

1

2

3

4

5

6

7

PUBLIC HEARING ON

8

YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC.

9

BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER

10

NEWPORT BEACH, CALIFORNIA

11

FRIDAY, FEBRUARY 20, 2009

12

13

14

15

16

17

18

19

20

21

22

23

24

Reported by:  
LAURA A. MILLSAP, RPR  
CSR No. 9266  
Job No. 090220LAM

25

1

2

3

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Public hearing was taken on behalf of  
the City of Newport Beach at 3300 Newport Boulevard,  
Newport Beach, California, beginning at 2:00 p.m., and  
ending at 4:53 p.m., on Friday, February 20, 2009, before  
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.  
9266.

1  
2  
3  
4

APPEARANCES:

For The City of Newport Beach:

RICHARDS, WATSON, GERSHON  
BY: PATRICK K. BOBK0, ESQ.  
Page 2

09-18838  
355 S. Grand Avenue, 40th Floor  
Los Angeles, CA 90071-3101  
(213) 626-8484

CITY OF NEWPORT BEACH  
BY: DAVE KIFF, Assistant City Manager  
JANET JOHNSON BROWN, Associate Planner  
SHIRLEY OBORNY, Administrative Assistant  
3300 Newport Boulevard  
Newport Beach, CA 92658-8915  
(949) 644-3002

For Yellowstone Women's First Step House, Inc.:

DAVIS, ZFATY  
BY: ISAAC R. ZFATY, ESQ.  
580 Broadway Street, Suite 301  
Laguna Beach, CA 92651  
(949) 376-2828

3

1 NEWPORT BEACH, CALIFORNIA; FRIDAY, FEBRUARY 20, 2009  
2 2:00 P.M. - 4:53 P.M.  
3  
4 MR. ALLEN: All right. So we're going to start

5 the hearings on the Yellowstone matters today. My name  
6 is Thomas W. Allen, and I've been designated as a hearing  
7 examiner by the City to hear these group home matters,  
8 and have been assigned to this one as well.

9 I'm a former City attorney. I'm semi-retired  
10 now. I have no relationship with the City of Newport  
11 Beach, except as a hearing examiner. And I don't have  
12 any physician relationships or involvements with group  
13 recovery homes or any of those types of businesses.

14 We have four separate residential care  
15 facilities to be consider today, all of them located  
16 within close proximity to each other, 1561 and 1621  
17 Indus, and 2172 Redlands and 1571 Pegasus.

18 Yellowstone Recovery is the applicant on all  
19 four of these, and each of them seeks a use permit, which  
20 is a land use approval. And they also seek reasonable  
21 accommodation from the standards of the ordinances of a  
22 regulatory nature that would otherwise be applicable to  
23 these uses. Of course, the reasonable accommodations are  
24 based upon the premise that alcohol and drug addicted  
25 individuals are legally defined as disabled.

4

1 So with that preface, we'll get underway. So  
2 would everyone please turn off their cell phones, if you  
3 do happen to have them on? Thank you.

4 And with that, would Mr. Kiff wish to commence?

5 MR. KIFF: Thank you, Mr. Allen.

6 Today, as Mr. Allen noted, Yellowstone Women's  
7 First Step House is applying for four use permits for  
8 four facilities, as well as reasonable accommodation.  
9 The Yellowstone Women's First Step House has asked to at  
10 least consolidate its presentation for -- to allow them  
11 to present information on all four homes at once.

12 Assuming that's amenable to you, Mr. Allen, we  
13 would move forward on that basis, and then I'll describe  
14 how it goes from there.

15 First would be the hearing on the use permit  
16 applications. I'll give a very brief background on our  
17 Ordinance regulating group residential uses, and then  
18 Janet Brown, from our Planning Department, will present  
19 Yellowstone's applications and some information about the  
20 area.

21 Then the Applicant is invited to come up and  
22 make a presentation. The applicant's time is not  
23 limited, as is a tradition with use permit hearings.  
24 After the Applicant is finished, the public hearing can  
25 be opened, and the comments are limited to three minutes,

5

1 unless the Hearing Officer determines otherwise.

2 The public hearing is then closed. The  
3 Applicant can then rebut or clarify comments. And then  
4 there could be a dialog between the Hearing Officer and  
5 the Applicant, or the City staff and the Applicant. Then  
6 the Hearing Officer has the opportunity to make a

7 determination potentially to approve with conditions, to  
8 deny or continue the hearing to a date certain.

9 At that point, then, we would open a hearing on  
10 reasonable accommodation requests, and I'll go through  
11 that briefly. Assuming these were to be consolidated,  
12 Kathy Wolcott, of our City Attorney's Office, will give a  
13 brief background about our reasonable accommodation  
14 chapter within our Newport Beach Municipal Code, and then  
15 present their requests, Yellowstone's requests.

16 The Applicant would have another opportunity to  
17 stand up and make a presentation. They may defer to that  
18 or stipulate to the presentation that they made  
19 previously.

20 Open the public hearing. Three-minute comments  
21 from the public. Close the public hearing. Applicant  
22 can again return. Questions. And then the Hearing  
23 Officer can approve their request, deny their request or  
24 continue the hearing to a date certain.

25 So with that, I'm going start my bit of just

6

1 background on the Ordinance. This is a use permit  
2 hearing held under the Newport Beach Municipal Code  
3 20.91A, Use Permits in Residential Districts. And as  
4 noted, following the hearing, we'll open a public hearing  
5 on three requests for reasonable accommodations. This is  
6 a separate public hearing.

7 But Ordinance 2008-05 was effective about a

8 year ago, and it calls out this process. It says that  
9 "Existing group residential uses had to apply for a use  
10 permit to stay in operations," and they had to apply by  
11 May 22nd.

12 Yellowstone Women's First Step House did apply  
13 for those permits for four facilities. Then a Hearing  
14 Officer makes a determination to approve or deny the use  
15 permit. That's what today's hearing is about.

16 The Hearing Officer's decision can be appealed  
17 to the City Council. The City Council's decision may not  
18 be appealed, but there is another opportunity for  
19 reasonable accommodation requested at that point. As  
20 you'll see today, the reasonable accommodation request go  
21 before the Hearing Officer at a public hearing, and can  
22 also be appealed to the City Council.

23 So with that, I'm going defer to Janet to talk  
24 about Yellowstone'd facilities.

25 MS. BROWN: Thank you.

7

1 Good afternoon, Mr. Allen.

2 The four properties that we are discussing  
3 today are located in the West Santa Ana Heights area of  
4 the City of Newport Beach. This area was annexed into  
5 the City in January -- on January 1, 2008. The  
6 neighborhood in which the properties are located allows  
7 for single-family residential development, and the  
8 neighborhood is developed with a mix of single-story and

9 two-story dwellings.

10 As we've mentioned, there are four locations at  
11 1561 Indus, 1621 Indus, 1571 Pegasus, and 20172 Redlands.  
12 These four properties were established over a number of  
13 years. The first property, at 1621, in 2003. The two  
14 other properties were established -- the use of the  
15 residential care facilities, I mean, was established in  
16 2005. And then the last property, at 1561, was  
17 established in 2007.

18 Three of the buildings are sober living homes  
19 for women only. One facility contains beds for 12 women.  
20 That's at 1561 Indus. 1621 is also a women's facility  
21 with 18 beds. Pegasus Street is a facility for women  
22 with 18 beds. And then the Redlands property is a  
23 facility, sober living environment, for men with 17 beds,  
24 although they did apply for 18 beds under the use permit  
25 application.

8

1 Just one other thing I wanted to point out in  
2 this particular neighborhood. In addition to the four  
3 Yellowstone properties, there is one other house that  
4 we're aware of located at 1501 Pegasus that is a  
5 transitional housing for women. I believe right now it  
6 has eight beds, and that property is subject to abatement  
7 under the Ordinance.

8 The applications that the operator has  
9 submitted are for a use permit -- a group residential use

10 permit for the four facilities, which they submitted  
11 consistent with the requirements of the Ordinance number  
12 2008-05. They were submitted on May 20th. In addition  
13 to the use permit applications, they also submitted  
14 applications for reasonable accommodation.

15 And just briefly, I wanted to state that the  
16 Ordinance also included a provision for reasonable  
17 accommodation, which allows for disabled individuals or  
18 providers of housing for disabled persons to apply for  
19 reasonable accommodation from the City zoning and land  
20 use regulations, the policies and practices, when needed,  
21 to provide an individual equal opportunity to use and  
22 enjoy a dwelling.

23 The Applicant requests approval of the use  
24 permits to allow the continued operations at the  
25 facilities with the existing occupancy that I noted

9

1 earlier.

2 Staff is recommending approval of the use  
3 permits with operational conditions for just two of the  
4 properties. Those would be 1621 Indus, a women's house.  
5 We're recommending a maximum occupancy of 15 beds. And  
6 also, we're recommending approval with operational  
7 conditions for 20172 Redlands, the men's house, with a  
8 maximum of 15 beds. Staff recommends denial of the 1561  
9 Indus house and the Pegasus house.

10 The information in the reports and our

11 recommendations are based on documentation that's been  
12 provided to us by the Applicant and information that was  
13 available to us at the time that the reports were  
14 written.

15 Our recommendation is based primarily on the  
16 overconcentration in this neighborhood. We tried to  
17 apply the APA standards of what a block consists of. And  
18 in this case, the neighborhood is characterized by  
19 meandering streets and cul-de-sacs. So we felt that all  
20 four facilities would be located in what we would  
21 characterize as a block. And they are all within 100 to  
22 3- or 400 feet from each other. That was part of the  
23 reason or our basis for denial of two of the facilities.

24 There may be new information introduced at the  
25 hearing today that may require further evaluation by the

10

1 staff and by the Hearing Officer in order to help us  
2 determine if our recommendations are appropriate.

3 However, if the Hearing Officer, after hearing  
4 testimony, agrees with our recommendations, staff does  
5 request your direction to prepare a Resolution of  
6 Approval with Operational Conditions of approval for 1621  
7 Indus and the Redlands property, and we also request  
8 direction to prepare a Resolution of Denial with  
9 Prejudice for 1561 Indus and the Pegasus property.

10 That concludes my presentation.

11 MR. KIFF: I have a couple of additional

12 comments, Mr. Allen. In advance of the public's  
13 testimony, and also in advance of the Applicant's, this  
14 relates more to what we've seen in past hearings. This  
15 is both a caution and an invitation for comment.

16 But the Ordinance allows us to address concerns  
17 that are specific to these properties. And some of these  
18 concerns include an overconcentration in the area. As  
19 Janet noted, we believe that at least two of these  
20 facilities should close in order meet the APA standard of  
21 "one or two group residential uses per block," as set  
22 forth in the Ordinance.

23 Secondhand smoke is something that can be  
24 addressed and considered. Meetings on-site that do not  
25 involve just the clients of each facility. Assembly uses

11

1 are not permitted here without a separate use for  
2 assembly uses.

3 Certainly, discussion about treatment provided  
4 on-site that should only be provided in ADP licensed  
5 facility -- I'm sorry -- Alcohol and Drug Programs,  
6 California Department of Alcohol and Drug Programs.

7 Profanity and/or excessive noise, as well as  
8 noise late at night. Inappropriate responses from  
9 clients when neighbors attempt to remedy that  
10 interaction. Trash problems. Lack of quiet hours or  
11 curfews. And then quality capability of on-site  
12 supervision.

13                   Now, the caution and concerns that we do not or  
14 will not consider that have come up in the past,  
15 declining home values. There is no data to show that the  
16 presence of recovery facilities more are impactful on  
17 property values than changes in the housing market or the  
18 presence of long-term rentals, vacation rentals, et  
19 cetera.

20                   Allegations that recovery homes are a cost  
21 burden to the City. There's no evidence to suggest that  
22 recovery homes cost the City any more in services than a  
23 typical multi-family building housing the same amount of  
24 people or, in these cases of Yellowstone, a typical  
25 single-family house.

12

1                   Allegations that this specific use is too close  
2 to Orchard Drive Park. This use is roughly a 1,013 feet  
3 way from the park. And remember that the Ordinance  
4 itself allows the Hearing Officer to consider the  
5 proximity of the use locations to schools, parks and  
6 other residential care facilities, outlets for alcoholic  
7 beverages, and any other use which could be affected by  
8 or affect the operation of the subject use. There's no  
9 evidence on the record that this park effects or is  
10 affected by this specific use.

11                   And then, it's not appropriate, per se, to  
12 offer general comments about recovery homes City-wide  
13 without directing your specific comments to these

14 operations on Indus, Pegasus and Redlands. And I note  
15 the proximity to Orchard Drive Park there.

16 With that, Mr. Allen, I turn it back to you.

17 MR. ALLEN: Could one of you just note, once  
18 again, which ones you're recommending for denial and  
19 which ones for approval on the map there, so that  
20 everyone knows?

21 MR. KIFF: Yes. I have a pointer there, Kathy.

22 This is one that is proposed to stay at 15  
23 beds. This would be proposed to stay at 15 beds. This  
24 would be proposed to close. This would be proposed to  
25 close. This one, they did not apply for a use permit,

13

1 and they are subject to abatement, arguably. That's not  
2 to say they couldn't ask for reasonable accommodation.  
3 We haven't heard from Lynn House.

4 MR. ALLEN: Okay. Thanks.

5 So with that brief introduction, let's open it  
6 to the Applicant, so that they can make a presentation.  
7 Excuse me, Mr. Bobko is taking the floor.

8 MR. BOBK0: I'm sorry, Mr. Allen. I just want  
9 to make a quick comment.

10 Counsel for the Applicant and I and the City  
11 have discussed some stipulations that we wanted to  
12 present before this thing got fully under steam.

13 The first one is that we would -- the Applicant  
14 now -- and I'll let him address it more fully when he

15 comes up to speak. But he would like to make general  
16 comments, legal comments, about all four, on all of the  
17 addresses. And then we will allow people to comment, and  
18 we will deal with, at a staff level, each one  
19 individually. But he would like a make a general  
20 statement, which is fine.

21 Secondly, when the public comments, if there  
22 are general comments, we invite the public to make those  
23 generally. But if they have specific comments, we would  
24 ask that they make those specific comments about specific  
25 addresses. So -- and the reason for this is we would

14

1 like to keep our record clear of which comments -- which  
2 comments apply to which address.

3 And Counsel for the Applicant and the City are  
4 willing to stipulate to that. I'll let him say so when  
5 he comes up to speak.

6 MR. ALLEN: So let me understand again.

7 MR. BOBK0: Okay.

8 MR. ALLEN: What I heard you say -- and by the  
9 way, Mr. Bobko is an attorney representing the City here  
10 advising the City on matters.

11 In any event, you're suggesting that, inasmuch  
12 as we have four units independently to be considered and  
13 we have four permits to be considered, that we need to  
14 actually conduct separate hearings on the use permits for  
15 each one of those?

16 MR. BOBK0: Well, Mr. Allen, we leave the  
17 actual nuts and bolts of how the hearing is conducted to  
18 you, obviously.

19 Our suggestion, though, in order to keep a  
20 clean record, is to understand which comments are  
21 directed to which address; that if people have comments  
22 about a specific address, that they wait until we discuss  
23 that specific address to give those comments and not give  
24 them generally. If they have -- someone has general  
25 comments about the neighborhood or something more

15

1 indirect, then they can present those at the beginning.

2 So yes, we would -- I think that the City or  
3 staff will address all of the different addresses  
4 together to some degree. But I think that we also need  
5 to look at them each individually. I'm not sure.

6 MR. ALLEN: Yes, yes. Okay.

7 MR. BOBK0: Okay. But the staff report  
8 suggests that there are 73 homes, and that if -- and we  
9 recommended that two of them be abated.

10 Staff, at least, feel free to jump in here at  
11 any time.

12 But I don't know if we can just do them each  
13 individually, completely individually. But in order to  
14 keep a clean record, we'd like to, if people have  
15 comments about individual homes, have them address them  
16 when we talk about the individual address.

17 MR. ALLEN: Possibly, mechanically, then, we  
18 could open the public hearings for all four of them at  
19 once after the Applicant makes his presentation and after  
20 Staff may do any rebuttal to that. And then people could  
21 come up and make comments generally or specifically  
22 on -- one at a time, I suppose, so that we keep that  
23 testimony orderly.

24 MR. ZFATY: Good afternoon, Mr. Allen. Isaac  
25 Zfaty, Counsel for Yellowstone.

16

1 As to the comments, I would propose that we  
2 have specific comments separated by house, so, in other  
3 words, there would be four different segments to the  
4 discussion this afternoon.

5 As to my portion, I've put together a  
6 presentation that will apply to each of the four homes.  
7 We'll address all of the issues that are raised in  
8 Ms. Brown's report. Additionally, we have a legal  
9 discussion that we think specifically applies to these  
10 homes, which are located in the Santa Ana Heights region,  
11 which was annexed in the City in January of 2008.

12 MR. ALLEN: Right. So I think that it makes  
13 sense, then, that we'll open the hearings for all four,  
14 but we'll conduct individual hearings as we go through  
15 with each one and have people -- if they want to make  
16 general comments, they can make general comments, and  
17 then get specific with regard to that one and come back

18 up with specific comments on each one. That way, there  
19 is a separate record for each one.

20 MR. ZFATY: Okay. That's fine with the City, I  
21 assume?

22 MR. BOBK0: That's fine.

23 MR. ALLEN: So with that preface -- and I hope  
24 the public understands, you'll get plenty of opportunity  
25 to speak, so that's one of the primary functions,

17

1 obviously, of these public hearings is that the public  
2 gets to say their peace with regard to these individual  
3 units.

4 All right. So the Applicant will get under way  
5 now with his presentation, and we'll proceed as  
6 outlined.

7 MR. ZFATY: Thank you, Mr. Allen. Again, Isaac  
8 Zfaty, I am Counsel for Yellowstone.

9 We're here today to discuss these four homes.  
10 And as I mentioned earlier, we have some specific legal  
11 concerns that we think relate to the Santa Ana Heights  
12 region that we'd like to address at the front end of this  
13 entire proceeding today.

14 As you know, the Santa Ana Heights area was  
15 annexed into the City on January 1st of 2008, and the  
16 Ordinance came into effect on February 22, 2008. And  
17 that has particular legal relevance in terms of how the  
18 California Supreme Court has looked at both zoning and

19 ordinances.

20 We have -- to begin with, the law regarding  
21 established use -- the law pertaining to ordinances that  
22 effect existing use is well established. The California  
23 Supreme Court held, in Beverly Oil Company versus the  
24 City of Los Angeles, that "if the law affects an  
25 unreasonable, oppressive or unwarranted interference with

18

1 an existing use or planned use for which a substantial  
2 investment in development costs has been made, the  
3 ordinance may be held invalid as applied to that property  
4 unless compensation is paid."

5 Particular point of emphasis here is, I think,  
6 it's been established, as discussed in the prologue by  
7 Ms. Brown, that all four of these properties were being  
8 run as sober living homes prior to both the annexation  
9 and the Ordinance going into effect.

10 Supreme Court also noted in the Hanson Brothers  
11 Enterprises, Inc., versus Board of Supervisors case, that  
12 "in performing the constitutional analysis as to any type  
13 of social ordinance, we have zoning ordinances and other  
14 land use regulations customarily exempt existing uses to  
15 avoid questions as to the constitutionality of their  
16 application to those uses."

17 And for the record, the citation on that is 12  
18 Cal. 4th, 533. Backing up, so the record is clear, the  
19 Beverly Oil Company case is located at 40 Cal. 2nd, 552,

20 with an opinion cite at 559.

21 Supreme Court's held in Edmonds versus County  
22 of Los Angeles, which is a 1953 case, located at 40 Cal.  
23 2nd., 642, that "the rights of users of property as those  
24 rights existed at the time of the adoption of a zoning  
25 ordinance are well recognized and have always been

19

1 protected."

2 The Wilkins versus City of San Bernardino case,  
3 which is yet another California Supreme Court case, says  
4 that "cases in which zoning ordinances have been held  
5 invalid and unreasonable as applied to particular  
6 properties fall roughly into four categories." And  
7 there's really only one that applies here. It is the  
8 first, "where the zoning ordinance attempts to exclude  
9 and prohibit existing established uses or businesses that  
10 are not nuisances."

11 The California Supreme Court noted in the Bower  
12 case, which is 75 Cal. App., 4th, 1281 -- I'm sorry.  
13 That was a Cal. App. case. It was citing to the Hanson  
14 case. They say there that "generally, governmental  
15 agencies do not apply newly enacted zoning ordinances to  
16 close businesses lawfully operating at the time that  
17 those ordinances became effective."

18 Now, the Jones versus City of Los Angeles case  
19 is a California Supreme Court case, which we would submit  
20 to you, Mr. Allen, is on all fours. This is a case that

21 was one of the seminal Supreme Court cases regarding  
22 zoning ordinances and restricting use in the State of  
23 California. The case citation is 211 Cal., 304.

24 The facts in Jones are, the case -- excuse me,  
25 the Court was reviewing an action to enjoin enforcement

20

1 of a particular Los Angeles ordinance. There, as here,  
2 the City annexed an unincorporated area of Los Angeles  
3 called Mar Vista.

4 Subsequently, the City enacted the offending  
5 zoning ordinance. The ordinance made it specifically  
6 unlawful to erect, establish, operate, maintain, or  
7 conduct any hospital, asylum, sanitarium, home, retreat,  
8 or other place for the care or treatment of insane  
9 persons, persons of unsound mind, or persons affected by  
10 or suffering from mental or nervous diseases. As you can  
11 imagine, the plaintiffs ran for sanitariums.

12 At the time of the enactment, there were  
13 already in operation these four sanitariums in Mar Vista,  
14 which were run by Jones. There was a constitutional  
15 challenge to the ordinance as applied to the sanitariums  
16 as it existed with the annexed territory prior to the  
17 annexation and prior to the adoption of the ordinance.

18 Just so we're clear, the constitutional  
19 challenge happened after that, after both those events  
20 occurred. The wording there is a little bit misleading.

21 In all events, the Courts found that "the

22 ordinance did withstand constitutional  
23 scrutiny. And in doing so, the Court found the  
24 police power as evidenced in zoning ordinances  
25 has a much wider scope than the mere

21

1 suppression of offensive uses of property. It  
2 acts not only connectively, but constructively  
3 and affirmatively for the promotion of the  
4 public welfare."  
5 Court noted that "the evidence showed in that  
6 case, and the lower Court found, that the  
7 restricted districts were mainly residential in  
8 character, as here. This is sufficient to  
9 justify the exclusion of the businesses, the  
10 Court said, such as that carried on by the  
11 plaintiffs.

12 "The decisions uphold the validity of  
13 ordinances excluding from residential district  
14 property uses much less incongruous than these,  
15 as, for example, flats, stores, and business  
16 buildings.

17 And again, the "these" that the Court's  
18 referring to here are sanitariums.

19 Mr. Allen, the plaintiffs in that case argued  
20 that zoning laws could not be applied in any event based  
21 upon discrimination. The Court there found that a high  
22 level of deference had to be given to zoning laws.

23                   The argument -- the Court said the argument of  
24       plaintiffs, carried to its logical conclusion, would  
25       destroy the usefulness of zoning ordinances as an

22

1       effective means of city planning, or it would require  
2       examination in the regulation solely on the basis of  
3       present conditions.

4                   But zoning legislation looks to the future, and  
5       that's important. It is a constructive movement in  
6       principle legislation. And as such, it's received the  
7       approval of our courts.

8                   The Court goes on to hold that "We have thus  
9       arrived at this conclusion. The ordinance in  
10      question, insofar as it prohibits the  
11      establishment of hospitals for the treatment of  
12      nervous diseases in certain districts in the  
13      City of Los Angeles and permits their  
14      establishment in other specified districts, is  
15      valid.

16                  "The business is so restricted or proper  
17      subjects of such regulation, and, hence, the  
18      ordinance does not result in a denial of due  
19      process. The classification of districts is  
20      reasonable and not arbitrary, and, therefore,  
21      there is no denial of equal protection of the  
22      laws.

23                  "This one is clear, we feel, with respect to

24 the establishment of new businesses of this  
25 character in the prohibited districts. But

23

1 does the same result necessarily follow with  
2 regard to existing buildings within this  
3 district -- excuse me -- existing businesses in  
4 these districts?"

5 The Court goes on, Mr. Allen, to frame the  
6 issue. The Court said, "Does this broad view of the  
7 police power, which justifies the taking away of the  
8 right to engage in such businesses in certain territory,  
9 also justify the destruction of existing businesses? We  
10 do not think that it does."

11 In the Jones case, Mr. Allen, the Court  
12 examined prior precedents and found the following:

13 "First, that the right to engage in a lawful  
14 and not dangerous business in a certain area may be taken  
15 away in pursuit of a reasonable zoning scheme." But they  
16 do not decide that an established and not dangerous  
17 business operating in a lawful manner in a certain  
18 territory may be eradicated in pursuit of an reasonable  
19 zoning scheme.

20 The Court held that, "as a matter of practice  
21 also, those who had drafted ordinances have  
22 usually proceeded with due regard for valuable  
23 vested property interests and have permitted  
24 existing non-conforming uses to remain.

"They are very generally agreed that the

1           destruction of a existing non-conforming use  
2           would be a dangerous innovation of doubtful  
3           constitutionality, and that a retroactive  
4           provision might jeopardize the entire  
5           ordinance."

6           Court went on to hold that the problem, which  
7           is the important problem of this case, has, so far as we  
8           are aware, only been squarely presented to Appellate  
9           Courts in a few instances. The reason for the paucity of  
10          decision is illuminating. Zoning laws have almost always  
11          invariably been prospective in nature.

12          Court went on to examine other state laws and  
13          found that the establishing statutes which give the  
14          zoning power to municipalities expressly provide that no  
15          retroactive ordinances shall be passed.

16          Court continued on. "Zoning holds that an  
17          ounce of prevention is worth a pound of cure,  
18          and that it is fairer to all concerned to  
19          prevent the establishment in residence  
20          districts of objectionable businesses than to  
21          drive them out once they were established.  
22          Zoning looks to the future, not the past. And  
23          it's customary to allow buildings and  
24          businesses already in the district to remain,  
25          although of a class which cannot be

1               established."

2               Court also held that retroactive operation of  
3       the provisions of the ordinance is generally avoided.  
4       Retroactive zoning is not to be recommended. Moreover,  
5       the purposes of zoning, which is said to be the  
6       crystallization of present conditions and the  
7       constructive control of the future development, does not  
8       require that existing uses be changed.

9               Hence, it has been generally assumed that any  
10      attempt to make zoning ordinances retroactive would meet  
11      with the opposition of the courts and might result in  
12      their declaring the ordinance as a whole  
13      unconstitutional.

14              Non-conforming uses may be required to be  
15      removed, but the majority of the cases seem to indicate  
16      that if this procedure is attempted, the ordinance will  
17      be declared unconstitutional because unreasonable."

18              Court continued on. "Building zone ordinance  
19      permits lawful uses of buildings at the time of  
20      the passage of the ordinance, although not in  
21      conformity with its provisions to continue  
22      thereafter. This exception is made so that the  
23      ordinance shall not have a retroactive  
24      operation. It would be manifestly unjust to  
25      deprive the owner of property of the use of

1           which it was lawfully devoted when the  
2           ordinance became effective."

3           Therefore, it appears that the instant case  
4           involves a situation materially different from that  
5           presented in the usual zoning case. As here, Mr. Allen,  
6           the exercise of power in this instance is, on the whole,  
7           far more drastic than in those in which a mere right to  
8           engage in a particular business is restricted.

9           Court went on to say that "We are asked to  
10          uphold a municipal ordinance which destroys  
11          valuable businesses built up over a period of  
12          years. If we do so on the ground that this is  
13          a proper exercise of the police power in the  
14          enactment of zoning legislation, it follows  
15          that the same thing may be done to apartment  
16          houses, flats, or stores.

17          "The establishment of many lawful and not  
18          dangerous businesses in a city would then  
19          become an extremely hazardous undertaking. At  
20          any time, in pursuance of a reasonable plan for  
21          its future development, the city could prohibit  
22          the continuance of the businesses, and make  
23          property valueless, which was previously  
24          constructed and devoted to a useful purpose.

25          "It may will be that in the course of years,

1           one of the outlying permitted districts in the  
2           present scheme will become residential in  
3           character," the Court said, "and will, by  
4           another ordinance, be placed in the prohibited  
5           area. If the plaintiffs, at great expense,  
6           reestablish themselves in that district, they  
7           might be pursued again, and again eradicated.

8           "All of this to be justified under the police  
9           power as a proper taking of private property  
10          for public use without compensation. The  
11          approval of such a doctrine would be a blow to  
12          the rights in private property such as this  
13          Court has never been witnessed." Excuse me,  
14          "never before witnessed. Only a paramount and  
15          compelling public necessity could sanction so  
16          extraordinary an interference with useful  
17          business."

18          Court goes onto question, "What is the public  
19          necessity here? We've considered the ordinance  
20          solely as modern zoning legislation, for such  
21          is, undoubtedly, its character. There is, it  
22          is true, testimony in the record to show that  
23          the district was, in some respects, a less  
24          agreeable residential section than it would be  
25          if the businesses of plaintiffs were removed.

1           "Neighbors complained that the presence of  
2           the sanitarium depreciated the value of their  
3           own property. There's similar testimony as to  
4           occasional noises made by unruly patients, and  
5           several patients having escaped. Although, in  
6           this connection, the trial court found that  
7           none of the inmates of any of the four  
8           sanitariums was ever injured in any manner  
9           whatsoever, any of the inhabitants of said Del  
10          Mar -- excuse me -- Mar Vista district, or  
11          elsewhere, nor has any of said inmates ever  
12          attack or attempted to do bodily injury into  
13          any of said inhabitants."

14          Court went on to look at a nuisance analysis,  
15          and it held that a nuisance could be regulated against.  
16          It found specifically that "a properly conducted  
17          sanitarium for the care and treatment of persons affected  
18          with mental or nervous diseases cannot, we feel, be held  
19          to constitute a nuisance."

20          Court said that "a well-conducted modern  
21          hospital, even one for the treatment of contagious and  
22          infectious diseases, is not such a menace, but on the  
23          contrary, one of the most beneficent of institutions and  
24          needs no argument."

25          The Court continued on to say "Must we say that

1           the property of some of the residents of a  
2           district can be taken from them without  
3           compensation in order to make more attractive  
4           and pleasant the lives of other residents? The  
5           added benefit to the majority of the residents  
6           of the restricted district should not be  
7           received at the expense of others."

8           And then in the words of Justice Holmes,  
9   Mr. Allen, in the Pennsylvania Coal Company case, which  
10   is 260 U.S., 393, the general rule is:

11           "At least that while property may be  
12           regulated to a certain extent, if regulation  
13           goes too far, it will be recognized as a  
14           taking. In general, it is not plain that a  
15           man's misfortunes or necessities will justify  
16           his shifting the damages to his neighbor's  
17           shoulders.

18           "We are in a danger of forgetting that a  
19           strong public desire to improve the public  
20           condition is not enough to warrant achieving  
21           the desire by a shorter cut than the  
22           constitutional way of paying for the change."

23           And lastly, the holding:

24           "Court held that it follows that the present  
25           ordinance is valid insofar as it prohibits the

1 further establishment of businesses of this  
2 type in the redistricted -- excuse me -- in the  
3 restricted districts and is invalid in its  
4 application to these plaintiffs who were there  
5 before the annexation occurred and before the  
6 ordinance was implemented."

7 We would submit to you, Mr. Allen, that --

8 MR. ALLEN: Are you done with that legal  
9 analysis or that portion of that presentation?

10 MR. ZFATY: I am.

11 MR. ALLEN: Because I'm interested in how that  
12 Jones case that focuses on annexation is any different or  
13 how it would apply -- how non-conforming use ordinance  
14 would apply any different to you just because you were  
15 recently annexed than it does to anyone else in the City  
16 who's been conducting a -- I don't see the difference,  
17 and I'm curious as to why you think that's significant.

18 MR. ZFATY: I think it's significant, because  
19 this is a Supreme Court case that's been on the books for  
20 78 years that specifically addresses that situation. And  
21 I would agree with you that there's been case law that's  
22 come down that probably makes it even broader in scope  
23 than that, and talks about prospective zoning and the  
24 utilization of reasonable accommodation for those  
25 businesses that are already in place.

2 situation where you have an area of a city that was added  
3 on. The language of the Court speaks to the issue of, do  
4 we chase this business from place to place? We can enact  
5 an ordinance in this area once we annex it.

6 You'll recall, Mr. Allen, that the Court  
7 specifically said that, Are we going to -- if we are to  
8 annex another area where that business has since moved,  
9 then are they again out of compliance with our  
10 ordinances, and do they have to again come to us and  
11 either move or ask for a permit? So I think the Jones  
12 case, as I mentioned, is particularly applicable to our  
13 situation.

14 Now, specifically as to our homes, within the  
15 factual findings in the staff report, there were some  
16 issues that I think probably needed to be addressed.

17 The first is, for the record, at 1561 Indus.  
18 It is a five-bedroom home. Currently there are 12 beds  
19 there. The second home we're talking about here today is  
20 1621 Indus. It's a six-bedroom home. That has 18 beds.  
21 The next is 20172 Redlands, six bedrooms, 17 beds. And  
22 1571 Pegasus, six bedrooms, 18 -- excuse me, 18 beds.

23 All of these homes, as I mentioned earlier, are  
24 in the Santa Ana Heights area. All have been  
25 established. All are run as sober living homes. Without

32

1 argument, much less dangerous to any public issue, public  
2 concern than any sanitarium would present.

3           Now, there was a list of inconsistencies that  
4 we found in the reports. Parking, our visitors, or the  
5 issue of our visitors, meetings, the licensing issue, the  
6 average stay of the individuals who are at these homes,  
7 and the bed count.

8           And we noticed that overconcentration was, at  
9 least appeared on the staff report, to be one of the key  
10 concerns. We would note, though, that none of these  
11 properties are in close proximity to any schools, day  
12 cares, parks or alcohol serving facilities.

13           This portion of the staff report noted that the  
14 project is located within the established single-family  
15 residential neighborhood consisting of one- or two-story  
16 tracked homes. And consistent with that, the report  
17 notes that there are no public or private schools or  
18 public parks located with any proximity of the site.

19           This slide, Mr. Allen, illustrates just one  
20 example of what happens when Yellowstone comes into a  
21 property. You can see on the left side there, there's a  
22 photograph of the way the property looked before we came  
23 in. The right side is after.

24           We have improved the homes in which we are  
25 located. Yellowstone bought old dilapidated homes in an

1       area of town which was near dog kennels and under the  
2 Orange County flight path. The homes were in an  
3 incorporated area of Santa Ana.

4           The 1621 Indus property was abandoned. We  
5           purchased it at an auction. The 20172 Redlands property  
6           was run by drug dealers. One went to jail. At  
7           1621 -- excuse me. At 1561 Indus, there was a woman  
8           there who was renting out homes, one of them for years.  
9           And at 1571 Pegasus, the property, when we took it over,  
10          was in such disrepair that we had to put significant  
11          assets and resources into it.

12          From the staff report, there was an indication  
13          that there were numerous efforts to communicate with the  
14          Applicant to provide them with an opportunity to correct  
15          certain situations. And the note was that they were  
16          internally inconsistent and -- and to process the  
17          applications in order to deem them complete.

18          Yellowstone has made itself available to  
19          clarify any of these issues. As the staff report duly  
20          notes, there's been a number of correspondence exchanged  
21          between my office and the City. We have -- I hope,  
22          provided the City with everything that it needs in  
23          hopefully a timely fashion. The common concerns are  
24          listed here as to, I think, all four homes. We'll  
25          address each one of these in turn.

1           First off, as to the parking, the slides here,  
2           Mr. Allen, depict areas where there is parking on each of  
3           the four properties. In the December 23, 2008, and the  
4           January 29, 2009, correspondences, we noted that ample

5 parking was present for four cars to park. However, only  
6 the house manager and the assistant manager are permitted  
7 to park on-site.

8 UNIDENTIFIED SPEAKER: (Inaudible response.)

9 MR. ALLEN: Everybody gets their turn. It's  
10 not appropriate to make comments during the time when his  
11 presentation is being made. And then I won't let him  
12 interrupt you either, okay?

13 MR. ZFATY: Thank you.

14 On the issue of the curfew, our residents  
15 aren't allowed to actually be in the home from 8 a.m. to  
16 3 p.m. Residents have to be back at 4 p.m. At 8 p.m.,  
17 there's quiet time. And the lights are out uniformly at  
18 10 p.m.

19 There is a transportation route that is now  
20 utilized. There's a van that takes our residents to  
21 treatment and also to church. There's pick up at 8 a.m.  
22 There's drop off at 4 p.m.

23 To the issue of visitors, there is visitation  
24 allowed at the Costa Mesa facility. There was a question  
25 about this on the staff report. The question I think

35

1 came from a letter that was provided in support of the  
2 Yellowstone homes.

3 And the question was, well, if this person  
4 talked about in their letter of support how they visited,  
5 why are you saying in your application that there is no

6 visitation? Answer is that it occurs in at the Costa  
7 Mesa facility.

8 As to meetings, there are no treatment meetings  
9 in any of the four homes. There are -- there are  
10 administrative house meetings, and those happen one time  
11 a week and for one hour. And there are no interactions  
12 between the homes.

13 So the record is clear, the average stay is six  
14 months, and that varies from time to time. I think our  
15 initial note, when this process first began about a year  
16 ago, was our average stay was about 12 months. And due  
17 to economic issues, it's decreased to six months. I  
18 think we noted that in our most recent correspondence.

19 There is no licensing at any of the properties.  
20 And I think we've made the record clear that we  
21 mistakenly included in our original application that one  
22 or perhaps two of them were, in fact, licensed. There  
23 was some confusion on our end, but we attempted to  
24 address that as quickly as possible.

25 As to the issue of trash, we have the same

1 type, size and number of trash cans as any of our  
2 neighbors. The complaints about trash and beer,  
3 especially, I think are unfounded. There's certainly no  
4 beer coming out of any of our houses.

5 The picture here on the screen depicts a  
6 construction zone in the neighborhood, and, though we're

7 not here to provide evidence that beer came from that  
8 construction zone, it's certainly something that could be  
9 reasonably adduced.

10 Now, as to the City's concern of  
11 overconcentration, we don't think that the measurements  
12 that the City are utilizing are accurate to reflect the  
13 distance between the homes. They are sort of the  
14 as-the-crow-flies measurements, which probably aren't  
15 properly utilized here.

16 Also, as to the location of the homes, we're  
17 located on much larger lots than, for example, down on  
18 the Peninsula. This is relevant to the distance between  
19 the homes and also parking issues as well.

20 As to the concentration, as the map here shows,  
21 there were, last month, 89 beds in this area. With the  
22 closure of 1501 Pegasus, 12 beds are gone. 1502 Pegasus,  
23 as well, includes, by our estimate, another 12 bed  
24 reduction. So already, within this area, there's been a  
25 27 percent reduction, not including a single bed from

37

1 Yellowstone.

2 The next slide, Mr. Allen, depicts  
3 concentration of sober living homes. Just we've taken  
4 one example on River Avenue. The distance between 5009  
5 River and 5101 River is approximately 154 feet, which is  
6 a smaller measurement than any of our homes.

7 This slide depicts a number of the sober living

8 homes within the City and shows the concentration  
9 throughout.

10 As to the issue of parking, this slide shows  
11 the 1601 West Balboa property, which was approved by City  
12 on February 12th. As we all know, parking down there is  
13 quite an issue as compared with, for example, the Indus  
14 Street parking, which is much less of an issue. And as  
15 noted earlier, we have two cars parking at any property,  
16 and we have ample parking for each of those cars on our  
17 properties.

18 This slide here shows another parking  
19 comparison. The Pegasus side, on the left, versus West  
20 Balboa, 1115, Ocean Recovery.

21 This is a picture of the parking at 1132 West  
22 Balboa. Again, much more congested than anything you  
23 will find in our neighborhoods.

24 As to the particular concerns regarding  
25 inconsistencies, at 1561 Indus, the bed count, there as I

38

1 mentioned earlier, Mr. Allen, is 12. It has been  
2 consistently reported in our use permit application as  
3 12.

4 As to the parking, the parking discrepancy as  
5 to whether there were two or four cars parked on this  
6 site, I think we may have noted in one of our submissions  
7 that there is ample room for four cars, but, in fact,  
8 there really are just two cars parked on this site.

9                   As to the bed count, this has been consistently  
10       reported as 12 since the May 20, 2008, application.

11                   As to the parking, our May 20, 2008,  
12       application noted that four residents have personal  
13       vehicles, which are parked in the garage with the  
14       driveway. This is no longer the case. The December 23,  
15       2008, and January 29, 2009, correspondences from my  
16       office clarified this. We noted in that correspondence  
17       that there was ample room for four cars to park on the  
18       site; however, only the house manager and the assistant  
19       manager, two cars, are permitted to park on the site.

20                   As to 1571 Pegasus, the bed count there is 18.  
21       And the staff report erroneously provides that we  
22       included in our 1-28-09 e-mail a clarification of a  
23       12-bed occupancy for this facility. But as you can see,  
24       Mr. Allen, excerpted in the lower left-hand corner is our  
25       e-mail, which I believe was also attached to the staff

39

1       report as an exhibit. And that shows very clearly that  
2       in that e-mail, we submitted that Pegasus was an 18-bed  
3       count.

4                   A request here today is that we provide -- we  
5       be provided with continued unabated operation.  
6       Yellowstone is a good neighbor. It's not located near  
7       schools or day cares. We've improved the properties and  
8       increased the property values around us.

9                   Yellowstone sober living homes are on large

10 lots. Yellowstone has been providing sober living since  
11 2003, and we're a member of the Sober Living Coalition in  
12 good standing. Of note, two of the Yellowstone homes,  
13 the two that have been recommended for closure, are both  
14 Oxford Charter homes.

15 That concludes my presentation Mr. Allen. As  
16 we noted, we are asking for a CUP. I think that it goes  
17 without saying that to the extent that any such permit be  
18 denied, we're asking for reasonable accommodations. And  
19 as I understand it, that may be handled in a separate  
20 hearing, though I don't know that my comments need to be  
21 repeated.

22 Thank you.

23 MR. ALLEN: Thank you.

24 Does staff want to give any responses to those  
25 comments? Or prior to that, does anyone else from

40

1 Yellowstone wish to make a presentation at this time?

2 So that concludes the Applicant's initial  
3 presentation?

4 MR. ZFATY: Yes.

5 MR. ALLEN: Mr. Bobko, did you have something  
6 to say?

7 MR. BOBK0: I wanted to address a couple of  
8 legal issues.

9 Four quick points. Number one, we don't  
10 believe that under the Ordinance, respectfully,

11 Mr. Allen, that you have the authority to overturn the  
12 Ordinance or decide whether or not it applies here. We  
13 think that the duly elected legislative body has already  
14 made that determination.

15 MR. ALLEN: I agree with that.

16 MR. BOBK0: Okay. And to give you some  
17 comfort, a federal judge has also agreed that this is a  
18 facially valid Ordinance, so we don't think you are  
19 proceeding in peril.

20 Secondly, I wanted to be sure to point out that  
21 the Applicant -- and although we haven't had a chance to  
22 read Jones, although he gave an excellent resuscitation,  
23 the Applicant was pointing out that in the Jones case,  
24 there was a business. And I was trying to keep track of  
25 how many times we were -- the case described it as a

41

1 business.

2 And I think that that's a very salient point  
3 that needs to reverberate in this proceeding is that  
4 Applicant is conceding that this is, in fact, a business.  
5 And a business is treated a little differently.

6 More importantly, however, is that we're not  
7 eradicating businesses. In fact, this proceeding is a  
8 proceeding where the Applicant can avoid being completely  
9 put out of business.

10 Moreover, the Ordinance makes explicit -- gives  
11 explicit opportunity for the Applicant to advertise their

12 business over time and, as in many non-conforming  
 13 situations, that's simply the way it's done. I know that  
 14 you, as a former city attorney, are probably aware that  
 15 that's very common in First Amendment cases, where you  
 16 have billboards or adult uses or such that have become  
 17 non-conforming. There's always a period of time in which  
 18 they are allowed to gently go away.

19 So as a matter of law -- and I'll let staff  
 20 deal with the particulars of the case, but as a matter of  
 21 law, we don't believe there's any problem applying this  
 22 Ordinance to this Applicant. And if, by some chance, you  
 23 need further briefing, we'd be happy to provide briefing.  
 24 And I'm sure the Applicant's Counsel would as well, so --

25 MR. ALLEN: No. As you said, I don't see my

42

1 role in these proceedings as challenging the validity of  
 2 the City's legislation. I think there's left to the City  
 3 and a separate proceeding.

4 So I asked the question merely because I was  
 5 personally curious about the distinction between the  
 6 recently annexed property versus the non-conforming uses  
 7 that are created whenever an ordinance is adopted that  
 8 affects them.

9 Anyway, thanks.

10 MR. BOBK0: Thank you.

11 MR. ZFATY: May I respond briefly?

12 MR. ALLEN: Sure.  
 Page 41

13 MR. ZFATY: I think the response to that is  
14 that it's not that we are necessarily saying that you,  
15 Mr. Allen, are supposed to comment on the  
16 constitutionality of the Ordinance, rather that the  
17 application of the Ordinance in our particular  
18 circumstance might be a little bit different and might be  
19 viewed in a different light.

20 MR. ALLEN: Understand. Thank you.

21 All right. Does staff have any other comments  
22 at this point?

23 MR. KIFF: I'm going to save them for the end.  
24 I'd like to hear the public comment as well.

25 But to your point about annexation, I thought

43

1 it was well placed. I don't know if folks in the  
2 audience knows that Newport Beach has grown with 94  
3 separate annexations to this date. So I don't know where  
4 one annexation's timing starts and the other does not,  
5 but --

6 MR. ALLEN: All right. So with that, with  
7 those comments, then, we will open the public hearing.  
8 My thinking is that we'll go through the individual  
9 properties one by one, so that those of you who wish to  
10 comment on a particular one can do so.

11 And frankly, I think at the same time, you can  
12 make your comments, if you have more general comments,  
13 about the effect of these uses in the City. That's fine,

14 too. But, of course, the primary focus here is on the  
15 individual properties. So how about if we start with  
16 1621 Indus and work our way around Indus and then down  
17 Pegasus, I think it is?

18 And please state your name for the record, and  
19 common name spelling.

20 MR. HANLEY: Robert Hanley, H-a-n-l-e-y. I  
21 live at 1601 Indus. I am the western neighbor to 1621.  
22 I have been in my home there 27 years. I moved into that  
23 home in '62 -- '63 -- I'm sorry. '72, '73 -- from the  
24 Bay Area. Came out of the electron tube industry,  
25 because it was fading away. And I went to work for

44

1 Hughes as a process engineer.

2 I finished raising my six children in that  
3 home, four girls and two boys. And obviously having  
4 lived in that home that long, they are up and gone, with  
5 the exception of my youngest lad is staying with us.

6 One reason I bought there was because of the  
7 community, the size of the home, the facilities close to  
8 that home, the schools, my work. I worked for Hughes.  
9 And basically, we have enjoyed that home. We have  
10 invested in that home about \$40,000.

11 Now, the comment was made about the investment  
12 in the home next to me. One of the problems we have, we  
13 have a redevelopment agency. And due to that situation,  
14 the County owned about ten homes in that area. And if

15 any of them degraded, it was due to that.

16 The home next to me was rented, which wasn't  
17 supposed to be, for almost ten years. Then it sat empty  
18 for a good year. And I never saw this, but it was  
19 reported that transients were bedding down there.

20 When the home went on the market, I interfaced  
21 with the Thames about what was to become of the home.  
22 And I immediately wasn't happy, and they knew it. But, I  
23 mean, I faced up to it. And I've been a good neighbor to  
24 those people. And that's what it's about. Neighbor.

25 And our efforts, for instance, to become part

45

1 of Newport Beach started in '99. And there were five of  
2 us --

3 MR. ALLEN: I'm sorry. I failed to note that  
4 each person gets three minutes. And as you can see, the  
5 red light is blinking, which means your time is up. So  
6 if you can just summarize, that would be great.

7 MR. HANLEY: All right. I have two objections.  
8 And one of the objections is they are not neighbors. If  
9 we have a problem, tough. The place is inundated with  
10 young people. I've seen 30 to 40 walk the streets from  
11 one facility to another, or they arrive in their vans.

12 Early on, they had parties, and the whole  
13 street was parked up. I had to go out and protect the  
14 fire plug. Make sure they didn't park in front of the  
15 fire plug.

16                   And to protect my driveway, I had to  
17                   have -- I had a handicapped child, which we had a van  
18                   for, that I needed the egress and access. And I actually  
19                   had to run some people away, and, of course, they got of  
20                   niffed at me.

21                   I saw people --

22                   MR. ALLEN: You need to wrap it up, please.

23                   MR. HANLEY: Okay. I saw people come in from  
24                   out of the neighborhood and say, "Oh, there's a party  
25                   going on."

46

1                   MR. ALLEN: Thank you.

2                   MR. HANLEY: There's monkey business going on.

3                   MR. ALLEN: Someone else like to speak? Just  
4                   please come forward at the conclusion of the last one.

5                   MR. WALKER: I'm Barry Walker, 1571 Indus. I'm  
6                   next to 1561 and only a few feet away from the 1621.

7                   Probably start out with, unfortunately,  
8                   Mr. Zfaty apparently has been misled by his clients,  
9                   because there are cars parked on our street from the  
10                  people living in that house.

11                  He says nobody's supposed to be in the house  
12                  from eight until three. When I came to this meeting and  
13                  left at 1:30, one of the residents had returned home, and  
14                  was -- her car was parked in the driveway.

15                  Being there, we know which cars apparently  
16                  belong to the supervisor. And this woman, you know,

17 yesterday came and parked in the drive, did some  
18 business, and went and parked up the street, walked back  
19 to the house. And then as I was leaving, she had come  
20 back to the house for something.

21 So saying that people are meeting the time  
22 tables that they have put up there, everybody's there by  
23 4 o'clock, it doesn't happen.

24 This house, 16 -- excuse me -- 1561 is the only  
25 one of the four that has a swimming pool. And during the

47

1 summer, the men come from the men's house, people come  
2 from the other houses, come over and have swimming  
3 parties. You know, middle of the afternoon. It doesn't  
4 carry on to the middle of the night, but we were led to  
5 believe that only these people would be using that  
6 property, and that's just not the truth.

7 The other one is, as Bob mentioned, at the 1621  
8 house, for years, there have been what appeared to be  
9 orientation sessions, middle of the day, middle of the  
10 day, 10 o'clock in the morning, that have 20, 30, 40,  
11 people have been brought.

12 And then about 10:30 or 11 o'clock in the  
13 morning, they're all walking out, walking the sidewalks,  
14 walking, you know, occasionally across everybody's plants  
15 in the parkway, you know, taking a tour of the  
16 neighborhood, you know.

17 Unfortunately, when house next to us was sold

18 and taken over by Yellowstone, nobody made an effort to  
19 say, you know, we're going in there. Here's how you get  
20 a hold of us if there's a problem. You know,  
21 understanding they didn't want to be dealt with every  
22 little complaint, but when there's a problem, we have no  
23 idea who to contact.

24 You know, we've had to go over and pound on the  
25 door ourselves to say, you know, "Get your sinking car

48

1 out of our driveway." So, you know, I don't know want to  
2 be a NIMBY, but there is a problem with the amount of  
3 concentration of the vehicles that we have associated  
4 with the various houses.

5 Concentration is probably the big issue. The  
6 pictures they showed of the street and no trash, I would  
7 say yesterday, everybody had four or five trash cans out.  
8 And that's, you know, that's too much. Thank you.

9 MR. ALLEN: Thank you.

10 MR. WALKER: Thank you.

11 MR. ALLEN: We're still on 1621.

12 MR. GROSKREUTZ: Chuck Groskreutz. I live at  
13 1551 Pegasus Street.

14 THE REPORTER: Spell the last name.

15 MR. GROSKREUTZ: G-r-o-s-k-r-e-u-t-z.

16 I just might -- would like to just make my  
17 comments in the three minutes that I have that real apply  
18 to the whole group, since I've made some surveys, and so

19 I want to take the time to do that.

20 I live on 1551 Pegasus, which is the  
21 thoroughfare by which all these people come in and out on  
22 foot through that tract. Now, based on Counsel's bed  
23 count, that means that there would be or could be 65  
24 additional people who will be traipsing in and out of our  
25 neighborhood.

49

1 And let me just mention to you that currently,  
2 the amount of people that come by my home and what they  
3 do during those trips have specific impact on my  
4 property. And as an example, just in the last week, we  
5 came out -- I came out this morning in the morning to go  
6 to work, and I found about eight 7-11 coffee chocolate  
7 cups all over my front lawn.

8 Interestingly enough, this happened after I had  
9 sent my comments in to staff about my concerns about  
10 these homes. I don't feel that the homes that we  
11 have -- and Counsel has mentioned that the parking was  
12 adequate. Well, when you take a picture of the parking  
13 at 2 o'clock in the afternoon when everybody's out at  
14 work, it's a lot different than when you look at what the  
15 situation is after five in the evening.

16 It must be known that there are no parking on  
17 the opposite side of Santa Ana Avenue. It's all red.  
18 There's no parking facilities on that thoroughfare.  
19 There's no space.

20                   So everyone who parks in the apartments,  
21           everyone who lives there, everyone who lives in all the  
22           new condominiums up on Santa Ana Avenue, and on the new  
23           homes on Riverside, they all have to park someplace. And  
24           where they park is generally anywhere they can find.  
25                   So any extra parking that we used to have is

50

1           complicated now by the fact that we have extra people in  
2           our neighborhood who are using those facilities and  
3           attending those facilities.

4                   The second thing I wanted to point out is I do  
5           a walk every other evening in my exercise program, and I  
6           walk by these homes. Oftentimes, and I will say  
7           oftentimes, more often than not, I would say at least on  
8           the average twice per week, there are several groups if  
9           in these homes in the back -- on the one that's right on  
10          the corner of, I believe, Redlands there, number 18, you  
11          can hear the men in the back with their group.

12                  There's a wave the cigarette smoke that comes  
13          by, and you can hear them having a meeting. They are  
14          meeting. And there's been some statements here tonight  
15          that they don't occur. Well, that's not true. It's just  
16          flat not true.

17                  The other point I'd like to make is that there  
18          is an issue with the quality of life that's been changed.  
19          Counsel mentioned that they have improved the value of  
20          the homes, which I understood wasn't something we're

21 supposed to talk about.

22 But sense he brought it up, I don't know how  
23 you can possibly say that that use in this neighborhood  
24 has improved the value of the homes. There's no way. If  
25 you look at the value of the homes in that neighborhood,

51

1 there's absolutely no way, and, the sales will point that  
2 out. So that's not true.

3 And then the final thing that I like to point  
4 out is the kennels were zoned long ago. They are not  
5 even in that neighborhood. They are around the corner  
6 down the side.

7 So, you know, I really think that when you look  
8 at our specific community -- I've been there for 25  
9 years. This is a community that has larger homes, large  
10 lots. The ability to put, you know, 65 beds in four  
11 homes -- and let's put a little number to this. Let's  
12 say that there's a thousand dollars a month --

13 THE COURT: You have got to put a wrap on it.

14 MR. GROSKREUTZ: -- \$65,000 per month for these  
15 people to live there, and it's a huge cash cow. Even cut  
16 in half, that's \$32.5. This is a business. This is not  
17 a residential use. It's a business. And they are  
18 running a business. The dog kennels are running a  
19 business, too, but I think they keep more of their  
20 business in accordance with the rules and the zoning  
21 regulations.

22 And so I oppose all of these for any exception  
23 whatsoever. They need to be standing and adhere to the  
24 zoning regulations that everybody else does for that use.  
25 Thank you.

52

1 MR. ALLEN: Thank you.  
2 Folks, we're really running over these three  
3 minutes, and that's the way we try to run things here,  
4 and we've got off to a bad start. Let's stop it.  
5 MR. ABRAHAM: Sorry. I apologize. My daughter  
6 is here, and I want to get her home. So if I could, I  
7 wanted to talk just a very few comments in general, but  
8 then about 1571 Pegasus.  
9 MR. KIFF: Your name, please?  
10 MR. ABRAHAM: My name is Steven Abraham. I  
11 live at 1592 Pegasus.  
12 I am a newcomer there. I'll only been there  
13 since 2000. People have lived in that community for 30  
14 years. But what I heard today was that the home went  
15 there in 2003, 2005, and 2007. And as the City attorney  
16 pointed out, as Counsel pointed out, these are  
17 businesses.  
18 If the 7-11 were forced to close on the corner,  
19 there would be no question that the 7-11 could no longer  
20 operate its business. These are single-family  
21 residences. They have been and they will continue to be,  
22 I hope, for a very long time.

23                   You'll hear from people who their grandparents  
24                   and their children were there, and their grandchildren  
25                   were there. And I hope that my daughter will live in

53

1           that home for many years to come and, God willing, her  
2           children.

3                   But it's not a business zone. It's not an  
4           economic opportunity zone. It's a neighborhood. It's  
5           the neighborhood like I was raised in in Gainesville,  
6           Florida. And this is my home, this is my community, and  
7           I'd love to see it that way.

8                   But let's talk specifics. I live at 1592  
9           Pegasus. I live right across from one of the homes on  
10          Pegasus. Six bedrooms? I can tell you quite frankly I  
11          was surprised to hear six bedrooms. Because there are  
12          generally two styles of construction in that  
13          neighborhood. There's a single -- there's a single-story  
14          with a second-story over the roof that goes to the back  
15          over the garage. And then there's a more traditional  
16          type. That's the majority of the homes.

17                  And I think all of the other homes fit into the  
18          category. The inside of the houses are exactly the same.  
19          It's four bedrooms upstairs, a den downstairs, might be a  
20          bedroom, you know. You start to change every single room  
21          into a bedroom, it starts to become a hotel. Again, it  
22          looks more like a business than a residence.

23                  I was amazed at the pictures, the four homes,

24 and not a single car parked in front of them. Well, sir,  
25 I would invite you to come to that neighborhood any

54

1 evening, and what you saw in those pictures is not what  
2 you'll see. And finally, I noticed in those pictures,  
3 every one of the garage doors was closed, and they talked  
4 about ample parking.

5 By the way, I'm a land use attorney, and every  
6 now and again, I play Bet Your Bar Card. I'm willing to  
7 bet my bar card that if you go to 1571 Pegasus and open  
8 that garage door, you won't find any room for a car.  
9 Pictures can be a little deceiving, but I think what  
10 you'll hear from most of the residents isn't. This is  
11 not a compatible use.

12 Thank you, sir.

13 MR. ALLEN: Thank you.

14 MR. ROBERTSON: Good afternoon. Thank you for  
15 allowing me to present my information today. My name is  
16 George Robertson. I'm trying to get all the information  
17 in in three minutes.

18 I have been a resident in the area since 1963.  
19 I grew up in that area and purchased my house there in  
20 1988. I bought it there despite some discouraging  
21 comments about the airport and the kennels because it's a  
22 good place to raise kids. It's a quiet area. There's no  
23 traffic going through, which comes to some of my comments  
24 here about the characteristics of the neighborhood.

25 Mr. Kiff did make a comment about the park at

55

1 the end of Orchard. By my calculation, it's a little  
2 less than a thousand feet. I'm not go to quibble, but  
3 there's a community park there.

4 Now, I wasn't going to do any deductions, but  
5 that has seen impacts from drinking. You go down there  
6 on a Saturday morning, and you'll find alcohol beverages  
7 on the grass and in the gutter. I wasn't going to make  
8 any deductions, but those impacts happened. It did not  
9 coincide with the time of the construction, though, as  
10 the attorney here has demonstrated before.

11 There's some inconsistencies and, perhaps,  
12 misrepresentations about the mischaracterization of the  
13 use of the treatment of these places. Go back to my  
14 notes here. And I did provide written comments to the  
15 City.

16 The house size and number of rooms has been  
17 mentioned before. None of those houses as built had over  
18 2,650 square feet, and the majority of them have 2,585  
19 square feet. So the square footage provided in the  
20 documentation, which, I'm assume, is being provided by  
21 Yellowstone, is overestimated by -- in the neighborhood  
22 of 25 percent. So I'd be interested to see where that  
23 extra square footage is coming.

24 They also talked about the bedrooms. None of  
25 these houses were -- had more than five bedrooms as

1 built. Many of them have four. So I'd be interested to  
2 see where those additional bedrooms come from. Only one  
3 house that I know of, one on River, excuse me, on  
4 Redlands Drive had any modifications done to it.

5 Transportation, parking. Within the staff  
6 reports, there's comments about no transportation being  
7 commonly provided. That, again, is a falsehood. They  
8 talk about the vans being parked in a different city.  
9 They are parked right on Pegasus Drive right by the  
10 Redlands facility. There's two vans there with the  
11 vanpools, and they are used on a daily basis.

12 And I will concede to the attorney that there  
13 is no interaction between these houses. However, there  
14 is considerable interaction between the residents of the  
15 houses. So with that, I'm going to leave my comments  
16 there. I think that other people will probably comment.

17 I'd just like to say in closing, in regards to  
18 the decisions today -- and I'm trying to do it  
19 quickly -- request that the City deny all the  
20 applications due to the inconsistencies and  
21 contradictions contained in the application as reflected  
22 in the City staff report.

23 And in lieu of that decision, I request that,  
24 prior to any approvals being granted by the City, the  
25 staff verify the issues contained in number two of my

1 report, which is, essentially, the square footage, number  
2 of bedrooms.

3 And be more transparent about the decision of  
4 which house to approve or not approve. Within the staff  
5 reports, two were approved, two were not approved. Me,  
6 as the public trying to review them, I couldn't figure  
7 out why they approved one and didn't approve the other.

8 Additionally, I suggest to the City that if the  
9 Applicant is unaware of the facts on the ground, either  
10 the vanpools, residents co-mingling, use of private cars,  
11 that contradict statements made by the Applicant as  
12 reflected in the staff report, that there's a disconnect  
13 with the on-site residence managers and the Applicant.  
14 So that's another issue for the City to clarify.

15 Finally, before any granted -- are approved or  
16 granted, I ask the City add a condition that the  
17 Applicant provide all of the neighbors with a common set  
18 of house rules that is updated as changes are made.  
19 Because I have no idea some of these house rules were in  
20 place and that I could even complain about them.

21 And finally, I ask that the City provide the  
22 neighbors with a method of reporting violations of these  
23 rules and a description of the City's action that would  
24 be taken under such instances.

25 Thank you very much.

1 MR. ALLEN: Thank you.

2 And by the way, just for the audience's sake,  
3 staff has received those written comments from a number  
4 of different source, e-mails and so forth. And they are  
5 all getting distributed around to everybody. So you can  
6 be assured that I see them, as well as the other  
7 stakeholders in the game here.

8 Okay. Who's next?

9 MR. MC DONOUGH: Mike McDonough,  
10 M-C-D-O-N-O-U-G-H. 1562 Pegasus. I've been there since  
11 '73. I raised my four children there. From my front  
12 door, I can see three of the group homes. Four of them  
13 are within 100 yards of my house. The other one is just  
14 150, maybe.

15 The complexion of the neighborhood has  
16 completely changed since I've been there. It was all  
17 families, lot of kids. Rarely see kids out on the street  
18 now playing as you used to. I won't allowed my grandkids  
19 out front where my kids used to play. It's -- the  
20 interaction between the homes, the Redlands home, are  
21 often down to the Pegasus house.

22 The vehicles that transport them in the  
23 morning, there's one car after another picking people up.  
24 In the afternoons, there's cars coming one after another.

25 They say there's no parking problem. I've had

1 cars parked blocking my driveway. Several of the  
2 residents that have cars have blocked the driveway. They  
3 are running businesses. It's a transient hotel. The  
4 only difference is we don't have registration cards, so  
5 the police can come in to see who is in them.

6 If I wanted to run a business out of my house  
7 and start a hotel, I wouldn't be able to. Just because  
8 they call it a treatment center, you shouldn't allow them  
9 to run businesses in a residential area.

10 Thank you.

11 MR. ALLEN: Thank you.

12 MR. MATHENA: I'm Larry Mathena. I think you  
13 know how to spell it.

14 Forgive me for not submitting written comments.  
15 Principally the reason I didn't is because, unlike the  
16 commitment of posting everything 72 hours before, these  
17 were not -- the staff reports weren't posted until very  
18 recently. And even with what's out there, we don't have  
19 the exhibits. So I really don't have any basis to know  
20 how the staff came up with its findings.

21 And I have great concern, for example, when I  
22 look at the summary report that says, "20.91(A).050 would  
23 cause persons in recovery to be denied low cost housing,  
24 and that the persons denied the housing are of limited  
25 income whose needs can only be met by Yellowstone."

1           While generally agreeing with their assertion,  
2       staff made a slight distinction here between current  
3       residents, et cetera. I would have to ask, has the City  
4       done a study as to what is available and where it's  
5       available? If it's not, why is it making admissions like  
6       this? Period.

7           Similarly, the staff goes on to note, and I'm  
8       just reading this in its summary, "If use permits are  
9       denied for one or more of the other Yellowstone  
10      facilities, and if expenses at each home are shown to be  
11      reported, then all five required reasonable accommodation  
12      findings can be made and staff can recommend approval of  
13      the request."

14           So when I read that, all that I know and all  
15      that's been agreed to is that, evidently, if you prove  
16      the expenses are low enough, their direction to you is to  
17      approve. I don't get that either when you start to look  
18      at the whole report, and I don't understand the logic of  
19      it in any case.

20           Moving right along, and just to cover a couple  
21      specific things, the Cal ADP, in its summary of  
22      post-rehab folks, self-reporting say 25 percent use while  
23      they are in the facility. So to kind of blindly say,  
24      "Our people would never do that" is silly.

25           The other thing I would observe -- because

1     these folks out here don't understand the rules -- I have  
 2     no clue if these are illegal assemblies. And if they  
 3     are, it's okay, because the City, when it finds out,  
 4     doesn't enforce things like anyway is what was said at  
 5     the last hearing like this.

6             A final comment that I really didn't see dealt  
 7     with -- and, again, I'm blind in Reasonable  
 8     Accommodationland -- is the Municipal Code under  
 9     20.98.025(C) and (D). Clearly, there are reasons not to  
 10    grant reasonable accommodations in this context. And  
 11    again, because I don't know what's on file, I'm done.  
 12    And I actually did it in three minutes.

13            MS. DEVINE: Hi. My name is Judy Define, and I  
 14    live at 1662 Pegasus. Thank you for letting me talk to  
 15    you today.

16            When we purchased our home, it is underneath  
 17    the airport, as some people have said. And no one goes  
 18    looking for a home under the airport. The reason we  
 19    bought it is because of the family characteristic of the  
 20    neighborhood.

21            When I started raising my children there -- I  
 22    have two grade-school children -- there were ten  
 23    stay-at-home moms in the neighborhood. There were  
 24    children running everywhere. And there are still are a  
 25    lot of children in the neighborhood. It's a great

1 neighborhood.

2 And on its Web site, Newport Beach said that  
3 they wanted to protect the character of our neighborhood,  
4 and that's all I want, too, is to protect that character.  
5 Three of the main streets in our neighborhood are  
6 Pegasus, the street I live on, Redlands and Indus.

7 Yellowstone is currently operating a facility  
8 on each of these streets. They asked for an exemption  
9 from Section 20.91A.050 in order to house 18 resident  
10 clients in each of the three homes and 12 clients in a  
11 fourth home.

12 My first question would be, those are the  
13 resident clients. In addition, are there managers who  
14 live there, too? So are you talking about not just 18  
15 people but possibly 20 people in a five-bedroom house?  
16 So that's something I'd like to look into.

17 Because I know the neighborhood and the  
18 neighbors know each other so well, we're able to go  
19 around and say how many people are in each house. So I  
20 went around, and I thought, okay, how do we tell the  
21 character of a neighborhood? Let's look at how many  
22 people there are. You know, we can use numbers at least.  
23 So I gathered the number of residents on each street for  
24 comparison.

25 Now, if you were to pass the applications and

63

1 the exemptions for the number of people on Pegasus

2 Street, where there are 28 homes, there would be 26.8  
3 percent of the population would be recovering alcoholics  
4 and addicts, okay? That's two blocks, okay?

5 On Indus Street, where there are 14 homes, 47  
6 percent of the people who live on that street would be  
7 recovering alcoholics and addicts.

8 And then the third street that we're talking  
9 about is Redlands Street. And on that street, because  
10 it's a shorter street and not a lot of homes, 75 percent  
11 of the population on that street would be recovering  
12 alcoholics and addicts.

13 And if you figure that those are three streets  
14 out of our five streets -- maybe, we only have five  
15 little streets in our neighborhood. We're very -- we're  
16 not a pass-through, we're an enclave. And that's a huge  
17 chunk of our population. Now, how can you say it's a  
18 NIMBY if over half of the population is changed? I don't  
19 think that's an NIMBY issue. That's an overconcentration  
20 issue.

21 Finally, I'd like to remind everyone that the  
22 normal stay indicated on the Yellowstone Recovery Web  
23 site on the home page says 90 days. That's what it says  
24 when you go there. So that means four times a year, all  
25 the population of those homes would be allowed to change.

1 It would be allowed to.

2 If you take that number of homes and the number

3 of people who cycle through there altogether, that would  
4 be 264 people coming in our neighborhood. In those same  
5 streets, there are 104 people who live there permanently.  
6 So if 71 percent of the people who are coming and going  
7 on those streets are not residents for four -- or more  
8 than 90 days, does that not change the complexion of my  
9 neighborhood? Yes, it does.

10 Thank you.

11 Oh, I respectfully ask that you deny the  
12 applications and exemptions.

13 Thank you.

14 MR. ALLEN: What was your last name, please?

15 MS. DEVINE: Devine, D-e-v-i-n-e.

16 MR. ALLEN: Thank you.

17 MS. DEVINE: Thanks.

18 MS. WALKER: Hi. I'm Judy Walker, 1571 Indus.

19 And in general comment, like our last speaker,  
20 the City has indicated that they want to keep the  
21 complexion of a residential neighborhood. As we've very  
22 nicely demonstrated with numbers -- and I did a similar  
23 exercise with just not even the turnover but with the  
24 beds that have been requested -- it would be the  
25 equivalent of adding eight additional homes to a very

65

1 small component of our neighborhood.

2 And my concern is infrastructure. I don't  
3 believe that -- and I would ask the City, have you looked

4 at what is the impact of having that kind of increase?  
5 It's like three times the concentration of population in  
6 a dwelling. Are our sewers ready to hand that? Are the  
7 rest of the people in the neighborhood going to fall prey  
8 to problems because these are residences developed for  
9 families, not for businesses?

10 And I have to say with everyone else parking is  
11 an issue. Driveway gets blocked.

12 Trash is an issue. While, yes, we have trash  
13 cans like everyone else, I would say if you're having  
14 three to four times the population in one building, is  
15 there enough curb space for the residents to put that  
16 number of cans out front. They are overflowing  
17 currently. They are being placed in front of fire  
18 hydrants, which means there's no neighborly feeling of we  
19 have concern for the people we're living with.

20 In those instances where I've had to approach  
21 people to try to get cars moved from my driveway, I've  
22 been met with, "You're not blocked in." It's not a  
23 neighborly -- it's exchange.

24 I can speak now directly to 1561. When they've  
25 overflowed their swimming pool into my yard, and I

66

1 approached their manager, she looked me straight in the  
2 face and said, "Are you sure?" I had 3 extra inches of  
3 water in my yard, and she had a foot in her backyard.  
4 There's not a feeling that they are willing to work with

5 us. It is very confrontational at all times.

6 And in general, the feel of the neighborhood,  
7 through all the traffic, we can no longer have what we  
8 feel is an effective neighborhood watch. We all know  
9 neighbors. But now we can't tell, does this car belong  
10 here or not? With our economic situations, we know crime  
11 can be an issue. How can we effectively look out for our  
12 neighbors when we don't know what belongs in your  
13 neighborhood and what doesn't.

14 Thank you.

15 MR. ALLEN: Thank you.

16 MS. LEE: I name is Louise Lee. I live at 1671  
17 Orchard. I'm the only one that doesn't live directly  
18 next to these homes, but I've lived in the neighborhood  
19 since 1983 when I bought my home.

20 I have two dogs that I walk through the  
21 neighborhood on a regular basis. And I see a lot of the  
22 things that everyone else is saying about the traffic,  
23 with the going back and forth between one home and  
24 another home, with the excessive number of cars, the lack  
25 of parking, the trash.

67

1 And the one house that's -- I think it's 18 on  
2 the corner, where the attorney pointed out the picture of  
3 the home that looked very tall, and he's intimated, well,  
4 that must be the workman from that house, well, it's a  
5 one man that's been doing all the construction on that

6 house. I've never once seen him drinking. And  
7 generally, he worked in the nighttime, because he works  
8 during the daytime. And it's been a very long  
9 process, but hopefully it's almost done.

10 I question -- in the house, the number 18,  
11 happens to be in the same model as mine, and I question  
12 how they can have six bedrooms, because that's a  
13 four-bedroom house. Some of the other houses that  
14 have -- were either four or five bedrooms and now have  
15 six bedrooms in them, how did they -- did they get the  
16 permits to redo these houses, which they obviously must  
17 have? I really question whether they legally can  
18 converted these homes to six bedrooms.

19 And to have the number of people living in  
20 these homes definitely impacts our neighborhood and  
21 actually has caused many problems with the neighborhood  
22 that we have. And I don't think I have too much else to  
23 say.

24 Thank you.

25 Oh, I do have one question. What is Oxford

68

1 Charter homes? The attorney referred to that like that  
2 was some great wonderful thing.

3 MR. ALLEN: We'll have them respond to that  
4 when they wrap. Thank you.

5 MS. LEE: Thank you.

6 MR. ALLEN: Anyone else?

7 MS. GROSKREUTZ: Good afternoon. My name is  
8 Victoria Groskreutz, G-r-o-s-k-r-e-u-t-z, and I live at  
9 1551 Pegasus.

10 I would have to say ditto to the other comments  
11 that have been made. I've submitted quite a few pictures  
12 that I've taken myself to the City, and I've submitted  
13 those through Dave Kiff. And they clearly show, and I  
14 have some here, that the trash is overflowing. And  
15 there's toilet seats sitting in the street and old  
16 furniture that sits for days before being picked up.

17 MR. KIFF: Ma'am, I'm sorry to interrupt you.

18 I looked at those pictures, too, and it was my  
19 understanding that those were 1501 or 1502 Pegasus; is  
20 that right?

21 MS. GROSKREUTZ: That's correct.

22 MR. KIFF: Okay. Because that's not the  
23 subject of the hearing today, but -- so in other words, I  
24 can't submit them as evidence, because they are not the  
25 subject properties. Those are the Lynn House properties.

69

1 MS. GROSKREUTZ: They are now. But in the  
2 past, they were Yellowstone.

3 MR. KIFF: Okay.

4 MS. GROSKREUTZ: And the property directly -- I  
5 live across the street from Mike McDonough, and he said  
6 he could see three homes. And there are actually the two  
7 homes that were occupied at 1501 and 1502, but the house

8 two doors down from me. I'm in the middle of the block.

9 And then, of course, the other one on Redlands, I  
10 believe, it is. That are all very close in proximity.

11 We, too, have had these issues with the  
12 parking. We've had cars parked in front of our driveway.  
13 We haven't even been able to put out our trash cans  
14 because your cars have been parked there.

15 Bi-weekly meetings for the residents but other  
16 people come in with lots of cars have occurred. And I've  
17 always questioned why they don't have their meetings at  
18 churches or other community locations where there's  
19 adequate parking, but this may be on deaf ears. This  
20 seriously impacts the parking on the street.

21 We've also had cars that have been left on our  
22 streets for days full of trash and junk that just sit  
23 there. I've had to call on those also.

24 I also have had to -- I've actually gone out to  
25 follow -- when I see people getting out of cars, I have

70

1 something else reported. I've watched to see where they  
2 go, and they go down to the houses and enter them. And  
3 they do park sometimes a block away. I don't know if  
4 they don't want their cars noticed, but they park far  
5 away, and they are walking to the home.

6 So I feel like our tract is becoming a parking  
7 lot for sober living homes. When our own family and  
8 friends come over, we, too, have had to park a car out

9 front to save a space for them to park when they come  
10 home from work or when they come to visit.

11 When the attorney suggested that they actually  
12 have -- or stated in the past that was sold on public  
13 auction, there were other families members bidding on  
14 that property, but they are outbid by Yellowstone. One  
15 of the families was a young man and his wife and child  
16 that wanted to buy that house, and he was actually raised  
17 in that neighborhood. So it was very disheartening to us  
18 to see that happen.

19 We recently applied for refinancing for our  
20 home that would have considerably reduced our monthly  
21 mortgage, but we were told that the last comparable sale,  
22 which I believe was the 1502 house, which was a sober  
23 living facility, impacted that -- the value of the home,  
24 and so it wouldn't go through as a comparable sale that  
25 was high enough.

71

1 Realtors have told us that they have to inform  
2 prospective buyers that there's sober living homes in the  
3 tract. This also affects our property values and the  
4 character of our neighborhood.

5 And I, too, am concerned about the recent  
6 explosions of trash that have been left on our property.  
7 I can't figure out why, but there's also been a plant  
8 that's been knocked over.

9 Another concern was when there were --

10 MR. ALLEN: Can you please put a wrap on it?  
11 You're past your three minutes.

12 MS. GROSKREUTZ: Okay. This is the last thing  
13 I wanted to say. The two homes at 1501 and 1502, often  
14 had women in their pajamas crossing back and forth across  
15 the street all hours of the night and day. When you make  
16 a right turn into the neighborhood, you have to be very  
17 cautious, because you can actually hit somebody crossing  
18 the street, because there's this constant flow.

19 We also had at least six times that the fire  
20 department had to respond to 1501 because of detox that  
21 was going on, which we understood was not licensed. And  
22 I would like to know if there's any records from the fire  
23 department that support that.

24 Thank you. I respectfully ask you to deny the  
25 request of the application.

72

1 MR. ALLEN: Okay. I don't see anybody else  
2 coming forward, and we aren't going to close the public  
3 hearing yet. And I'm suggesting -- and if staff wants to  
4 comment, please do -- that we open the hearing and  
5 initially attempted to focus on 1621 Indus, but then we  
6 transitioned, and everybody just started talking. And I  
7 think that's just fine, because you all got to say your  
8 peace.

9 Here's my thinking, unless I hear vehement  
10 objection from staff or even the Applicant, that if any

11 of you have something specific, site specific, to one of  
12 these particular properties that you didn't get to say  
13 that you feel compelled and you need to say in order to  
14 complete your presentation, I'd suggest you come back,  
15 and I'll give you a minute, minute and a half, to focus  
16 in on a compelling issue that you don't think has been  
17 presented.

18 Now, obviously, all of the neighborhood issues  
19 and the concerns that are neighborhood-wide have been  
20 expressed articulately and repeatedly. But please do.  
21 If you feel you need to focus on one of these particular  
22 properties, go ahead and do it.

23 MR. HANLEY: 1621?

24 THE REPORTER: Name again?

25 MR. HANLEY: Robert Hanley.

73

1 THE REPORTER: Thank you.

2 MR. HANLEY: What I'm about to say about that  
3 house is about all of them. There's no car parked in the  
4 garages. The garages are full of beds and such. So the  
5 statement that they accommodate their own parking is  
6 false.

7 I was told by one of the participants that she  
8 could not park in the driveway because it was reserved  
9 for whoever. She had to park at the curb. I made  
10 certain statements about the amount of parking, hydrant,  
11 and what have you. I videoed all this. And if I knew

12 that would be something that would be credited, I would  
13 have brought it.

14 I have an argument with the whole concept in  
15 them being called medically a disability. There are  
16 people with disabilities that are alcoholics. But I'll  
17 be damned if an alcoholic is a disabled person.

18 MR. ALLEN: Thank you.

19 Mr. Robertson needs to focus -- and again, we  
20 don't need general comments. That's not what the purpose  
21 of revisiting. This is a focus on an individual one,  
22 where you see something good or bad about it that you  
23 feel has not been said.

24 MR. GROSKREUTZ: Chuck Groskreutz, 1551 Pegasus  
25 Street.

74

1 Just wanted to ask about the 1571 Pegasus,  
2 20172 Pegasus (sic), 1621 and the other address, which I  
3 didn't write down. Each one of these show  
4 bedrooms -- six bedrooms, six bedrooms, six bedrooms,  
5 five bedrooms now. And I want to know or would like to  
6 know whether they were -- when they were purchased,  
7 whether they were added, whether the bedrooms were added,  
8 and if so, if the permits were pulled, because I'm not  
9 sure. I don't know. It's my only comment.

10 THE COURT: There's been a question that's been  
11 raised by several people, and I expect staff can address  
12 it, and then we'll deal with it from there. Thanks.

13 MR. GROSKREUTZ: Thank you very much for the  
14 second opportunity.

15 MR. ROBERTSON: George Robertson, 20112  
16 Redlands Drive. My one point is in regards to 20172  
17 Redlands Drive, and by extension, 1621 Indus.

18 One of the findings under the Section  
19 20.91A.060(A) through (G) was that no secondhand smoke  
20 can be detected outside the property. Staff has found  
21 that this is the case.

22 I feel that finding cannot be made for two  
23 reasons. We've already heard one person today talk about  
24 being able to smell secondhand smoke from the Redlands  
25 facility. Plus, I've personally have seen people smoke

75

1 in the front yards of those two residences, both on  
2 Redlands and then on also on Pegasus.

3 In addition, if you're to go by those  
4 residences, you would find cigarette butts in the gutters  
5 in front of those. And whether those were residents or  
6 guests, I can't say. But my assumption is that guests  
7 should also be following the guidelines as residents.

8 Thank you very much.

9 MS. LEE: I'm Louise Lee.

10 And in his original presentation, he made a  
11 comment about how Yellowstone had come in and upgraded  
12 all of the homes. And I personally have watched from the  
13 time they came in and bought them. And, yes, they put

14 paint, and they did a bunch of fixing up, et cetera.

15 But now you walk around -- and in particular,  
16 let's see, which one is it? It's 1621, I believe, Indus.  
17 The one that's in the middle of that, at the end of the  
18 curve, the driveway is breaking down. There's paint  
19 peeling off of the houses. The one that's on 1571 on  
20 Pegasus, the same situation.

21 So the homes, in fact, all of them, have been  
22 allowed to deteriorate, which also directly effects the  
23 way our neighborhood looks and the values of our  
24 neighborhood and the general feeling of the neighborhood.  
25 So they have not done a good job on keeping the

76

1 facilities looking nice. They have really allowed them  
2 to deteriorate.

3 MS. BOSLEY: I'm Rita Bosley. 1632 Indus  
4 Street. I live right across the street from 1621.

5 And my neighbor across the street and the  
6 neighbor to this property is not here represented, and I  
7 feel I need to represent her. She has asked the property  
8 people to go in on a fence with her, and they refuse to  
9 do so. The fence is falling down, and she needs  
10 cooperation. I'm not sure if she knows who to ask,  
11 whether she just asked the people at the house, but she  
12 has not gotten any cooperation with them.

13 I also see very big groups of people coming in  
14 for meetings on Friday mornings at 10 o'clock. And we

15 were told that that was not going to happen. They come  
16 in, and they get into their vans, and people are walking  
17 down the street.

18 There are many, many people that walk down the  
19 street not only in the van being delivered but they walk  
20 from other buildings, and so it's like a gang. We have  
21 just lots and lots of people walking through there, not  
22 really paying any attention to anyone else, or being  
23 inconsiderate, just walking as a big group.

24 Also, on 1571 Pegasus, I just took a walk  
25 around this morning, and between 1571 and Santa Ana

77

1 Avenue, there were over 25 cigarette butts just sitting  
2 in the street. That's trash, and that effects our  
3 neighborhood.

4 Thank you.

5 MR. ALLEN: Thank you.

6 Anyone else want to focus on a particular  
7 issue?

8 MS. WALKER: Judy Walker, and I'll speak to  
9 1516 specifically.

10 Two things. One, that has been requested for a  
11 occupancy of 12. I would like Yellowstone to directly  
12 address issues that were brought up earlier. Is that 12  
13 residents plus staff? Because we could be looking at  
14 densities much higher than are on the paperwork at this  
15 point.

16                   Secondly, it was intimated that the property  
17           prior to Yellowstone's purchase was a rental, as if that  
18           was something bad. I live at 1571. Not only was the  
19           house at 1561 a rental, the house to the other side of me  
20           is also a rental property.

21                   I knew the residents in those houses. I know  
22           them. They were part of the neighborhood. We exchanged  
23           conversation. We helped each other. It was not a bad  
24           situation of a rental, not as we have now, where it's a  
25           transient situation. It was much more of a neighborhood.

78

1                   Thank you.

2                   MR. ALLEN: Okay. I don't see anybody else.  
3           Thank you very much.

4                   We have the testimony in. I think we've  
5           adequately gotten a picture of what this neighborhood is  
6           like and how the recovery facilities effect it. From  
7           here, we want to give the Applicant an opportunity to  
8           respond to some of these issues that have been raised.

9                   MR. ZFATY: Okay. Thank you, Mr. Allen.  
10          Again, Isaac Zfaty on behalf the Yellowstone. And just  
11          so we're clear, am I to respond to the issues addressed  
12          to all four of the properties?

13                   MR. ALLEN: Are we going to be able to keep the  
14          record straight? That's the only concern I have from  
15          start to finish here. And as long as we can, we will.

16                   MR. BOBKO: Mr. Allen, I propose that staff go

17 through, and we go through each one one by one. If  
18 staff --

19 MR. KIFF: Yeah. I think we have a couple of  
20 categories of questions we might like some assistance  
21 with some follow-up. There's more general questions, and  
22 then there may be a few house specific questions.

23 So if that's amenable to the Hearing Officer  
24 and to the applicant --

25 MR. ALLEN: Okay.

79

1 MR. KIFF: -- maybe I can direct the questions  
2 to Mr. Zfaty, and if he needs to make a preliminary  
3 comment, that's fine, too.

4 MR. ZFATY: Sure. Well, I'd like to be able to  
5 address some of the comments that were made. And then I  
6 have another point as to the legal discussion in response  
7 to some of this.

8 First off, as to Mr. Hanley's comments, he  
9 talked about the fact that we are not neighbors. I don't  
10 think that that's any part of a criteria or criterion  
11 that we're looking at here.

12 He talked about protecting a fire plug and his  
13 driveway and also parking in front of a hydrant. There  
14 wasn't any specific evidence provided of that. The only  
15 response that we can give, in the absence of any specific  
16 evidence, is that there are remedies for that. And those  
17 remedies don't include the loss of the ability to use a

18 property.

19 If there's a specific automobile that blocks a  
20 driveway or a hydrant, again, without having any specific  
21 evidence that that -- of even who that car belonged to or  
22 whether the person was affiliated with Yellowstone or  
23 how, the only remedy that I think Mr. Hanley has is to  
24 call the authorities and have them come out and cite the  
25 offending vehicle.

80

1 He spoke of parties and monkey business.  
2 Again, on that issue, though, we don't have any specific  
3 evidence of it. What we do have is a public record of  
4 citations. And we have received no citations for that  
5 purpose by the Newport Beach Police Department. So  
6 that's probably evidence enough.

7 To the concern of young people being present, I  
8 don't know -- again, I think that's not any kind of  
9 indicia that we're looking at here today, the age of the  
10 people who are associated with Yellowstone. And  
11 moreover, I think that's probably a discriminatory  
12 category that can't be utilized here.

13 As to the cars in the garages, Mr. Hanley  
14 raised that issue, as well as a number of his neighbors  
15 as to a number of the properties. As you know, the City  
16 has gone through and inspected each one of the  
17 properties. So the City has direct evidence of that, as  
18 to whether our garages are empty or full.

19 I think Mr. Abraham -- I think his bar card is  
20 in serious jeopardy here. The City, again, has come  
21 through and looked. And according to Mr. Abraham, there  
22 is a bunch of junk mattresses, et cetera. And he put his  
23 bar card on it. The City has seen firsthand what's  
24 located in our garages.

25 As to Mr. Hanley's concern about the

81

1 characterization of alcoholics and drug addicts as  
2 disabled, unfortunately, or fortunately, depending upon  
3 who you are talking to, that's an issue that Mr. Hanley  
4 will have to take up in the United States Congress, who  
5 has seemed it necessary to find that alcoholics and  
6 recovering drug addicts are, per se, disabled.

7 Mr. Walker spoke of cars parked in the street  
8 from people from our homes. Again, we have no  
9 identification of those cars. Without being able to know  
10 who those cars are, license plates, et cetera, it's  
11 impossible for us to even speak to it. I will say this.  
12 As I mentioned in our presentation, we don't allow the  
13 residents to park their cars anywhere near the  
14 facilities. So I don't know, frankly, where that comes  
15 from.

16 As to people coming and going, I think it's  
17 important here to note that the record is devoid of any  
18 timing. As we mentioned, the properties, in their  
19 current state and certainly since they became a part of

20 the City of Newport Beach, does not allow visitors,  
21 people coming and going. The residents certainly can  
22 come and go, but our policy is not one that includes  
23 visitors. And again, we have no identification here of  
24 who these individuals are.

25 Mr. Groskreutz -- and I apologize if I've

82

1 mispronounced his name, as someone who is sensitive to  
2 that issue -- spoke of 65 additional people in the  
3 neighborhood. I think that actually mischaracterizes  
4 what's happening here. We've applied to allow the  
5 continued use of our four properties for 65 beds. So  
6 there's no new people coming in.

7 And as discussed in our original presentation,  
8 there has been the abatement of at least two properties  
9 in our neighborhood that we know of, which goes to  
10 another point, which is, in term of the analysis of  
11 overconcentration, there are currently no permitted group  
12 facilities in our neighborhood.

13 As to the coffee cups on his lawn, again, we  
14 attempt to do our best to make sure that, as to our  
15 residents, something like this doesn't occur.

16 As to his comment that this happened just after  
17 he submitted something to the staff, as the City well  
18 knows, we have no access to that. So there's certainly  
19 no nexus there.

20 To his point of kennels, the issue there that

21 he said quite awhile ago there were kennels, that was the  
22 point, that there were kennels. We are not -- we're not  
23 claiming that -- we're certainly not kennels -- we  
24 replaced any kennels, and we're not commenting on the  
25 presence of kennels currently.

83

1 As to his comment that we take in \$65,000 a  
2 month, or even half of that, \$32,500, that's absolutely  
3 not the case. We are a non-profit organization. We are  
4 not profiteers. You can call us -- I don't know that you  
5 can call us a business. I'm not sure what the  
6 significance of it is, but legally we are a non-profit  
7 organization.

8 As to the issue of permits at the homes for the  
9 numbers of rooms, again, I don't think that's at issue at  
10 all here. The City has been able to come through the  
11 homes, examining exactly how many bedrooms are located in  
12 each of these homes. And we have not been cited for any  
13 construction-related permit problems.

14 I spoke about Mr. Abraham's concerns already.

15 As to Mr. Robertson's concerns, he spoke of  
16 drinking in the park. One thing we know for sure is that  
17 none of our residents are drinking at the park. We  
18 actually test the residents of the facility for drugs and  
19 alcohol use. And so that's something that we're quite  
20 certain of. There's absolutely no drinking in the park  
21 that includes any residents at any of the Yellowstone

22 facilities.

23 Same issue as to Mr. Robertson's concerns about  
24 square footage. The City has records of square footage  
25 at the property -- at the properties, at all four of the

84

1 properties. And to our knowledge, there's no issues  
2 regarding square footage.

3 There is no interaction between the houses.  
4 This was a concern that, again, Mr. Robertson raised.  
5 Another one of our residents came and confirmed, at least  
6 in her mind, that that wasn't the case. Although, I  
7 think the comment was there might have been women walking  
8 in pajamas. We certainly have no information of that.  
9 That's not something that we would encourage. Certainly  
10 it's something we would discourage if we learned of it.

11 As to the -- again, Mr. Robertson raised the  
12 question of square footage and bedrooms specifically at  
13 20172. The City has records of that.

14 On the issue of secondhand smoke and excessive  
15 smoking, the issue, so we're clear, is under the  
16 Ordinance is excessive smoke, not just mere smoking. And  
17 the City has found -- made a finding that smoking or the  
18 presence of smoke is not an issue at our properties.

19 Mr. McDonough commented on the fact that he  
20 wouldn't allow his grandkids outside of his house any  
21 longer. And on that point, I would say the following:

22 That's a form of, I think, demagoguery that

23 doesn't have any place here. There has been no reports  
24 of any sort of child abuse from any person who lives at  
25 Yellowstone. We have no resident sex offenders at any of

85

1 our properties. So we take particular exception to any  
2 kind of connotation that we might be dangerous to  
3 children.

4 Same as to registration cards and as to the  
5 issue of treatment. There is no treatment that goes on  
6 in any of these four properties.

7 I wasn't quite certain as to whether  
8 Mr. Mathena was arguing for us or against us until he  
9 talked about the reasons not to grant reasonable  
10 accommodation.

11 On that point, which I'll address again at the  
12 end of my discussion as to the individual concerns, there  
13 is, as we pointed out earlier, a legal -- specific legal  
14 issue why, as applied to our homes, reasonable  
15 accommodation should be granted if the CUPs are not.

16 Ms. Devine spoke of the family characteristics  
17 and the character of the neighborhood. Just so we're  
18 clear, the record shows that the neighborhood, once it  
19 became a City of Newport Beach neighborhood, already  
20 included all of these properties.

21 So to the extent that the City of Newport Beach  
22 is performing any analysis as to whether the character of  
23 the neighborhood would be changing with the grant of any

24 of these use permits, the record is replete with facts  
25 that the neighborhood had its characteristics when it

86

1 became the City of Newport Beach. And those  
2 characteristics included all four Yellowstone homes.

3 A couple of the neighbors raised the issue of  
4 managers, and whether those managers are in addition to  
5 the numbers of individuals at these properties. The  
6 answer to that question is they are not.

7 As to Ms. Devine's concern about the  
8 percentages of recovering alcoholics and addicts, again,  
9 we would emphasize that recovering alcoholics and addicts  
10 are a member of a protected class. So it's not  
11 appropriate to characterize in this proceeding, or any  
12 other in this country, as an indicia for evicting any  
13 individuals from any particular neighborhood the fact  
14 that they are recovering alcoholics or addicts.

15 As to the parking and trash issues that were  
16 raised by Ms. Walker and a couple of her other neighbors,  
17 I think that Mr. Kiff amply raised the fact that there  
18 may have been some additional trash in the neighborhood  
19 due to other properties. We don't have any trash -- any  
20 additional trash concerns. Our trash runs in the same as  
21 everyone else's in our neighborhood. We have the same  
22 number of trash bins. We don't have any special runs.  
23 Waste management doesn't come by any more for our  
24 properties than it does for anyone else's.

And Ms. Walker raised the issue regarding

1 staff. I addressed that.

2 Ms. Lee talked about the construction issue.  
3 So the records clear on that, I think I did make it clear  
4 in my initial presentation, but we were merely pointing  
5 out that there was construction in the neighborhood. And  
6 to the extent in any additional trash might have been  
7 present in the neighborhood, it may have been due to that  
8 or also the beer cans or bottles, or whatever it was that  
9 was discussed. Again, there is no alcohol in any of  
10 these homes.

11 Ms. Lee raised the permit issue in terms of  
12 building permits. Again, there's no evidence before you,  
13 Mr. Allen, that we are out of compliance with any  
14 building permits.

15 And Ms. Lee also asked that we address the  
16 issue of an Oxford Charter. An Oxford Charter -- an  
17 Oxford House is a concept of recovery from alcohol  
18 addiction. In its simplest form, an Oxford House  
19 describes a democratically run, self-supporting,  
20 drug-free home. And it's typically a non-profit  
21 501(C)(3) corporation. It's a Federal charter.

22 And just a brief history of it is, in 1988,  
23 Congress established the requirements that every state in  
24 the country establish a revolving fund to help start  
25 houses based on the Oxford House model. Since that time,

1 Oxford House, Inc., has organized a national headquarters  
2 to help individuals throughout the United States open  
3 these Oxford homes.

4 Ms. Groskreutz -- and again, I apologize if I  
5 mispronounce her name -- spoke of trash issues, which  
6 I've already discussed, house meetings, which I've  
7 already addressed, and cars.

8 She also talked about property values. There's  
9 sort of -- as a trial lawyer, that's sort of a common  
10 mistake that happens in trials, and it's that if you open  
11 the door to something that's not relevant, that someone  
12 can come back and respond to things that are not  
13 relevant.

14 And as an evidentiary matter, that's simply not  
15 true. But I will take a mea culpa on that one. I  
16 understand that's not an issue, so we won't talk about  
17 that any longer.

18 Realtor disclosures regarding sober living  
19 homes are not an issue that we look at. It's part and  
20 parcel, I think, to the previous.

21 She spoke of her plant being knocked over or a  
22 plant being knocked over. Again, without any specifics,  
23 I don't even know how to address that.

24 Ms. Bosley spoke of her friend who had a  
25 problem with us agreeing to share the cost of a new

1 fence. Again, I don't think that's an issue that we are  
2 looking at here today.

3 And Ms. Bosley also commented on -- I think her  
4 words were, "We are like a gang." Again, we take  
5 exception to that type of demagoguery in this proceeding.  
6 More importantly, there's absolutely no evidence of gang  
7 activity related or associated with Yellowstone.

8 Now, as to the legal discussion, the reason  
9 that I spent so much time on Jones -- and I hope it isn't  
10 lost on you, Mr. Allen -- is that when we talk about  
11 constitutionality of ordinances such as this one, though  
12 you are not called to judge the constitutionality, and  
13 though the constitutionality of this -- the facial  
14 constitutionality of this statute has been, at least,  
15 partially passed on by Judge Selna, what's critical in  
16 any sort of ordinance is the application of the  
17 ordinance.

18 When we're talking about the issues that we're  
19 discussing here, application absolutely bears on  
20 constitutionality. There are plenty of instances where  
21 in otherwise un- -- excuse me, otherwise constitutional  
22 statute can become unconstitutional based on the way that  
23 it's applied.

24 The current facial validity of this Ordinance  
25 could become a future substantive invalidity in light of

1       this application. And it's not just in relation to these  
2       properties or any particular applicant. It's in relation  
3       to, as we spent quite a considerable amount of time on,  
4       the entire ordinance as set forth in Jones.

5               Thank you.

6               MR. ALLEN: I think let's take a five-minute  
7       break here, and we'll resume. Let's resume at 3- or 4:25  
8       by the clock on the wall.

9               (Pause in proceeding.)

10              MR. ALLEN: All right. So let's go back on the  
11      record, please.

12              I believe that the Applicant just finished  
13      presenting some rebuttal to the public comments that were  
14      made, and it appears that Mr. Kiff may be ready to also  
15      do some explanations.

16              MR. KIFF: Actually, I had a number of  
17      questions that may be to put a finer point on some of the  
18      things that Mr. Zfaty, as well as the residents, raised.

19              I was hoping maybe you could return to the  
20      podium and help me answer some questions.

21              MR. ZFATY: Sure.

22              MR. KIFF: So forgive me if some of these are a  
23      little bit redundant, but -- so do folks who are  
24      complaints of Yellowstone, are they allowed to have  
25      personal cars with them during their stay at Yellowstone?

1 MR. ZFATY: No, I don't believe so. No.

2 MR. KIFF: No, they are not?

3 MR. ZFATY: No.

4 MR. KIFF: So for the record, they are not  
5 allowed.

6 So when the neighbors that have alleged folks  
7 are either parking near by or walking in, so is that not  
8 a truthful statement, or it's a recent change?

9 MR. ZFATY: Well, I don't know if it's truthful  
10 or untruthful. It's hard to comment, as I mentioned,  
11 without any kind of specific identification as to --

12 MR. KIFF: Understood. But I guess was there a  
13 recent change in policy that clients during their stay at  
14 Yellowstone could not have cars? So, a couple of months  
15 ago where they allowed for cars and now they are not?

16 MR. ZFATY: No, certainly not within the timing  
17 of the enactment of the Ordinance in February.

18 MR. KIFF: Okay. Let's talk then a little bit  
19 a finer point on the meetings. So what meetings do take  
20 place at an individual house?

21 MR. ZFATY: There are -- there's one meeting  
22 per week.

23 MR. KIFF: That's the so-called house meeting?

24 MR. ZFATY: It's a house meeting.

25 MR. KIFF: Who's doing chores, and that kind of

1       thing?

2                   MR. ZFATY: Essentially.

3                   MR. KIFF: Okay. So do AA meetings take place

4       inside the house or in the yard?

5                   MR. ZFATY: No. No.

6                   MR. KIFF: Okay.

7                   MR. ZFATY: There's some information that I

8       don't have, so --

9                   MR. KIFF: I don't have, understood.

10                  MR. ALLEN: And you should, by all means, have

11       the client talk also here. If you don't know the rule,

12       please.

13                  MR. ZFATY: I will look to them if I don't know

14       the answer or the rule.

15                  MR. KIFF: Okay.

16                  MR. ZFATY: I think the client's a little too

17       nervous to get up here to speak.

18                  MR. ALLEN: We still need to know what the

19       rules are. I think it's very important to --

20                  MR. ZFATY: No, understood.

21                  MR. ALLEN: -- overall.

22                  MR. ZFATY: Understood.

23                  MR. KIFF: Yeah. But oftentimes, the reason

24       I'm asking these questions is to develop a condition --

25                  MR. ALLEN: Right.

1 MR. KIFF: -- whether or not it's -- there's a  
2 couple of homes that we recommend the denial of and the  
3 ones we recommend approval of, I'm trying to help craft  
4 those conditions.

5 MR. ZFATY: Certainly.

6 MR. KIFF: Even if this were a non-recovery  
7 home use, there wouldn't be an assembly use allowed at  
8 that home, whatever home it was, without a separate use  
9 permit.

10 And then the assembly use and the meeting uses  
11 certainly drive our consideration over parking. Because  
12 even if folks walk to it, arguably, they are parking out  
13 on Santa Ana or some other location. So again, I think I  
14 understand now that no meetings would take place at a  
15 home except for a house meeting.

16 Am I correct in saying that those house  
17 meetings would only involve the clients at that home who  
18 reside there at that home and maybe the on-site manager  
19 and assistant manager?

20 MR. ZFATY: Correct.

21 MR. KIFF: Okay. And regarding the on-site  
22 manager and assistant manager, so do they reside at the  
23 home as well? In other words, is that where they live  
24 and use a bed there?

25 MR. ZFATY: Well, you know, I don't know the

2 guess my question would be, is that relevant to the  
3 analysis?

4 MR. KIFF: It's certainly relevant to the bed  
5 analysis, yes.

6 MR. ZFATY: As to the number of beds, as I  
7 mentioned, the number of beds that we've applied for are  
8 the number of beds that we intend to have sleep there.

9 I'm a little concerned -- without even asking  
10 my client the answer to that question, I'm a little  
11 concerned about privacy issues. So that's why I'm asking  
12 Mr. Kiff if there's any relevancy.

13 If the question is to the number of beds, the  
14 answer is the number of beds that we've applied for  
15 represent the number of people who will actually be  
16 sleeping and residing there.

17 MR. KIFF: Okay. So -- because it involves  
18 another issue, too, in that other conditions that we've  
19 required on other homes have 24/7 on-site supervision.  
20 So it would be my expectation that we would apply that to  
21 the condition with this facility as well. And the  
22 occupancy of the home should accommodate those one or two  
23 individuals -- I imagine it's one individual -- within  
24 the approved bed count?

25 MR. ZFATY: That's correct.

1 MR. KIFF: Okay.

2 MR. ZFATY: As to everything you said except  
Page 92

3 for the one. You assume it's one individual. In some  
4 instances, it's two. It may be two in all four cases.

5 MR. KIFF: Understood.

6 MR. ZFATY: I'm not as facile with the numbers,  
7 but our application does reveal those numbers.

8 MR. KIFF: Okay. And then, the issue of the  
9 garages. We enforce cluttered garages all the time  
10 everywhere. We usually do it because someone calls us  
11 and says, "Hey, that neighbor over there has a garage  
12 that's full, and as a result, parking is constrained in  
13 that neighborhood." So we will go and enforce that.

14 There's always a concern whenever we do that  
15 anywhere at any home that we have to give advanced notice  
16 of the inspection, and there's a lot of clearing before  
17 we get there, and then a lot of replacing after we leave.

18 The condition we would apply to the Yellowstone  
19 homes, just like the other homes, is that all parking at  
20 all times -- sorry -- all garages at all times is  
21 available for parking, so -- per the Code. That's how it  
22 applies to every home in town.

23 MR. ZFATY: Certainly.

24 MR. KIFF: Granted, we don't all get all of  
25 them. Sometimes it takes a complaint to get us to follow

1 up on that.

2 MR. BOBK0: Can we have two minutes to confer?

3 MR. ALLEN: We need to take short break off the  
Page 93

4 record. Two minutes or so?

5 MR. KIFF: Two minutes is fine.

6 (Pause in proceeding.)

7 MR. KIFF: I'm ready again. Let's proceed on  
8 the record.

9 Mr. Zfaty, I was hoping to go back to the issue  
10 of staff and beds and clients. And as was pointed out to  
11 me, it's critical to another analysis we'll do as a part  
12 of the reasonable accommodation findings that involve  
13 financial data that we know who is a paid client or  
14 potentially a sponsored client.

15 Because I imagine some of your clients are,  
16 indeed, on a scholarship, for instance, or sponsored.  
17 Who is a paid client residing there, taking up a bed,  
18 versus who is an assistant manager or manager residing  
19 there taking up a bed?

20 So I was hoping maybe we'd have a little bit  
21 greater discussion about that. Maybe with the instance  
22 of, say, 20172, if you're requesting -- and I believe my  
23 numbers may be wrong -- 17 beds at that facility, of  
24 those 17 beds, will 15 be clients and two be a manager or  
25 assistant manager? And I don't see how this would

97

1 violate privacy rights, because we're obviously not  
2 asking about individual's names or we're -- just asking  
3 for titles and roles.

4 MR. ZFATY: That's fine. The number is 18,  
Page 94

5 Mr. Kiff, and two of those are managers.

6 MR. KIFF: So of the -- let me just restate it  
7 and you'd agree, I assume. Of the 18 beds, for instance,  
8 asked for at 20172, 16 people are clients and two are  
9 staff?

10 MR. ZFATY: Correct.

11 MR. KIFF: Okay. Thanks. All right. Just a  
12 quick question about the curfew. That isn't -- your  
13 previous question helps me answer that. That's enforced  
14 by the manager and assistant manager?

15 MR. ZFATY: Correct.

16 MR. KIFF: Okay. And when you talk about quiet  
17 hours versus lights out, quiet hours in our previous  
18 approvals has indicated that you can't hear a sound above  
19 the typical sound that folks in the house would make. In  
20 other words, no blarring music or no loud TV's at the  
21 property line. So that's a condition we would apply,  
22 just informational there.

23 You answered the question about what Oxford  
24 House Charter means.

25 I was hoping maybe you could speak a little bit

98

1 about how that discrepancy been the -- may be a  
2 discrepancy on the Web site that the person raised about  
3 having a 90-day stay versus a six-month stay. What is a  
4 typical stay at Yellowstone House?

5 MR. ZFATY: Currently the typical stay -- the  
Page 95

6 average stay is six months.

7 MR. KIFF: Average stay is six months, so --

8 MR. ZFATY: There are some that stay longer;

9 there are some that --

10 MR. KIFF: Maybe I wanted a mean rather than

11 max.

12 MR. ZFATY: I think the mean is six.

13 MR. KIFF: Okay.

14 MR. ZFATY: That's the normal stay.

15 MR. KIFF: Okay. I had a question, then -- we

16 talked about beds and the sizes of the buildings, and the

17 bedrooms and the size of the buildings.

18 MR. ZFATY: Excuse me. Can I clarify that? I

19 don't think it's six months for each of the four

20 properties, if I recall correctly.

21 MR. KIFF: Okay.

22 MR. ZFATY: Am I wrong about that? I'm sorry.

23 I'm wrong. It is six for each, okay. I apologize.

24 MR. KIFF: Okay. Just for the record, about

25 bedrooms and permits, when the City annexes territory

99

1 like West Santa Ana Heights, we don't go in and do a

2 building records inspection for each home. That would be

3 unreasonable.

4 So we don't know whether a conversion occurred

5 prior to annexation, and the folks at Yellowstone, for

6 instance, bought the house with the conversion, versus

7 the folks at Yellowstone House making the conversion  
8 later that may have been contrary to a plan.

9 It's not something we typically investigate,  
10 unless a neighbor is calling in saying, "I think those  
11 folks are doing illegal construction," and then we'd send  
12 the Building Department by.

13 And further, our own analysis of these homes  
14 for the use permit process did not involve a building  
15 inspector going out. These were contract planning staff.  
16 So the folks there were not looking at whether or not one  
17 room or another was permitted. Indeed, we don't have the  
18 old county plans on each home.

19 Question involving the County. Is it your  
20 understanding or your client's understanding that there  
21 was or was not a use permit requirement for this type of  
22 facility prior to annexation?

23 MR. ZFATY: My understanding is there was not.  
24 I don't believe that we were required to have any use  
25 permit when we were an unincorporated area. And I don't

100

1 believe that we had one.

2 MR. KIFF: Okay. That's my second question.  
3 We may go back and look at that. I'm not -- sometimes  
4 what the County does doesn't entirely surprise me. But  
5 I'd be quite surprised if they didn't have any use permit  
6 requirement for a group residential use above six people.

7 MR. ZFATY: We'll also take a look and see  
Page 97

8 if -- I will take a look and see if we did have one. To  
9 my knowledge, we did not.

10 MR. KIFF: Okay. Let me try to make a finer  
11 point on one thing. You said a couple times, Mr. Zfaty,  
12 that there's no interaction between houses. Is that,  
13 indeed -- are we interpreting that to mean that there's  
14 no interaction between the people in the houses?

15 And that kind of gets back to the meeting  
16 issue. For instance, one of the conditions would be  
17 that -- well, sorry. Let me back up a little bit.

18 Generally, we follow the State Alcohol and Drug  
19 Program mandates about privacy issues in recovery  
20 facilities. And what ADP says is that you're not allowed  
21 to have clients go from -- visit one house and -- live in  
22 one house and visit another without everyone in each  
23 house signing a disclosure agreement saying that they  
24 waive their right to privacy, because they are entitled  
25 to some privacy within an individual home as persons in

101

1 recovery.

2 So, therefore, we have applied that as a  
3 condition, that folks are not allowed to intermingle  
4 between houses until or unless those waivers are  
5 executed. But it sounds like to me you're saying they  
6 don't have any reason necessarily to go from one house  
7 for another.

8 MR. ZFATY: No. We don't have interaction  
Page 98

9 between the homes.

10 MR. KIFF: Okay. That is my list of questions,  
11 actually.

12 I would note one thing just for the record.  
13 What we've followed, typically, when folks say a  
14 realtor's obligated to disclose the presence of a  
15 recovery facility nearby, it's been our advice through  
16 the realtors is that they are not, and they shouldn't.  
17 Again, you're disclosing the identity of a protected  
18 class. I know a lot of realtors don't always understand  
19 that, and that's not something I can solve in any short  
20 time.

21 Again, I think that is the conclusion of my  
22 questions, Mr. Allen, unless Janet, if you had any that I  
23 missed?

24 MS. BROWN: No.

25 MR. KIFF: Okay. In conclusion, then,

102

1 Mr. Allen, we would still recommend the actions that we  
2 put in our staff report in terms of the use permit, and  
3 that is a reduction in beds to 15 for two facilities and  
4 the abatement of two.

5 With the ones that would remain, we would have  
6 a list of conditions that we'd come back to you with,  
7 that basically are quite similar to conditions we've  
8 approved in the past and, as I stated on the record  
9 today, are the kinds of things involving parking and

10 meetings and staffing, et cetera.

11 MR. ALLEN: Could we discuss the  
12 overconcentration issue a little further? Because it  
13 seems to me that that is the overriding feature here that  
14 brings about your recommendation for approving two and  
15 denying two. It's clear that there is a cluster of uses  
16 in this one particular location.

17 And that in applying the Ordinance criteria  
18 that has been adopted by the Council, if we do go forward  
19 with that and apply the American Planning Institute's --

20 MR. KIFF: Association.

21 MR. ALLEN: -- Association's criteria, which  
22 were incorporated into the Ordinance, how does the block  
23 definition appear to you from the standpoint of being  
24 consistent with what we've done on the Peninsula already  
25 and as it would apply to this?

103

1 MR. KIFF: Well, as Janet noted, arguably, a  
2 couple of these blocks are fairly easy to go into the  
3 block test, which generally we've thought of blocks as  
4 being rectangular in nature. But we also have, in this  
5 instance, cul-de-sac blocks, which are not as easy to  
6 analyze.

7 However, just looking at distancing from one  
8 property to another, and, in effect, straight lining some  
9 things, to us, it made the most sense to consider -- that  
10 the neighborhood of the Yellowstone homes as a single

11 block.

12 And we thought we were being on the generous  
13 side in going with the two uses per block versus one use  
14 per block and considering that the home at 1621 and 20172  
15 to be the facilities that should stay and would not  
16 result in an overconcentration.

17 Partially, too, it's because of the clients  
18 served that -- in taking into consideration that  
19 Yellowstone obviously has a male clientele and a female  
20 clientele, obviously, they could change houses around and  
21 move those clients. But to us, it made the most sense to  
22 maintain those homes, in part because the home on  
23 Pegasus, the one in the middle there, that 18 one, it is  
24 in relative --

25 MR. ALLEN: Go down the other side. Okay.

104

1 MR. KIFF: And I moved up the other way to the  
2 18. My pointer always -- there we go. It's going to do  
3 that.

4 But this house does have somewhat of a  
5 proximity of the two Lynn Houses. And it's questionable  
6 as to our abatement success there. And these are all  
7 little bits of things that play into our discussion.

8 The major discussion is that it's more  
9 appropriate to maintain this home and this home with that  
10 significant distance, which I think is over 300 feet,  
11 than maintain, say, this and this. This one and this one

12 could be a possibility, but that brings into context the  
13 closeness of the Lynn House facility.

14 These are also facilities that are -- they are  
15 large facilities, so in the interest of the argument that  
16 they made about their financial liability, that -- I may  
17 be have to be corrected -- but it's my understanding that  
18 they believe that 15 beds was the amount that they needed  
19 to remain financially viable.

20 These are also two homes that allow those 15  
21 beds to be accommodated versus, for instance, keeping  
22 16 -- I'm sorry -- 1561, which only would allow for 12  
23 beds because of the size of the house.

24 MR. ALLEN: Yeah, because 1561 is a 12-bed. I  
25 see.

105

1 Well, I'm inclined to follow the staff's  
2 recommendation here, based upon what we have heard today  
3 and the contents of the reports. We don't have a  
4 conditions of approval to be considered for today. But  
5 you would bring them back.

6 And if we can continue this hearing to a date  
7 certain, I would make the determination that 1561 and  
8 1571 -- I'm sorry -- 1561 Indus and 1571 Pegasus be  
9 terminated. And that 1621 Indus and 20712 Redlands be  
10 continued, and that appropriate resolutions be brought  
11 back on all of them, and that there be the analysis on  
12 the overconcentration that we've discussed so far as the

13 block issues are concerned. And at that time, at a  
 14 continued date, then we would also go forward with the  
 15 reasonable accommodation hearings that have to be done.

16 MR. KIFF: I think that's reasonable. And that  
 17 would also allow folks who follow the issue, including  
 18 the Applicant, to get a better understanding for our  
 19 recommendations.

20 Because one gentleman, I believe it was  
 21 Mr. Mathena, appropriately, brought up the fact that a  
 22 lot of these materials were not -- especially the  
 23 reasonable accommodation materials were not made  
 24 available in the manner in which we like to do.  
 25 We -- legally, it was appropriate what we did, but the

106

1 manner in which we like to provide it was -- should have  
 2 been earlier. But I think that's a fair suggestion,  
 3 Mr. Allen.

4 MR. ALLEN: I'm going to disappear temporarily  
 5 because my computer was unplugged.

6 All right. So then let's proceed to talk about  
 7 dates when we can return here and conclude these matters  
 8 or at least get through the reasonable accommodation  
 9 timing.

10 MR. KIFF: Well, I guess I would look to Kathy  
 11 and Janet a little bit, with the caveat that hints the  
 12 Applicant certainly, I would propose maybe the 12th or  
 13 the 13th of March. Probably the 12th, because -- and

14 then maybe go back to 4 o'clock time period to allow more  
15 folks to attend.

16 My reticence in looking at next week is because  
17 I'll be gone, not that it has to happen with me, but for  
18 the Thursday and Friday. And I think that also is a  
19 little bit of a short time to really give the public  
20 their right amount of time to review this.

21 So if that works with various calendars,  
22 including the Applicant's, maybe I'd proposed Thursday  
23 the 12th at 4 o'clock.

24 MR. ALLEN: Thursday the what date? I'm  
25 sorry.

107

1 MR. KIFF: Sorry. Thursday, March 12th. We're  
2 always looking back here, because that's where the  
3 calendars are.

4 MR. ZFATY: That's a Friday?

5 MR. KIFF: That's a Thursday.

6 MR. ALLEN: Yes, that's a Thursday.

7 MR. KIFF: I think it's more reasonable to hold  
8 these on Thursdays. This was an exception for us.

9 MR. ALLEN: That's acceptable to me.

10 MR. KIFF: How about the Applicant?

11 MR. ZFATY: I didn't bring my calendar with me,  
12 unfortunately. That sounds fine.

13 MR. KIFF: Okay.

14 MR. ZFATY: We'll hold that day. If there's a  
Page 104

15 problem, we'll let you.

16 MR. KIFF: Thank you.

17 MR. ALLEN: All right. So again, Hearing  
18 Officer will follow the recommendation of the staff with  
19 respect to the use permit determinations.

20 And we'll continue the preparation and adoption  
21 of resolutions for those actions to March the 12th, at 4  
22 p.m., and then also we'll continue the public hearings to  
23 that date to hear the reasonable accommodation  
24 considerations.

25 MR. KIFF: Just to be clear, then, Mr. Allen,

108

1 your intention is that the public hearing on the use  
2 permits are closed, but the public hearing on the  
3 reasonable accommodation would be continued to that date?

4 MR. ALLEN: Yes.

5 MR. KIFF: Okay.

6 MR. ALLEN: It's my understanding we're  
7 required to do that.

8 MR. KIFF: I believe so, yes.

9 MR. ALLEN: All right. So that concludes the  
10 proceeding for today. And we'll return on March the  
11 12th.

12 (Ending time: 4:53 p.m.)

13

14

15

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

I, the undersigned, a Certified Shorthand  
Reporter for the State of California, do hereby certify:

That prior foregoing proceedings were taken  
before me at the time and place herein set forth; that  
any witnesses in the foregoing proceedings, prior to  
testifying, were placed under oath; that a verbatim  
record of the proceedings was made by me using machine  
shorthand which was thereafter transcribed under my  
direction; further, that the foregoing is an accurate  
transcription thereof.

I further certify that I am neither financially  
interested in the action nor a relative or employee of  
any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed  
my name.

Dated:\_\_\_\_\_

|    |                       |
|----|-----------------------|
| 22 | 09-18838              |
| 23 | Laura A. Millsap, RPR |
| 24 | CSR No. 9266          |
| 25 |                       |