 impact the soil going under the adjacent property.

16 Q. What about power? The power's on the front -- or  
17 on the taxiway, and it was permitted by the City. Is that a  
18 conflict?

19 A. A conflict with what?

20 Q. I'm saying a conflict with the ARB guidelines,  
21 having an electrical meter out front on the taxiway as  
22 opposed to the -- I guess the side?

23 A. No. It's a safety concern.

24 Q. So it's permitted but it is a safety concern?

25 A. It is a safety concern. I do not believe that the

1 ARB guidelines address location of a main feed electrical  
2 distribution box.

3 Q. Does the -- what about just power to the unit?  
4 Who generally has authority over that, the City or the  
5 association?

6 A. I would have to check the declaration. The  
7 declaration is pretty specific. I believe even the original  
8 documentation for the developer specified where sewer water  
9 and, I believe, electrical must be located, but I'd have to  
10 go back to the original developer documents on that. I  
11 believe all properties, except that property in discussion,  
12 does have their input on the seller.

13 MR. SMED: I'm going to take a couple  
14 minutes --

15 THE WITNESS: Sure.

16 MR. SMED: -- to use the restroom, and please do  
17 the same. Get a sip of water or something.

18 (Brief recess taken.)

19 BY MR. SMED:

20 Q. We were talking about a few things, but drainage  
21 -- and is there a water management district that covers the  
22 airport, to your knowledge?

23 A. I don't know.

24 Q. Is there any water management district that has  
25 any authority to govern over your sewer treatment or your

1 drainage systems?

2 A. I don't know what governance bodies.

3 Q. With regard to the ARB chairperson, are they  
4 required to have any particular skills, like being a  
5 contractor or some other specialized training that helps  
6 them to that?

7 A. Not required, but as we discussed, who might a  
8 take a chair position for any of the committees, we try to  
9 find someone that's aligned and having that general  
10 contractor experience is a plus.

11 Q. Okay. What are the other committees?

12 A. We have a Aviation Committee, we have a Grounds  
13 Committee, we have a Communications Committee, we have the  
14 ARB. I believe that's it.

15 Q. And would you agree that the ARB is essentially  
16 it's advisory [sic] in nature?

17 A. I would agree.

18 Q. And then ultimately all decisions need to be made  
19 by the board of directors though?

20 A. Correct.

21 Q. Do you know if any project has ever been approved  
22 where they didn't submit any drawings or plans for the  
23 project?

24 A. I'm not aware of that.

25 Q. So with regard to -- I guess it was Mr. Kagan at

1 the time, he didn't submit -- again, I want to be clear on  
2 this -- he didn't submit the application?

3 A. The form --

4 Q. And then there wasn't -- but he said there wasn't  
5 enough there or he said there wasn't enough plans or  
6 information there to provide that on to the board?

7 A. So this obviously has proceeded over a period of  
8 time and we discussed the notes that various ARB chairs  
9 furnished to the board, which may or not include an  
10 application. If there's a item of discussion that needs to  
11 be addressed by the board, he would bring that forward  
12 either by coming to a meeting and discussing the issues or  
13 concerns, or he would furnish the report as you mentioned  
14 earlier.

15 Q. Do you remember the report or any reports that --  
16 you know, the contents of any reports that the chairperson  
17 of the ARB Board provided to the board? Do you remember the  
18 contents of those -- you called them informal notes -- do  
19 you recall what the issues were?

20 A. I do recall a few of them. Some are safety  
21 concerns, some were drainage concerns, some were roof pitch  
22 concerns. Yeah, that's about all I recall.

23 Q. Are you aware if anyone on the board contacted the  
24 City Building Department and actually tried to get them to  
25 change the code -- not change the code, but follow the ARB

1 code as it relates to setbacks as compared to what is  
2 required by the City?

3 A. I'm not aware of anyone on the board trying to  
4 influence the City.

5 Q. Are you aware or did you approve as a member of  
6 the board any correspondence to go to the City to argue your  
7 case as to why the project shouldn't move forward?

8 A. I do not believe that the board authorized --  
9 certainly I did not authorize anything going to the City  
10 suggesting that the City should not move forward.

11 Q. Don't know of anything that Mr. Kagan --

12 A. Mr. Kagan may have sent concerns to the City, but  
13 I would not qualify those as reasons to stop an approval by  
14 the City.

15 Q. So the ARB guidelines, do they discuss storm  
16 drainage to your knowledge, or gutters?

17 A. I believe the ARB guidelines do address the water  
18 flow to the main wastewater system at the airport, yes.

19 Q. What about fire suppression?

20 A. I do not believe the guidelines address fire  
21 suppression. I believe that would be City code.

22 Q. I sort of asked this, I think. Electrical power  
23 and distribution?

24 A. Again, I believe that's City code.

25 Q. And then I have oil and grease and pollutant

1 containment?

2 A. There is language, I believe, in the ARB guidance  
3 document dealing with a sump for the collection of spilled  
4 hazardous material.

5 Q. And then just to sort of get into, I think, some  
6 key issues: Does the ARB limit a unit or a hangar to having  
7 one peak?

8 A. Does the guidelines?

9 Q. Yes, the guidelines.

10 A. I would have to go back and look at those  
11 paragraphs. I know that the guidelines do specify a 2/12  
12 roof pitch.

13 Q. What about the look or the visual of the facade?

14 A. Yes. It addresses the aesthetics for the  
15 commonality and uniformity across the airport.

16 Q. Isn't it true that there's numerous differing  
17 facades throughout the portion of the airport that is -- the  
18 hangars are built out on those lots?

19 A. You would have to define "facade." I can't speak  
20 for previous actions by the developer, but know of actions  
21 by the developer were we allowed variances in certain cases.  
22 I do not -- as long as I have been on board, we have not  
23 allowed those variances.

24 Q. But the developer was back in about 2006-ish,  
25 correct?

1           A.       2006, 2007-ish, yes. 2005.

2           Q.       What about the guidelines say anything about  
3 having to center a hangar on the property, the unit lot?

4           A.       I do not believe it uses those words within the  
5 guidance document, but it does specify east, west, and rear  
6 setbacks.

7           Q.       And you're alleging in this lawsuit that he  
8 basically needs to change his setbacks, correct? His  
9 setbacks are improper?

10          A.       At least one of his setbacks is improper.

11          Q.       Let's say you have a 3-foot setback. How do you  
12 define that setback with regard to, let's say, the wall  
13 that's going to be parallel with that setback line on  
14 whatever side of the building. If it's a 3-foot setback,  
15 must the building be flush up to 3-foot to satisfy that  
16 setback?

17          A.       I'm not quite sure of the question, but from the  
18 property line to the beginning of the structure should be  
19 the setback that's required.

20          Q.       So to try to put it another way, if I had a 3-foot  
21 setback, could I put a smaller hangar centered on the  
22 property but the sides of my building are small, it's like  
23 1,000 square foot, so basically there was 10-foot between  
24 the building and the 3-foot setback. Is that compliant with  
25 the setback rule?



1           A.       I don't believe it is. I don't believe there's  
2 any property that does have 1,000 square feet --

3           Q.       My question -- I'm just trying to understand what  
4 a setback is, and it's my understanding that it's your  
5 position, the association's position, that the setback  
6 basically makes you come up to that 3-foot, your wall would  
7 be flush with the 3-foot line --

8           A.       I believe it's 3-and-a-half --

9           Q.       3-and-a-half or 3.3 --

10          A.       -- or 5 feet.

11          Q.       What would happen if somebody built it another  
12 2-foot in? That just simply would be not consistent with  
13 the setback rule?

14          A.       That would be not consistent with the setback  
15 rule.

16          Q.       What about regulating the doors on the units? You  
17 know with the ARB guidelines how they address that?

18          A.       I do not believe they go into details on the doors  
19 themselves.

20          Q.       Is it okay to have a roll-up door on the taxiway?

21          A.       It is okay to have a roll-up door on the taxiway.

22          Q.       And there's -- ASM has one roll-up door on the  
23 taxiway. Is that door in controversy?

24          A.       I believe ASM has a roll-up door facing the  
25 taxiway and in my opinion, that's not outside the guidelines

1 or it is acceptable.

2 Q. Thank you. With regard to the ARB's requirements  
3 for insurance, are you -- were you familiar or do you recall  
4 two issues: One, builder's risk insurance, and another one  
5 was contractor's liability.

6 A. Uh-huh.

7 Q. Were those voted on in the past to your  
8 recollection?

9 A. I don't recall.

10 Q. If they were voted on, would they be basically --

11 A. Well, I believe the insurance requirements were  
12 inherited from the developer -- in the guidance documents we  
13 got from the developer there's a clause about insurance, so  
14 I believe those were inherited from the developer content,  
15 if you will. That's how they ended up in the guidance  
16 document.

17 Q. Isn't it true that at some point the amount of the  
18 builder's risk insurance was lowered from, like, 500,000 to  
19 \$250,000?

20 A. I'm not aware of that. I don't recall.

21 Q. Are you aware of a vote to require contractor's  
22 liability insurance in the amount of \$1 million?

23 A. I remember that, yes.

24 Q. And to your knowledge, did the board vote on that?

25 A. It was to increase that as I recall.

1 Q. So was it in place to increase it to \$1 million?

2 A. That's correct.

3 Q. Do you know if the association's website, the web  
4 portal, is operable?

5 A. The last time I was on it it was operable.

6 Q. Did it have all the compliant documents with 7/18  
7 to your knowledge?

8 A. I did not check at the time that I was on the  
9 portal.

10 Q. Do you know if the form was ever down or out of  
11 commission, and I'm saying for a couple years, not just...

12 A. I don't know. The form was originally set up by  
13 the developer as a transition to the association so it's  
14 been many, many years. I don't know if it's been up or down  
15 since the beginning of time. Whenever we notice that it's  
16 down for whatever technical reason, we try and get it up as  
17 soon as possible.

18 Q. Why did the association decide to have Mr. Kelso  
19 take the responsibility and liability for the website rather  
20 than leaving it to Mr. Jordan, do you know?

21 A. I don't know. That was probably before my time.

22 Q. Has any hangar or adjacent hangar to 27/28 been  
23 flooded or had a problem with drainage coming off of ASM's  
24 properties?

25 A. I don't know. I do want to go back on the

1 Mr. Kelso question. Mr. Kelso is the chairman of the  
2 Communications Committee.

3 Q. Okay. Does he live here locally?

4 A. He does live locally, yes.

5 Q. Okay. To further clarify on the -- to make an ARB  
6 rule, what would -- could you give me an example of what  
7 would constitute a significant change that would warrant a  
8 vote as opposed to a less consequential action that wouldn't  
9 require the vote? I was hearing that you didn't have to --  
10 I was hearing from your prior answers that you didn't really  
11 need to vote unless it was a significant-type rule?

12 A. So if it were a rule change which would affect the  
13 bylaws or the declaration, it would need to be voted on by  
14 the membership at large. If it's a clarification statement  
15 or minor modification to the ARB guidance document, that is  
16 a board vote.

17 Q. I'm trying to figure out an example just so could  
18 I could have it on the record. What's minor versus  
19 significant?

20 A. An example, in my mind, might be I have -- there's  
21 a requirement to have faux brick in the front facade, and I  
22 choose to use Company A and you choose to use real brick, so  
23 mine is polystyrene and yours is brick. And the document  
24 specifies -- and this is just an example -- specifies must  
25 be polystyrene, I don't think it does, but that would be the

1 minor change to keep -- in keeping with the guidance of  
2 having a front facade with a brick, the language may be  
3 clarified as brick or polystyrene, but you still have to  
4 have the intent of having that facade on the front.

5 Q. And on the flip side, I'm trying to get an example  
6 of one where the members, or the association, had to vote on  
7 it, I assume, because it was more significant or significant  
8 in the interpretation of the board.

9 A. Yeah. A rule change as we discussed earlier  
10 saying -- say, to make 75 percent go to 60 percent would  
11 require -- that's a major change to the condo docs and  
12 bylaws --

13 Q. I'm speaking to the ARB guidelines. I apologize  
14 if I confused that.

15 A. Yeah. The ARB guidelines are tied directly to  
16 what was inherited from the condo docs we got from the  
17 developer and the bylaws.

18 Q. Okay.

19 A. They're derived from it.

20 Q. How often do you go to the airport? How much time  
21 you spend there?

22 A. Currently I probably go once a week, maybe once  
23 every other week.

24 Q. You testified that you don't patrol the airport  
25 for this, that, and the other. Is there anyone else who you

1 know who regularly patrols the airport that may report to  
2 you what they're seeing around the airport?

3 A. An example, a pilot reported today during the  
4 break that one of our lighting systems was out. They  
5 reported that to our Aviation Committee lead and that  
6 Aviation Committee lead just texted me for action, so  
7 there's an example of how it's conveyed back to the board  
8 that there's a problem observed.

9 Q. Do you know -- do you know -- or when was the  
10 first time that you may have seen the permit box go up on  
11 his property on 27 or 28?

12 A. I don't recall. I don't know that there's ever  
13 been a permit box for 27/28.

14 Q. Does anybody -- and I'm thinking Mr. McCoy, does  
15 he have, like, a golf cart that he goes around the airport  
16 and search out things to try to report back to you?

17 A. No. That's not an assignment, but I think pretty  
18 much everybody on the airport -- well, a good majority of  
19 folks at the airport have golf carts, that's how we move  
20 around. And a lot of people, if they see something, they  
21 say something. That's how the airport operates.

22 Q. Do you know if any of the other hangars on the  
23 property have a larger gap because of the setback? Let's  
24 say if this is 9 feet, do you know if any other hangars have  
25 larger setbacks, like, where you could drive a car through?

1           A.       I'm only aware of one. You could not drive a car  
2 through, and the reason it was moved -- and it was in  
3 coordination with the City as I recall -- there's a fire  
4 riser, and that fire riser necessitated the move for the  
5 building, but I believe the fire riser keeps a car from  
6 driving through that driveway, through that separation.

7           Q.       So if you have -- I'll call it a fire riser or  
8 hydrant, be more sophisticated. Fire riser I understand --

9           A.       Much more complex.

10          Q.       -- if you had that or telephone, you know,  
11 stub-outs, those types of things and you can't drive  
12 through, would that be an appropriate --

13          A.       In this particular case, it was safety. The  
14 building would have blocked access to that fire riser, which  
15 was more than --

16          Q.       Oh, okay. I'm just saying -- let's say you had  
17 bollards -- are you familiar with bollards? Just, you know,  
18 concrete things in front of Target, you can put them in the  
19 ground to keep people out of various places with the  
20 automobiles. On properties 27/28 on the 9-foot section, to  
21 your knowledge, do they have a fire hydrant right there  
22 where you would drive a car through if you were going to?

23          A.       I don't recall.

24          Q.       Do you know if there's any other infrastructure  
25 ingrained within that strip between the two properties, the

1 9-foot strip, that would preclude at least an automobile  
2 from getting through? I don't know about a car --

3 A. I'm not aware of anything.

4 Q. Did you ever see a copy of the full-size plans of  
5 ASM's project? You said you saw the 11-by-14s, but did you  
6 ever see --

7 A. That's the only thing I've personally seen as far  
8 as plan view and elevation views.

9 Q. Do you know if during this process anyone directed  
10 the ARB Committee, whether that was one person or more, to  
11 cease communications with Mr. Albrecht?

12 A. I never suggested that or am I aware of any other  
13 board member that suggested that.

14 Q. When the -- when Mr. Kagan did write his ARB  
15 reports, did he send them out prior to the meetings so -- to  
16 the board members so they could have a chance to look at  
17 them, or were they presented at the meetings?

18 A. Typically, the way the committees work is if they  
19 have something to be brought before the board they send it  
20 Specialty Management. Specialty Management prepares a  
21 package to be delivered to the board, typically, I think  
22 it's 48 hours before the meeting. So if any of the  
23 committees wanted to include discussion items or have  
24 artifacts, they would have sent it to Matt Jordan. Matt  
25 Jordan would have included it in the package and would have



1 been part of that board package which would have minutes,  
2 financial information, and any artifacts that need to be  
3 discussed.

4 Q. In this lawsuit, to your knowledge, there's no  
5 issues related to the interior of his unit as it relates to  
6 restrooms or the restrooms being ADA compliant and/or the  
7 fire suppression system? Isn't it true that the board  
8 basically told Mr. Albrecht that on those issues they would  
9 defer to the City?

10 A. I would believe those are all City items, correct.

11 Q. I'm going to show what's marked as 124.

12 A. Sure.

13 (Defendant's Exhibit 124 marked for identification.)

14 BY MR. SMED:

15 Q. If you could just take a look at that.

16 A. Looks like the CO.

17 Q. I believe it is the CO.

18 A. Yes, it looks like the City of Apopka certificate  
19 of occupancy.

20 Q. So he gets the CO -- and I think there's been many  
21 things that I think have been alleged; let's say there were  
22 in letters from lawyers and this, that, and the other, but  
23 aside from the two peaks -- and I'll call it the facade, up  
24 front elevation of the building specifically in this case  
25 probably above the eave height and up because that's where

1 you have your M-styled roof as opposed to an A-style.  
2 Doesn't that allay the majority of the concerns of the  
3 association because they got -- because he received a CO? I  
4 understand that the ARB guidelines do not -- they're not  
5 going to supplant the City, but also the City's not to  
6 supplant the ARB guidelines per some of their language, and  
7 I'm just trying to figure out if that -- what that means in  
8 the whole context of this approval as we're sitting here  
9 right now?

10 A. So I would believe that if there were structural  
11 concerns, that the City would mitigate that by issuing the  
12 -- that's assuming their process -- mitigate those concerns  
13 on behalf the board or any of those City-type things that we  
14 discussed previously: Sprinkler systems, ADA compliancy on  
15 the restroom, structural concerns, that this would mitigate  
16 those concerns.

17 Q. I previously asked you if you knew when the first  
18 ARB guidelines were formally adopted and implemented and I  
19 believe you said you didn't know; is that correct?

20 A. I do not know the specific date. The original  
21 guidelines were developed by the developer.

22 Q. Isn't it true that they were actually formed in  
23 2012 by the association?

24 A. As a guidance document, I believe that's correct.

25 Q. Okay. So what you're saying is that the developer

1 had them in the declarations, so to speak, some rules that  
2 are for architectural purposes; is that correct?

3 A. They had them at the developer -- and this is  
4 personal experience because I built when the developer  
5 actually ran the association -- I was handed a guidance  
6 document from the developer, I was handed pieces of a  
7 contract, and I was handed various other items about the  
8 airport. To me, that's how I built my hangar, based on  
9 those guidance documents directly given to me by the  
10 developer. That document, as well as the bylaws and  
11 declarations, served as the input into the guidance document  
12 that we know today.

13 Q. So you had far less restrictions, correct, than  
14 would be the case now?

15 A. I would not say far less.

16 Q. Were there any -- what restrictions did you have  
17 or that you couldn't meet, if there were any?

18 A. I don't quite understand.

19 Q. With the developer, were there any restrictions  
20 that he was trying to impose -- I've been looking at the ARB  
21 guidelines that go here -- start here; you add to them, you  
22 add to them, you add to them. You're here, you're saying  
23 you had these restrictions as well --

24 A. I did.

25 Q. -- and I'm asking you if you were able to comply

1 with all the restrictions --

2 A. I did.

3 Q. -- or were there some that you couldn't --

4 A. No. I complied with every one of them. It was an  
5 attachment to my contract.

6 Q. The ARB guidelines don't always tell its story in  
7 words and language, it actually includes pictures. How  
8 should one look at those pictures as it relates to  
9 interpreting the guidelines? I mean, the picture is what it  
10 is, but does that mean that it has to exactly be that?

11 A. No, it does not exactly have to be that. And  
12 those are some of the evolutions of the documents, adding  
13 the pictures by the board for clarification. The document I  
14 got from the developer was nothing more than a paper  
15 document with some small paragraphs, no photographs, and so  
16 forth. And to clarify those items, which as you suggest,  
17 are words of the bylaws, declaration, and information given  
18 to us by the developer -- sometimes a picture to help in  
19 that clarification process. Are you bound to that picture?  
20 You're not bound to that picture. It's there for reference.

21 Q. Is there any significant action in the ARB  
22 guidelines that you know, or could you give me an example of  
23 one where the unit owners would actually have to vote on it?  
24 I know the board has to on significant -- maybe not on less  
25 consequential, but what's an example of something that's

1 important that would really require the members to vote on  
2 it?

3 A. Again, guidelines are guidelines, they're not  
4 rules, they're guidelines for both the unit owners and the  
5 board for consideration. Rules stem out of the governance  
6 documents. The governance documents, to change those,  
7 required to vote by all members. Clarification of the  
8 guidance documents is a board function.

9 Q. Do you know if all board members are compliant  
10 with all the ARB guidelines?

11 A. I do not know.

12 Q. Do you know --

13 A. I could speak for myself, and I am.

14 Q. Thank you. Do you know of any board members who  
15 reside on the property?

16 A. It's my understanding city ordinance prohibits  
17 residing on the property. They're commercial units,  
18 nonresidential units. I am not aware of anyone who resides  
19 on property. For temporary purposes, yes.

20 Q. Not even outside the board individuals?

21 A. I do not know of anyone residing on the property  
22 for an extended period of time. You're certainly allowed to  
23 bring your plane in, stay a couple nights, you know, depart.  
24 But a permanent residence, I do not believe that's allowed  
25 by the City.

1 Q. For a change of the guidelines or to vote on the  
2 guidelines, isn't it true that all the unit owners need  
3 advance notice?

4 A. The rules as specified in the condo docs and  
5 bylaws do require advance notice. As a change to the  
6 guidance documents, we have put that out ahead of time in  
7 the past.

8 Q. And how many -- how much time have you given for  
9 those, the guidelines or the rules? How much advance  
10 notice --

11 A. I don't know what it is. Specialty Management  
12 assists us with that document.

13 Q. Does 14 days sound like -- you ever hear -- you  
14 ever hear that you needed 14 days' notice?

15 A. If possible.

16 Q. Now, Mr. Landelot (phonetic) is a member of the  
17 board?

18 A. Currently he is a member of the board.

19 Q. Currently, correct?

20 A. Correct.

21 Q. And are you familiar with his units, 93 and 94?

22 A. I know he just constructed them. I have not been  
23 around them yet.

24 Q. Have you seen any architectural plans or drawings  
25 for his project?

1           A.       Yes. His plans were submitted just like everyone  
2 else with a review package and voted on by the board.

3           Q.       Was his final approval about 30 days later? Do  
4 you recall?

5           A.       I don't recall the timing.

6           Q.       Do you know if his final approval was voted on by  
7 the board?

8           A.       It was. I do recall the vote. That's a very  
9 recent build, probably within the past nine months.

10          Q.       When you have a board of directors meeting  
11 minutes, isn't it true that the votes are usually clearly  
12 reflected by motion -- and as I said previously, motion and  
13 -- you know, motion seconded and the vote by the others?

14          A.       Yes.

15          Q.       So if it didn't have a motion and vote to approve  
16 it, what would be the status of -- that wouldn't have been  
17 properly approved, correct?

18          A.       Or a mistake in the minutes, one of the two. But  
19 I recall voting on that particular platform.

20          Q.       Do you know who's in hangar 65?

21          A.       I have no clue.

22          Q.       Do you know if for Mr. Delots (phonetic) there was  
23 14 days' notice prior to that vote?

24          A.       Prior to the vote?

25          Q.       Yes. 14 days' notice to the unit owners prior to

1 voting to approve his project.

2 A. I don't know.

3 Q. Have you ever been aware that when issuing a  
4 notice -- strike that.

5 Have you ever been privy to see an affidavit  
6 attesting that notice occurred to the unit owners?

7 A. An affidavit attesting to what the unit owners --

8 Q. No. What I'm saying is if you -- if you had to  
9 give a 48-hour or 7-day or 14-day notice, the person who  
10 sent the notice actually attested that they sent it out,  
11 mailed it, to the unit owners?

12 A. I don't recall seeing an affidavit stating those  
13 in general.

14 Q. All right. If I could just hand you 125 and take  
15 a look at that.

16 A. Sure.

17 (Defendant's Exhibit 125 marked for identification.)

18 BY MR. SMED:

19 Q. It's another architectural review application. Is  
20 that application Mr. Landelot's?

21 A. It appears to be a partial, yes.

22 Q. And when you say partial, do you mean it wasn't --  
23 it's not the -- filled out on the bottom?

24 A. That's correct.

25 Q. And did he put a description of the --



1           A.       He did put a description.

2           Q.       And what is that description?

3           A.       Under the description it says: Building 145 by 70  
4 on lots 94 and 93.

5           Q.       I'm going to hand you what is 126, please.

6           (Defendant's Exhibit 126 marked for identification.)

7 BY MR. SMED:

8           Q.       Just tell me, does this look like some OAA  
9 Association meeting minutes?

10          A.       It does look like meeting minutes, correct.

11          Q.       And if you're on the first page -- and, again, if  
12 you look up at the top -- sorry -- it looks like October 6,  
13 2020?

14          A.       Correct.

15          Q.       And directing your attention to the bottom of the  
16 Page 1, they're not -- they're numbered in the upper right  
17 corner. It says: Architectural review, Adam Barney  
18 reported, and it says: Report 93 and 94 approved. If you  
19 look up a little bit for one of the other committees, you  
20 know, it's, like, motion and, you know, there's a motion and  
21 all that. So you're telling me that there was, in fact, a  
22 vote and this would be an error?

23          A.       As I recall, there was a vote at the meeting. I  
24 don't know if it was at this meeting, but there was a vote  
25 at a board meeting to approve Landelot's hangar build,

1 correct.

2 MR. SMED: What I want to do is just literally  
3 take five or ten. I'm going to ask you my final questions,  
4 just a couple, let me just go through my notes. I had some  
5 but I asked them during the way, and if you could just give  
6 me a couple of minutes to gather and then hopefully I can  
7 get you out of here fairly quickly.

8 MR. VAN ALSTYNE: Of course I'd have to go too.

9 MR. SMED: Right.

10 (Brief recess taken.)

11 BY MR. SMED:

12 Q. Does the association consider the building --  
13 buildings, pardon me -- on Lots 27 and -8 to be one building  
14 or two buildings?

15 A. The board perceives it as a singular building with  
16 an addition added to it.

17 Q. Okay. Let's say if Mr. Kagan -- or when he was  
18 chairperson of the ARB committee -- can he just simply make  
19 minor changes or suggestions to the rules?

20 A. Not rules, guidance.

21 Q. Guidelines?

22 A. Guidance language, and he submits those back to  
23 the board for discussion.

24 Q. How about a vote?

25 A. In my recollection, every time Joel brought

1 forward a suggested change, it was discussed and voted on by  
2 the board. It's been quite a period of time, but I believe  
3 I recall voting on every change that he suggested.

4 Q. So he took those to the board. Did -- with your  
5 understanding of the documents, do you believe that the  
6 owners have a right to take a look at those architectural  
7 guidelines, the changes, before they're adopted or  
8 implemented?

9 A. Do I believe the owners did --

10 Q. The unit owners. I'm just going to say everybody  
11 to make it simple, but do they have the right to look at the  
12 changes prior to them being adopted or implemented?

13 A. I believe because it's clarification language that  
14 it goes directly to the board. If it was something other  
15 than clarification language, it goes back to that 75 percent  
16 vote by all members, which it would be disseminated to all  
17 members if it was nothing more than a clarification  
18 language.

19 Q. Can you define the word "clarification" the way  
20 that you're using it? I understand, obviously, but I'm just  
21 trying to hone in on the actual definition.

22 A. Yeah. Again, an example of faux brick versus real  
23 brick would be a clarification. If it says must show a  
24 brick front might be the version that comes before the board  
25 and allowing the words to change from a brick front to read

1 faux brick or real brick would be a minor clarification of  
2 the main requirement.

3 Q. So that wouldn't require a unit owner, you know,  
4 seeing it first and it does or doesn't require a vote if  
5 that's that minor?

6 A. It does not require an association vote. It does  
7 require a board vote to make those changes of the guidance  
8 documents.

9 Q. Okay. So it's never going to be Adam Barney  
10 making a guideline, even if it's minor --

11 A. Not without discussion of the board.

12 Q. The board still takes care of that. That's what I  
13 meant. Thank you.

14 Did you attend a meeting with the City in 2019 to  
15 discuss issues related to the ARB guidelines and how they  
16 meld with the City and the issues that, you know, arise  
17 between the City and the airport?

18 A. There were several subjects at that meeting. We  
19 did have a meeting with several of the City officials and  
20 there were a variety of topics. I don't recall if  
21 guidelines were discussed. There were several other more  
22 pressing topics at the time we had that meeting.

23 Q. And recently there was a vote for the one row to  
24 raise the eave level to 27 feet. Would that be considered a  
25 minor or a significant change? Trying to figure out if the

1 board needs to vote on it or that would be the one thing  
2 that the unit owners need to vote on.

3 A. Right. Since there's already hangars in that  
4 space and that space already has hangars built by the  
5 developer at the higher height, it was determined that  
6 clarification language needed to be put in there to say  
7 since the developer's intent was to let that one go through,  
8 the rest of them adjacent to it should go through.

9 Q. But in that resolution isn't it true that you  
10 could be on that row and you could still build to 21 feet so  
11 it would be lower? Or does that require 27 feet?

12 A. It's specifically listed by lot number, the lot  
13 numbers that are consistently adjacent would be at the one  
14 height, the other ones that are consistently adjacent would  
15 be at the lower height. You do not have a choice.

16 Q. It's not a suggestion? Okay. Thank you.

17 A. That's right. Again, following the consistency  
18 and trying to keep everything as aesthetically uniform as  
19 possible.

20 Q. When you drive down the taxiway where Lots 27 and  
21 28 are -- I mean, as you look down them coming from either  
22 side, isn't it difficult to -- from an aesthetic purpose, I  
23 mean, isn't it -- it's just difficult to even see that 27-8  
24 -- and 27-8 don't have the setback, but aren't they actually  
25 uniform because if they have the single peaks and you have

1     those peaks --

2           A.       So it depends on your point of view.  If you're on  
3     -- that would be assuming you're in the front of the  
4     structure, that would be Alpha 2.  Alpha 1, the rear,  
5     there's nothing but vacant property, it's very obvious.  And  
6     to pilots who fly over that space all the time from a  
7     three-dimensional perspective it's easy to see things that  
8     are not uniform.

9           Q.       So planes fly over all the hangars -- I just --  
10    you're talking to a layman --

11          A.       Yeah.  When you enter a pattern it's usually a  
12    rectangular course, and because of noise abatement to the  
13    other side of the of 441, whether you're flying north or  
14    you're flying south, you fly basically over the edge of the  
15    airport looking down upon --

16          Q.       All right.  So you're saying that pilots will see  
17    it?

18          A.       Pilots could see it, yes.

19                   MR. SMED:  All right.  I'm going to turn it  
20    over to Mr. Van Alstyne.

21                   MR. VAN ALSTYNE:  Sure.  All right.  Thank you.

22                   MR. SMED:  Maybe I'll take these.  Here's the  
23    declaration.

24                   THE WITNESS:  I'll trade you.

25                               CROSS-EXAMINATION

1 BY MR. VAN ALSTYNE:

2 Q. Good morning. My name is Lewis Van Alstyne. I  
3 want to go over some background.

4 Can I just call you David since I already know  
5 you?

6 A. Sure.

7 Q. And if I refer to Monkey, you'll know I'm  
8 referring to Ass Monkey, LLC. If I refer to the association  
9 I'm referring to the Orlando Apopka Airport Association,  
10 Inc.

11 A. Okay.

12 Q. When did you buy your hangar?

13 A. The actual purchase I believe was in 2000 -- the  
14 purchase of the property was 2006, started to talking to the  
15 developer in 2005, and shortly after buying the property we  
16 constructed a hangar on Unit 13.

17 Q. Okay. And when you say you started talking to the  
18 developer in 2005, who was that?

19 A. In 2005, Jim Thompson had, I believe, a company  
20 called Orlando Country, LLC, or something similar to that,  
21 which was who we purchased our lot from.

22 Q. Okay.

23 A. Jim Thompson was the developer.

24 Q. Jim Thompson. And when you bought that hangar,  
25 did he actually give you anything at that time?

1           A.       Yes.   Quite a few documents.

2           Q.       All right.   This will be Exhibit 127.

3                   MR. SMED:   Let me see that real quick.

4           (Plaintiff's Exhibit 127 marked for identification.)

5 BY MR. VAN ALSTYNE:

6           Q.       Is this one of the documents Jim Thompson gave  
7 you?

8           A.       Yes.   It looks like a copy of the document that he  
9 gave me.

10          Q.       Does this document talk about forming an  
11 Architectural Review Board?

12          A.       Yes.   Midway -- looks like on Page 3:   An owners  
13 association will be formed and will have an Architectural  
14 Review Board and deed restrictions in place at the end of  
15 the development.   The association will be managed by the  
16 owners, and it goes on to talk about --

17          Q.       Okay.   So at this time the developer had both deed  
18 restrictions and architectural standards at the airport?

19          A.       Yes.

20          Q.       Does the document he gave you also refer to  
21 setbacks?

22          A.       It does.

23          Q.       I'm going to give you the next exhibit.

24          (Plaintiff's Exhibit 128 marked for identification.)

25 BY MR. VAN ALSTYNE:



1           Q.       Is this a document that was also given to you by  
2 the original developer?

3           A.       Yes. It looks like a copy.

4           Q.       And would it be fair to say that this document  
5 establishes architectural standards at the airport as early  
6 as 2005?

7           A.       I believe so.

8           Q.       Some of the items listed on this one-page document  
9 include eave height restrictions; is that correct?

10          A.       Correct.

11          Q.       What about roof pitch must be 2 to 12?

12          A.       Correct.

13          Q.       And does it say that all buildings will have  
14 oversize gutters and downspouts that will drain to the front  
15 of the building?

16          A.       Correct.

17          Q.       And does it also say that all buildings will have  
18 a setback of 3 feet 3 inches from the side property lines  
19 and 5 feet from the rear property line?

20          A.       Correct.

21          Q.       All right. So the next exhibit.

22               (Plaintiff's Exhibit 129 marked for identification.)

23 BY MR. VAN ALSTYNE:

24          Q.       Is this a letter dated August 10th, 2007, and it's  
25 double-sided, from Douglas Rodante, who was the president of

1 the airport association at that time?

2 A. Not 2007, 2006.

3 MR. SMED: Is there a second page to that?

4 MR. VAN ALSTYNE: It's double-sided. That's --

5 MR. SMED: I guess we'll remark it. Want to  
6 trash that one or...

7 MR. VAN ALSTYNE: You can just --

8 MR. SMED: Just take the sticker off?

9 MR. VAN ALSTYNE: Yeah, it comes off. It just  
10 has the second page. Actually, these are two different  
11 letters.

12 THE WITNESS: Yes. I believe one's 2006, one's  
13 2007.

14 MR. VAN ALSTYNE: All right. Let's mark this  
15 as 130. The original exhibit of 129 will stay 129, we're  
16 just going to mark this one 130.

17 (Plaintiff's Exhibit 130 marked for identification.)

18 BY MR. VAN ALSTYNE:

19 Q. So first looking at Exhibit 129, is that a letter  
20 dated October 17th, 2006, from Douglas Rodante who was the  
21 president of the association at that time?

22 A. Yes, it is.

23 Q. And did you receive this letter as a unit owner?

24 A. Yes, I did.

25 Q. So at that time it sounds like the association had

1       formed a temporary board of directors?

2           A.       That's what the letter states from Doug Rodante,  
3       that a temporary board of directors has been formed and he  
4       is acting as president.

5           Q.       Okay. And does it also say the developer, Jim  
6       Thompson, has turned over the airport to the owners as  
7       required by law?

8           A.       Yes, it does.

9           Q.       And going to Exhibit 130, do you recall receiving  
10      this letter as a unit owner?

11          A.       Yes.

12          Q.       And what does this letter basically state?

13          A.       This letter was stating that they had hired a  
14      management company to collect dues and force bylaws, manage  
15      financial records, so forth. It says the management company  
16      has an attached introduction letter.

17                   MR. VAN ALSTYNE: Okay. This will be 131.

18                   (Plaintiff's Exhibit 131 marked for identification.)

19      BY MR. VAN ALSTYNE:

20          Q.       And is this the management company that Doug  
21      Rodante was introducing?

22          A.       Yes.

23          Q.       Would this have been the letter that was attached  
24      to his letter, Exhibit 130?

25          A.       Yes.

1 Q. So is this letter just telling you that there is  
2 going to be -- the management company is going to be  
3 Specialty Management Company of Central Florida, Inc.?

4 A. Yes.

5 Q. Are they currently the management company?

6 A. Yes.

7 Q. Okay.

8 MR. VAN ALSTYNE: This is Exhibit 132.

9 (Plaintiff's Exhibit 132 marked for identification.)

10 BY MR. VAN ALSTYNE:

11 Q. Is this a notice to the unit owners dated  
12 September 19th, 2007?

13 A. Yes.

14 Q. Or possibly the date is August 13th, 2007, on the  
15 lower left-hand corner?

16 A. The body of the copy says the date of the notice  
17 is September 19th, but the actual document is dated August  
18 13, 2007.

19 Q. Okay. And is this notifying unit owners that  
20 there would be an election to fill five vacancies on the  
21 board of directors on September 19th, 2007?

22 A. Correct.

23 Q. And did you receive this as a unit owner?

24 A. I did.

25 Q. Okay.

1 MR. VAN ALSTYNE: This will be Exhibit 133.

2 (Plaintiff's Exhibit 133 marked for identification.)

3 BY MR. VAN ALSTYNE:

4 Q. Is this a -- Composite Exhibit 133, a notice of  
5 board of directors meeting to occur on October 22nd, 2007?

6 A. Yes.

7 Q. And then is the second page of that a meeting  
8 minutes for that meeting on October 22nd, 2007?

9 A. Yes.

10 Q. On the last page of the minutes, does it state  
11 where an Architectural Review Committee was formed naming  
12 the chairperson?

13 A. Yes, it does.

14 Q. Do you know those people that it's referring to?

15 A. It gives their first name. I'm assuming Wayne is  
16 Wayne Bentley. Jim is Jim Fanning. Bill Campbell is  
17 probably the third person in that committee with Jim being  
18 the chairman.

19 Q. So did you attend this by chance, this meeting?

20 A. I try to attend all the meetings that I could go  
21 to. I don't recall if I went to this specific meeting.

22 Q. Okay. So as a unit owner receiving this, did you  
23 interpret this to be the -- as of October 22nd, 2017, that  
24 they had formed an Architectural Review Committee?

25 A. Yes.

1 Q. Here's the next exhibit.

2 MR. SMED: Can I take a look at that last one?

3 THE WITNESS: Sure. Here's the three pages. I  
4 think you got the next one.

5 MR. VAN ALSTYNE: Yeah. That's 134.

6 (Plaintiff's Exhibit 134 marked for identification.)

7 BY MR. VAN ALSTYNE:

8 Q. So up until the last exhibit where the association  
9 appointed an Architectural Review Board, was it your  
10 understanding that the developer sat as the board  
11 chairperson until the developer turned it over to the  
12 association?

13 A. The developer was on the board, I don't know if he  
14 was the actual chair.

15 Q. Before he turned it over -- before he turned  
16 control over to the association, was it your understanding  
17 that the developer --

18 A. Yes, until -- up to the point he turned it over,  
19 that is correct.

20 Q. The developer made the rules for -- rules and  
21 guidelines for the architectural guidelines?

22 A. Yes.

23 Q. And the developer was the only person that could  
24 make those decisions because there was no board at that  
25 time?

1           A.       That's correct.

2           Q.       And when the developer was the -- before the  
3 developer turned it over, there was no membership to vote  
4 upon the guidelines; is that correct?

5           A.       Correct.

6           Q.       And the developer did not have to have a vote  
7 because there was no membership to vote on the guidelines;  
8 is that correct?

9           A.       Correct.

10          Q.       So looking at Exhibit 134, is this a letter dated  
11 December 19th, 2007, from Specialty Management to the  
12 association and unit owners?

13          A.       I don't know that it came from Specialty  
14 Management. It was certainly written by the association  
15 president. I don't know -- I believe it must have been  
16 distributed by Specialty Management since they're on the  
17 header.

18          Q.       Do you recall getting this letter?

19          A.       Yes.

20          Q.       Okay. What does -- does it talk on the bottom of  
21 the first page, does it say: We're currently taking steps  
22 to create a new Architectural Committee that will oversee  
23 and approve exterior building plans prior to their submittal  
24 to the City of Apopka. This committee will review hangar  
25 construction plans for siding and roof, color, eave heights,

1 and other characteristics to ensure continuity of  
2 construction throughout our airport development?

3 A. Yes. That's exactly what it says.

4 Q. So was the Architectural Committee formed in order  
5 to continue the pattern or scheme of construction that the  
6 developer started?

7 A. I believe so.

8 Q. The next page talks about a website for the  
9 airport. Is it your understanding that the ARB guidelines  
10 have always been posted on the airport's website?

11 A. To my recollection, the guidelines have always  
12 been on the website.

13 Q. Okay.

14 A. Prior to the turnover, it was handed to me at the  
15 sales office.

16 Q. Okay. So we're in 2007 now --

17 MR. SMED: Excuse me, could we go off the  
18 record for one second?

19 MR. VAN ALSTYNE: Sure.

20 (Discussion held off the record.)

21 BY MR. VAN ALSTYNE:

22 Q. In 2010 you were director of the airport  
23 association?

24 A. Yes.

25 Q. In 2011 you were director?



1 A. Yes.

2 Q. And in 2012 you were not on the board?

3 A. I was not on the board.

4 Q. And then from 2013 to 2018 you were a director or  
5 vice president?

6 A. Correct.

7 Q. And then 2019, 2020, and 2021 you've been  
8 president?

9 A. Yes. After Jim resigned in 2019, since that time.

10 Q. Okay. And referring to -- there was some  
11 discussion this morning about the declaration, Exhibit 120,  
12 Article 5.

13 A. Do you remember the page?

14 Q. Let me see. Article 5, Section 2.

15 A. Here we go. Yes.

16 Q. Section 2 is making a distinction between the  
17 association and unit owners; is that correct? Section  
18 2(A) --

19 A. Correct.

20 Q. -- and Section 2(B)?

21 A. Correct.

22 Q. And is it your understanding that it's defining  
23 the responsibilities of the association versus a unit owner?

24 A. Yes.

25 Q. Is it making the distinction then under Section

1 2(B)(I) that maintenance, repair, replacement and  
2 restoration of units is the sole and personal expense of the  
3 unit owner versus the association?

4 A. Yes.

5 Q. Is it making the distinction that all improvements  
6 made to unit are the responsibility of the unit owner versus  
7 the association?

8 A. Yes.

9 Q. And there was also discussion about the language  
10 used here talking about improvements, alterations,  
11 modifications, changes, trying to get in the semantics over  
12 how do you define each one. If the defendant made the  
13 construction that litigation is over, is it your opinion  
14 that he made both a change and a modification?

15 A. Yes. Several, yes.

16 Q. Is it your opinion that he made both an  
17 improvement and an alteration?

18 A. Yes.

19 Q. Is it your opinion then that it doesn't matter  
20 what you label it because it covers -- the changes made  
21 cover all of those definitions?

22 A. Yes.

23 Q. Okay. Looking at Article 2(C), which is the next  
24 page, Page 12 of 57, is that paragraph clear?

25 A. In my mind it's clear.

1           Q.       Okay. How does -- how do you interpret that  
2 paragraph? Do you read it as sentence by sentence?

3           A.       Yes. I read it by sentence by sentence, separated  
4 by the periods being thoughts.

5           Q.       Okay. Do you read each sentence as a condition  
6 that a unit owner must comply with when making an alteration  
7 or improvement?

8           A.       Yes.

9           Q.       Do you read it that a unit owner must receive  
10 approval in writing from the association board of directors  
11 before making any changes or alterations to any exterior  
12 wall and those structural load-bearing walls?

13          A.       Yes. That's what that says.

14          Q.       And do you see that as a condition to receiving  
15 written approval?

16          A.       Yes.

17          Q.       Do you see a condition to approval as another  
18 condition that the alteration as improvements must be in  
19 compliance with all existing building codes at the effect of  
20 such alteration?

21          A.       Yes.

22          Q.       Do you see another condition that alterations or  
23 improvements must require board approval if they're going to  
24 cause an increase in the cost of insurance carried by the  
25 association?

1           A.       Yes.

2           Q.       Is it possible that Monkey's construction could  
3 cost an increase in the insurance carried by the  
4 association?

5           A.       It may.

6           Q.       What -- is the electrical panel configuration in  
7 front of the building one of those possible conditions?

8           A.       Yes. Although an official survey has not been  
9 done or I have not seen one, by locating the electrical  
10 panel to the front of the building they have located it on  
11 common property. The property lines typically start right  
12 in the front of the building. As Mr. Smed pointed out, if  
13 you look straight down they're all on the property line so,  
14 therefore, putting something on the front of your hangar  
15 protrudes in the common area; the common area's insured by  
16 the association so it very well may have a -- a survey would  
17 need to verify its placement.

18          Q.       Okay. So based on your experience on the board  
19 and your interpretation of the declaration, is board  
20 approval required before constructing an improvement such as  
21 Monkey's?

22          A.       Yes. Board approval is absolutely required.

23          Q.       Did the board ever give written approval to  
24 Monkey?

25          A.       No.

1 Q. So the board never approved any modifications,  
2 improvements, alterations, or changes to Units 27 and 28?

3 A. That's correct.

4 Q. Do you believe that Monkey had every opportunity  
5 to stop work and work with the association to come up with a  
6 plan where both parties could be happy with the construction  
7 of Units 27 and 28?

8 A. Yes.

9 Q. Do you believe that Monkey proceeded with  
10 construction without hearing from the board or seeking an  
11 answer from them?

12 A. Yes.

13 Q. Exhibit 135 in front of you, do you remember  
14 receiving this e-mail?

15 A. Yes.

16 (Plaintiff's Exhibit 135 marked for identification.)

17 BY MR. VAN ALSTYNE:

18 Q. Is this e-mail a letter from -- or is this e-mail  
19 an e-mail from the association or the board's attorney  
20 requesting that the property manager post the attached  
21 notice at the property of Monkey?

22 A. Which section is that? Here it is. Okay. Yes.

23 Q. The attached letter dated May 29th, 2018, does it  
24 state the purpose of this letter is to put you on notice  
25 that this is a violation of the declaration and demand that

1 all construction activity cease until the alterations are  
2 reviewed and approved by the association?

3 A. Yes.

4 Q. And on the last page there's a highlighted portion  
5 saying the association demands that all improvement and  
6 construction on Unit 27 and Unit 28 be discontinued unless  
7 and until the plans for the proposed alterations are  
8 submitted to the association and approved?

9 A. Yes.

10 Q. Okay. Were the plans for the proposed alterations  
11 submitted to the association and approved?

12 A. No.

13 Q. There was an application made by Monkey; is that  
14 correct?

15 A. Correct.

16 Q. Subsequent to Exhibit 135?

17 A. Yes, I believe so.

18 MR. SMED: This is a little bit difficult to  
19 read here.

20 MR. VAN ALSTYNE: I printed those --

21 MR. SMED: Can I see the last exhibit?

22 THE WITNESS: Yes, sir.

23 MR. SMED: Thank you.

24 MR. VAN ALSTYNE: I did print -- Chris, to your  
25 point, I did print what I think would be the third through I

1 think fourteenth pages, something like that, four per page  
2 just because that's not really the part I'm focusing on. It  
3 would be a lot of paper. But I think this has already been  
4 marked as an exhibit too.

5 BY MR. VAN ALSTYNE:

6 Q. Exhibit 136 in front of you, is this an e-mail  
7 from Jim Heekin to you and the other board members, June  
8 17th, 2018?

9 A. Yes. It appears to be.

10 (Plaintiff's Exhibit 136 marked for identification.)

11 BY MR. VAN ALSTYNE:

12 Q. Who is Jim Heekin?

13 A. Jim Heekin was president of the association in  
14 2018.

15 Q. What does he do for a living?

16 A. He's a lawyer.

17 Q. And did you receive this letter that's attached?

18 A. Yes.

19 Q. And on the first page, the third paragraph, does  
20 it say Joel Kagan, who represented the airport ARB  
21 committee, informed the applicant that multiple  
22 noncompliance items were observed on the application  
23 documents and identified during the field meeting which  
24 would not warrant ARB approval?

25 A. Yes. It says that.

1 Q. Okay. And was that the board's opinion at that  
2 time?

3 A. Yes.

4 Q. Would that be reflected in the meeting minutes?

5 A. It should be.

6 MR. SMED: What was the date of that? I'm  
7 sorry.

8 THE WITNESS: The date of the letter? 16 June,  
9 2018.

10 MR. VAN ALSTYNE: There are more letters,  
11 e-mails. 137.

12 (Plaintiff's Exhibit 137 marked for identification.)

13 BY MR. VAN ALSTYNE:

14 Q. Exhibit 137, e-mail dated July 6, 2018.

15 A. Yes.

16 Q. I'm sorry, I got these mixed up. So the -- only  
17 the first page would be Exhibit 137.

18 A. First page of 137?

19 Q. Yeah.

20 A. Yes, it's an e-mail dated July 6, 2018.

21 Q. Exhibit 137 is an e-mail from Joel Kagan to you  
22 and the other board members attaching Exhibit 136, the  
23 letter dated June 16th of 2018; is that correct?

24 A. It says the attached drawing is unclear.

25 Q. The first --



1           A.       First paragraph?  Yes.

2           Q.       So it says on:  June 16th on behalf of the ARB and  
3 board I provided Lot 27 and 28 with preliminary response  
4 with copy attached --

5           A.       Correct.

6           Q.       -- and that's referring back to Exhibit 136, the  
7 letter attached --

8           A.       The letter attached, correct.

9           Q.       And I think at this time Mr. Albrecht sent an  
10 e-mail to the board -- or to Matt Jordan who forwarded to  
11 the board, and the attachment from Mr. Albrecht is  
12 elaborated in in this e-mail, the second paragraph.  Is that  
13 the way you interpret this?

14          A.       Right.  The attachment is not here but the  
15 paragraph describing the discrepancies is here in the  
16 e-mail, correct.

17          Q.       Does it say:  Either way the plan drawings  
18 attached do not address the issues identified to  
19 Mr. Albrecht in our preliminary response letter?

20          A.       Yes, it does.

21          Q.       Okay.  And then the next exhibit, 138.

22               (Plaintiff's Exhibit 138 marked for identification.)

23 BY MR. VAN ALSTYNE:

24          Q.       Do you recall this letter being presented to the  
25 board?

1 A. Yes.

2 Q. And to your knowledge, was this sent to Monkey?

3 A. Yes.

4 Q. Is this an approval letter for Monkey's ARB  
5 application?

6 A. It is not an approval letter.

7 Q. Does this letter outline several noncompliant,  
8 incomplete, or pending points of Monkey's proposed  
9 construction?

10 A. Yes, it does.

11 Q. This is Exhibit 139.

12 (Plaintiff's Exhibit 139 marked for identification.)

13 BY MR. VAN ALSTYNE:

14 Q. Do you recognize the photo in Exhibit 139? Do you  
15 recognize the subject of that photo?

16 A. Yes. It appears to be from the rear of 27 and 28.

17 Q. So we're looking at the rear, which would be the  
18 south side of Hangars 27 and 28?

19 A. Correct.

20 Q. And do you recognize the different roof pitch?

21 A. Yes. I believe I see three different roof  
22 pitches. Certainly two.

23 Q. So does it look like there are two buildings  
24 attached to each other rather than one large building?

25 A. It depends on the viewpoint. If you look below

1 the roof line, it appears to be a complete building. If you  
2 look at the roof lines, it appears to be two buildings.

3 Q. Would you call this a -- the roof shape, would you  
4 characterize that as an A-style or an M-style of the roof?

5 A. Looks more like an M.

6 Q. Is that -- is the photo representative of the  
7 condition that Units 27 and 28 are still in this day?

8 A. I believe so. I saw it earlier this week and I  
9 believe that's what it still looks like.

10 Q. Has Monkey ever submitted a complete ARB  
11 application?

12 A. Not to my knowledge.

13 Q. And is Monkey's building still noncompliant  
14 regarding the roof pitch?

15 A. Yes.

16 Q. Specifically, the roof is not a 2/12 pitch as  
17 required?

18 A. Correct.

19 Q. Is Monkey's building still noncompliant as to  
20 setbacks or at least one setback?

21 A. Yes.

22 Q. Is Monkey's building still noncompliant regarding  
23 storm water drainage?

24 A. Yes.

25 Q. Specifically, does storm water drain in the alley

1 or space between existing or adjacent hangars occasionally  
2 causing washouts and not draining to the street as required?

3 A. Correct.

4 Q. And is Monkey's building noncompliant regarding  
5 safety? And, specifically, that the electrical panel faces  
6 the airplane taxiway instead of the alley between the  
7 buildings?

8 A. Yes.

9 Q. And is Monkey's building still noncompliant  
10 regarding skirting?

11 A. Skirting would be on the front. There's no  
12 skirting requirement on the rear. Last time I observed it I  
13 don't remember skirting on the front.

14 Q. Okay. And the applicable ARB guidelines, were  
15 those always approved by the board of directors?

16 A. Yes.

17 Q. Okay.

18 MR. VAN ALSTYNE: Chris, if you'd like to  
19 continue your questioning, you can.

20 MR. SMED: Just one.

21 REDIRECT EXAMINATION

22 BY MR. SMED:

23 Q. With regard to the correspondence and the letters  
24 from the ARB to Monkey, to Mr. Albrecht, were they all  
25 approved by the board of directors, those -- that series of

1 letters that he just showed you?

2 A. I don't recall if they were all approved. I  
3 recall seeing several of them.

4 Q. I'm sorry. Say it one more time.

5 A. I recall seeing several of them.

6 Q. Do you know if Units 27 and 28, the picture, I  
7 assume, is right there. Do you know if they're combined  
8 inside?

9 A. I have never been inside the building.

10 Q. Have you ever seen any pictures taken by other  
11 individuals such as Mr. Jordan?

12 A. I have never seen any pictures taken by Mr. Jordan  
13 of the interior of the building.

14 Q. Do you have any knowledge that on June 6, 2018,  
15 Monkey provided a full size set of plans to Mr. Jordan?

16 A. I don't recall if I saw those, if he submitted  
17 those to Mr. Jordan.

18 Q. Have you notified the insurance companies that  
19 there might be a problem because of the electrical box that  
20 -- in the front?

21 A. I believe one of the board members had a task to  
22 contact and open the dialogue we need to establish the  
23 position of the electrical, which would need a survey --

24 Q. Isn't there a city electrical service out front of  
25 this building as well?

1           A.       City electrical service?

2           Q.       He's saying there's a green box in front of every  
3 hangar.

4           A.       Green boxes are low in height, about wing level,  
5 you know, as you goes up the pipe to the distribution and  
6 the meter. It's significantly higher than any low profile  
7 boxes, and I don't know what's in front of it, the hangar.

8           Q.       But those are electrical boxes, correct?

9           A.       They could be. There's a lot of telephone,  
10 low-voltage stuff. Telephone, cable TV. I do not believe  
11 there's power in the front of any building. Those are all  
12 low-voltage, nonhazardous connections.

13          Q.       And if it was higher voltage, it would be less of  
14 a problem with the boxes because it's not wing high --

15          A.       Uh-huh.

16          Q.       -- is your testimony?

17          A.       Uh-huh.

18          Q.       When he was talking about Mr. Thompson with --  
19 this is back in, I guess, 2006, 2007-ish, you mentioned --  
20 or you might have been reading that there's deed  
21 restrictions, but I'm wondering what those deed restrictions  
22 were at that time if it hadn't been handed over to the  
23 association? What deed restrictions --

24          A.       So the restrictions were the document that was  
25 handed to me by the developer when I purchased my property

1 -- my first property. He represented these as being the  
2 restrictions in the community to which, again, I attached to  
3 my contract at that time for my builder to adhere to.

4 Q. I think we're almost done here.

5 Lastly, there was -- the document that was handed  
6 to you by Mr. Thompson --

7 A. Yes.

8 Q. -- the list that Mr. Van Alstyne provided you, do  
9 you know what the date of that was? I don't think it was  
10 dated.

11 A. Yeah. So I initially -- I don't have any document  
12 other than my wife and I stopping by and discussing in  
13 2005 -- later 2005 with Mr. Thompson when he used to be  
14 called the Olympio (phonetic) which was their sales office  
15 -- where that package was given to me, reconfirmed just  
16 prior to construction.

17 Q. And just one little thing on Exhibit 135, if you  
18 could just take a look -- it's on the last page, it's three  
19 paragraphs above his highlight. And if you could just read  
20 that, please.

21 A. Okay. Where it starts --

22 Q. Read it aloud, please.

23 A. -- the alterations?

24 Q. Yeah.

25 A. The alterations and improvements that have

1 commenced in Unit 28 affect exterior structure walls that  
2 are not approved by the association in advance of  
3 construction. In addition, the proposed path of  
4 construction appears to violate the 10-foot side setback  
5 requirements in place for the condominium as set forth in  
6 the land use plan approved by the City of Apopka for the  
7 Orlando Apopka Airport, July 30, 2004.

8 Q. And so there was a 10-foot setback at that time?

9 A. I don't ever recall a 10-foot setback.

10 Q. If the city wouldn't allow a 3-foot 3-inch -- or a  
11 3-foot, 3-and-a-half-foot setback, what would the board or  
12 the association propose? I'm saying if they say it's 5-foot  
13 and you want it to be 3-foot, how would that be remedied?

14 A. So we -- since 2007 or 2006 when I joined the  
15 association, it had always been 3-and-a-half-feet. All  
16 those building permits, which probably amounts to almost 100  
17 now -- have the 3-and-a-half-feet minus maybe a few, 27 and  
18 28 included. And the City has not represented that as a  
19 problem to their building process.

20 Q. So if I went to the City right now and was to  
21 build a hangar and said I'm going to do it at 3. --  
22 whatever, 3.6 feet or 3-and-a-half-feet, they wouldn't have  
23 a problem with that?

24 A. I do not believe they would.

25 Q. No further questions.



1 MR. VAN ALSTYNE: I have a couple.

2 RECROSS-EXAMINATION

3 BY MR. VAN ALSTYNE:

4 Q. So in your ten years' experience as a board  
5 member, about how many ARB applications or reviews does the  
6 board do in a month or a year?

7 A. It depends on the year. Sometimes it's very  
8 sparse, sometimes there's one every two months, something  
9 like that. I would say the current pace is down.

10 Q. Does anyone on the board have any personal  
11 vendetta against Laurence Albrecht or Monkey?

12 A. Not to my knowledge.

13 Q. Does anyone on the board have the time, given  
14 their non-volunteer lives, to have a personal vendetta  
15 against Laurence Albrecht or Monkey?

16 A. I certainly don't and I don't believe the rest of  
17 the board does either.

18 Q. That's all I have.

19 MR. SMED: If one of the board members or the  
20 ARB chairman, let's just say, put in eight or ten -- eight  
21 or ten -- or let's just say six, seven letters, three-plus  
22 calls, and other individuals put in another two or three  
23 calls, wouldn't you consider that being a little bit  
24 personal and harassing to the City when if, in fact, in  
25 those communications they're trying to impose the ARB

1 guidelines on the city?

2 THE WITNESS: That's a hypothetical. I would  
3 need to see those to see if they're trying to just reflect  
4 our process which we have with the city, which typically is  
5 a good relationship where ARB concerns are fed to the City,  
6 we've done that for years, so this is not unique giving  
7 input to the City. The City has given us a verbal that they  
8 will consider those inputs as they evaluate different  
9 building plans and so forth. So it depends on the  
10 uniqueness of what you're stating. Whether I would say  
11 that's out of line or not, I'm not seeing a letter say -- I  
12 haven't seen anything so far.

13 MR. SMED: I am finished. Thank you very much  
14 for your time, sir.

15 THE WITNESS: These go to her? You?

16 MR. SMED: These go to her.

17 MR. VAN ALSTYNE: So the last question is for  
18 her: Do you want to read the transcript before she  
19 transcribes it, or do you want to waive that right?

20 THE WITNESS: Do I wish to read the transcript?

21 MR. VAN ALSTYNE: Yeah. Before she officially  
22 publishes --

23 THE WITNESS: I would like to read the  
24 transcript.

25 MR. VAN ALSTYNE: Okay. And I'd like to order

1 a copy.

2 COURT REPORTER: And are you ordering a copy as  
3 well?

4 MR. SMED: I will order a copy, yes.

5 (These proceedings concluded at 11:37 a.m.)  
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## 1 CERTIFICATE OF OATH

2  
3 STATE OF FLORIDA:

4 COUNTY OF ORANGE:

5  
6 I, Evelyn Rondon, Shorthand Reporter and Notary Public,  
7 State of Florida, certify that DAVID KOTICK personally  
8 appeared before me on this 21st of October 2021 and was duly  
9 sworn.10 WITNESS my hand and official seal this 12th day of  
11 November 2021.12  
13  
14  
15  
16 \_\_\_\_\_  
17 Evelyn Rondon  
18 Notary Public, State of Florida  
19 My Commission No.: GG299500  
20 Expires: February 25, 202321 Personally known \_\_\_\_\_  
22 OR Produced Identification \_\_X\_\_\_\_\_  
23 Type of Identification Produced \_\_Driver's license\_\_  
24  
25

## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4  
5 I, Evelyn Rondon, Notary Public, State of Florida,  
6 certify that I was authorized to and did stenographically  
7 report the deposition of DAVID KOTICK; that a review of the  
8 transcript was requested; and that the foregoing transcript,  
9 Pages 5 through 107, is a true and accurate record of my  
10 stenographic notes.

11 I further certify that I am not a relative, employee, or  
12 attorney, or counsel of any of the parties, nor am I a  
13 relative or employee of any of the parties' attorneys or  
14 counsel connected with the action, nor am I financially  
15 interested in the action.

16  
17 DATED this 12th day of November 2021.

18  
19  
20 \_\_\_\_\_  
21 Evelyn Rondon  
22  
23  
24  
25

## ERRATA SHEET

DO NOT WRITE ON TRANSCRIPT-ENTER CHANGES HERE

IN RE: ORLANDO APOPKA AIRPORT  
ASSOCIATION, INC., A FLORIDA  
CORPORATION V. ASS MONKEY, LLC  
CASE NO: 2019-CA-3579-O  
DATE: OCTOBER 21, 2021  
DEPONENT: DAVID KOTICK

PAGE NO. LINE NO. CORRECTION &amp; REASON

Under penalties of perjury, I declare that I have read the  
foregoing document and that the facts stated in it are true.

November 12, 2021

DAVID KOTICK  
Kotickdave@gmail.com

In Re: October 21, 2021, Deposition of DAVID KOTICK

Dear DAVID KOTICK:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for review. Please contact our office at (407) 898-2044 to make arrangements for read and sign or sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under Federal Rules\*; however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely,

Evelyn Rondon  
Landmark Reporting, Inc.

Cc: Lewis Van Alstyne, Esquire  
Christian D. Smed, Esquire

Waiver:

I, \_\_\_\_\_, hereby waive the reading and signing of my deposition transcript.

\_\_\_\_\_  
Deponent Signature

\_\_\_\_\_  
Date

Federal Civil Procedure Rule 30(e)/Florida Civil Procedure  
Rule 1.310(e)