

CERTIFIED COPY

PUBLIC HEARING ON
PACIFIC SHORES PROPERTIES, LLC
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
WEDNESDAY, MARCH 25, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 6:05 p.m., on Wednesday, March 25, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

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2
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LAWYER'S NOTES

[illegible]

1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, MARCH 25, 2009

2 4:00 P.M. - 6:05 P.M.

3
4 MR. ALLEN: All right. We'll open the hearing
5 on the reasonable accommodation request made by Pacific
6 Shores.

7 For starters, my name is Thomas Allen. I'm a
8 Hearing Examiner that has been appointed by the City to
9 conduct hearings on group recovery facilities.

10 This first item today is Pacific Shores at Clay
11 and Orange Avenue, up in the Heights, right off Newport
12 Boulevard.

13 Prior to going into that matter, we have a
14 quick item of housekeeping. There's been a request by
15 the staff to continue the Resolution of the approval of
16 the 900 West Balboa Boulevard item from last meeting.
17 And the request is to continue that until the next
18 hearing.

19 And is there any reason to be concerned that
20 we're impairing anybody's rights or considerations in
21 that respect by continuing this?

22 MS. BROWN: No, sir, there's not.

23 MR. ALLEN: Would it effect the time for an
24 appeal to be filed?

25 MS. BROWN: The time for appeal would begin

1 upon adoption of the Resolution.

2 MR. ALLEN: When is our next hearing?

3 MR. KIFF: We're going to have to look at your
4 calendar, Mr. Allen, and discuss that with you. And the
5 next home -- next facility coming up is Balboa Recovery,
6 potentially, at Kramer Center. And we need to pull those
7 staff together. I don't think it's more than two weeks
8 away.

9 MR. ALLEN: Why don't we do this. If anybody
10 expresses any concerns about getting it done sooner, then
11 I would certainly be willing to come in and go through
12 it. There's no public hearing requirement or anything of
13 that sort to be concerned with, so if there is concern
14 over getting it done more quickly, let me know, and I'll
15 come in and go through it and approve it.

16 MR. KIFF: Yes, sir.

17 MR. ALLEN: And so with that commitment, we'll
18 continue that item.

19 And then back to the agenda, which is number
20 two, the reasonable accommodation request for Pacific
21 Shores.

22 Staff report?

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

24 As we did with the previous reasonable
25 accommodation hearings, this will be represented by three

1 of us. Myself, I'll do the quick background and speak
2 the most briefly. And then Janet Brown, from our
3 Planning Department, will speak more about the specific
4 application, and then Cathy Wolcott, our Deputy District
5 Attorney, will speak more about the reasonable
6 accommodation requests specifically.

7 So a reminder to the audience, this is a
8 hearing on reasonable accommodation requests. And for
9 the purpose of the hearing they are soon to be
10 consolidated. There are five that have been requested by
11 Pacific Shores Properties.

12 As I just stated, we'll do a brief background
13 on how the hearing works, then the application, then
14 Ms. Wolcott will speak about the reasonable accommodation
15 chapter in our Municipal Code, as well as presenting the
16 specific request of Pacific Shores.

17 Then the Applicant has an opportunity to stand
18 up and speak before the Hearing Officer, and the
19 applicant's time is not limited. The public hearing is
20 open then, and comments by the public are limited to
21 three minutes, unless the Hearing Officer determines
22 otherwise.

23 The Hearing Officer then can close the public
24 hearing, and the Applicant can return to clarify or rebut
25 comments made. And then a dialog could ensue between the

1 Hearing Officer and the Applicant and City staff.

2 And then the Hearing Officer has an opportunity
3 to make a determination, the alternatives being approving
4 the request, denying the request, or continuing the
5 hearing to a date certain.

6 So for the public's understanding, here is
7 where the Pacific Shores Properties are, 492 1/2, 492
8 Orange, as well as 3309 Clay. They are proposing that
9 there be 50 recovery beds in this community divvied up
10 this way, 18 at 492 1/2 Orange, 20 at 492 Orange, 12 at
11 3309 Clay.

12 And with that, I may leave this up on the
13 board, but I'll let Ms. Brown speak more about the
14 specific application.

15 MS. BROWN: Thank you, Mr. Kiff.

16 Good afternoon, Mr. Allen. I'm Janet
17 Johnson-Brown, Associate Planner from the Planning
18 Department.

19 The Pacific Shores facilities are comprised of
20 three buildings located on two parcels on the southwest
21 corner of Orange Avenue and Clay Street in the Newport
22 Heights neighborhood. The properties are zoned R-2,
23 which allows for single-family and two-family residential
24 development.

25 The property located at 3309 Clay Street is

1 developed with a single-family dwelling, and the Orange
2 Avenue property is developed with two dwelling units.

3 The Applicant is requesting reasonable
4 accommodation for relief from the Municipal Code to
5 continue an unlicensed sober living facility to provide
6 housing for up to 50 individuals in the three buildings.

7 With regards to establishment of use, staff is
8 not certain when the use of the dwelling at 3309 Clay
9 Street was converted to a residential care or group
10 residential use. However, in response to complaints made
11 to the City in the Spring of 2007 about unpermitted
12 construction, City staff inspected the building and found
13 that the building was occupied and appeared to be in use
14 as either a residential care facility or a boarding house
15 use.

16 The property located on Orange Avenue, 492 1/2,
17 was constructed in 2005. And the final inspection by the
18 Building Department to allow occupancy of this building
19 occurred on September 21, 2005.

20 The 492 Orange Avenue building was inspected by
21 the Building Department to allow occupancy on April 26,
22 2007. I did want to make a note for the record that the
23 date of final inspection is incorrectly stated in the
24 staff report on page 5 as April 24, 2007. This date
25 should be April 25th.

1 After that final building inspection, the
2 facility manager was observed moving furniture and
3 tenants into the moving on May 8, 2007.

4 Since early 2007, there have been a variety of
5 code enforcement issues brought to the attention the City
6 regarding the Pacific Shores facility. These issues are
7 discussed in detail in the staff report and include, but
8 are not limited to, the unpermitted construction at 3309
9 Clay Street.

10 Following the inspection of the building in
11 Spring of 2007, the City issued a notice of violation for
12 unpermitted construction. In order to comply with City
13 and State building code requirements, the City requires
14 that violators remove unpermitted construction and/or
15 obtain approval of plans and permits for the unpermitted
16 work.

17 In response to the notice of violation and stop
18 work order, the property owner submitted plans to the
19 Building Department for plan check. It is the Building
20 Department's standard practice to delay further
21 enforcement action to allow the property owner an
22 opportunity to complete the plan check process and obtain
23 permits for the unpermitted work.

24 Over a year later, no attempts to complete the
25 plan check process were made by the property owner. And,

1 therefore, following standard City practice, enforcement
2 efforts resumed and an administrative citation was
3 issued.

4 To date, this matter remains unresolved. In
5 the process of reviewing the plans, staff noted that the
6 building was incorrectly classified as an R-3 occupancy
7 for Building Code purposes rather than an R-4 occupancy.

8 An R-3 occupancy applies to single-family or
9 two-family structures, whereas an R-4 occupancy would
10 apply to structures for uses such as residential care
11 facilities for more than six residents.

12 The City's Fire Marshal is here at the hearing
13 today and can provide additional input as to the
14 significance of applying the correct occupancy rating to
15 the structures.

16 In February of 2007, Code Enforcement staff
17 requested information about the use of the Pacific Shores
18 facility. The manager of the facility at that time,
19 Mr. Mark Manderson, Sr., informed Code Enforcement staff
20 verbally and in writing that the facility leased rooms to
21 tenants.

22 In May of 2007, an ADP complaint investigator
23 looked into the allegation of unlicensed treatment being
24 provided at the Pacific Shores facility. The officer
25 reported to City staff that she was told by Mr. Manderson

1 that the Pacific Shores facility was not a recovery
2 facility, and that they just rented rooms to tenants. At
3 the investigator's request, Mr. Manderson provided copies
4 of sample leases with the tenants -- some of the tenants.

5 The ADP investigator determined that the
6 Pacific Shores facility was likely a sober living
7 facility, but the treatment services that would require
8 ADP licensing did not appear to be occurring on-site.

9 In July of 2007, the new facility manager, Mark
10 Manderson, Jr., told Code Enforcement staff that the
11 Pacific Shores facility was a sober living home.

12 In October 2007, the City filed a lawsuit in
13 State Court against Pacific Shores, LLC, for violations
14 of the Moratorium Ordinance for establishing a sober
15 living facility while the moratorium was in effect. The
16 City dismissed Pacific Shores from that suit earlier this
17 year.

18 As stated, the Applicant has requested
19 reasonable accommodation for relief from provisions of
20 the Municipal Code to continue operating an unlicensed
21 sober living facility. An application was initially
22 submitted September 24, 2008. And subsequent
23 amendments -- amended requests were submitted to the City
24 on March 10 and March 13, 2009.

25 The operational characteristics as described by

1 Pacific Shores are as follows. And this is based on the
2 information that's been provided by the Applicant.

3 The clients reside at the facility under a
4 separate written agreement with the operator and are
5 expected to abide by a set of house rules, a copy of
6 which is attached to the staff report as Exhibit 11.

7 The Applicant states that it does not have a
8 manager or an administrator, but that there are two
9 residents in each house designated to make sure that
10 tenants do not use drugs or alcohol and to ensure the
11 quiet enjoyment of the dwelling. The Applicant has also
12 stated that Mark Manderson, who assists in the
13 maintenance of the homes, is available on a 24-7 basis.

14 According to the Applicant, the curfew and
15 quiet the hours are 10 p.m. on weekdays and 11 p.m. on
16 weekends. And the Applicant states that curfew applies
17 only to new members of the household during the first 30
18 days of tenancy, and that quiet hours apply to all
19 residents.

20 The Applicant has stated that treatment
21 services are not provided on-site, and that clients are
22 expected to attend 12-Step meetings. There are no
23 transportation services provided by the facility
24 operator; however, the Applicant states that all
25 residents are permitted to have personal vehicles while

1 residing at the facility, not all residents have
2 vehicles, and that some use public transportation.

3 The Applicant states that those residents who
4 do have personal vehicles park the vehicles along Old
5 Newport or along the commercial park area of Orange. And
6 that no residents park along Clay Street or on the
7 non-commercial parking area along Orange.

8 Each of the buildings do provide parking
9 on-site in the form of an attached enclosed two-car
10 garage.

11 And that concludes my portion of the
12 presentation. Catherine Wolcott, from our City
13 Attorney's Office, is here to discuss the specific
14 request as related to the reasonable accommodation and
15 the required findings that need to be made to grant the
16 request.

17 MS. WOLCOTT: Thank you, Mr. Allen.

18 To begin with some background on reasonable
19 accommodation in general, and anybody who's been to a
20 reasonable accommodation hearing before has heard this,
21 but we can go to the first slide.

22 Reasonable accommodation is something that is
23 required under the Federal Fair Housing Act Amendments.
24 Under Federal law, cities are required to -- Federal law
25 does define the failure to make reasonable accommodations

1 in rules, policies and practices or services when such
2 accommodations are necessary to afford a handicapped
3 person an equal opportunity to use and enjoy a dwelling.

4 The Court has repeatedly interpreted this
5 language as imposing an affirmative duty on landlords and
6 public agencies to reasonably accommodate the needs of
7 disabled individuals. This is not a system that the City
8 invented. This is something that is required under
9 Federal law, which all cities and counties and other
10 agencies -- other governmental entities have to comply
11 with.

12 The Fair Housing Act Amendment requires cities
13 to make exceptions from their usual rules, policies and
14 practices when necessary conditions are met. Those
15 conditions are:

16 The request is made on behalf of a disabled
17 individual or group of individuals;

18 The request is reasonable;

19 The exception or accommodation is necessary to
20 afford disabled individuals equal opportunity to use and
21 enjoy a dwelling, and we've also listed the source code
22 in the U.S. Code Regulations.

23 The request is considered unreasonable if
24 granting the request would either impose an undue
25 financial or administrative burden on the City, or it

1 result in the fundamental change in the nature of the
2 City's zoning program.

3 So just because a disabled individual makes a
4 request does not mean that the City is obligated to grant
5 that specific request. There is limits on that, and
6 staff does the analysis on whether or not a request is
7 reasonable or necessary.

8 When an Applicant has given a request that is
9 clearly cannot be granted, the City engages in an
10 interactive process when possible to give them the option
11 of what other requests they might ask for.

12 When courts have reviewed whether or not a
13 fundamental alteration is being proposed in a request,
14 what they look at is whether or not the request would
15 undermine the basic purpose which the requirement seeks
16 to achieve.

17 So in this case, we're looking at a number of
18 requests that have to do with our Zoning Code and our
19 Building Code. So we're going to be analyzing whether or
20 not the basic purpose or the fundamental purpose of the
21 Zoning Code, or Ordinance number 2008-05, or the
22 California Building Code would be undermined by those
23 requests.

24 As in all reasonable accommodation requests,
25 they are analyzed on a case-by-case basis under the facts

1 specific to that particular applicant, that particular
2 request, and the section they have asked to be exempted
3 from.

4 The first analysis that we would do when we are
5 looking at a reasonable accommodation is the -- actually,
6 first we look at is whether or not they are disabled. In
7 this case, the Applicant has submitted to us a signed
8 statement that everybody who would reside in this
9 property is a recovering alcoholic or addict.

10 And the Federal courts and the Code of Federal
11 Regulations has defined persons in recovery from alcohol
12 and drug addiction as disabled individuals. That's the
13 Federal definition.

14 Then we look at whether or not the
15 accommodation is necessary. Will the accommodation allow
16 the disabled individual to live in the dwelling? Will
17 the disabled individual be unable to live in the dwelling
18 without the accommodation?

19 And if there's a direct link between the
20 accommodation and the required equal opportunity -- I
21 should start with the fact that the way the U.S. Code
22 phrases it is important in the analysis of necessity.

23 You look at -- let's see. The language of the
24 Code, I believe, is we have to make the accommodation if
25 such accommodation is necessary to afford disabled

1 individuals an equal opportunity to use and enjoy a
2 dwelling.

3 And the wording of that becomes important if
4 you're looking at how different circuits have interpreted
5 that particular phrase.

6 Pacific Shores Properties has requested to be
7 treated as a single -- can we back up one, Dave? I'm
8 sorry.

9 MR. KIFF: Yes.

10 MS. WOLCOTT: One of the things that Court
11 cases, in interpreting the necessity prong, have looked
12 at is whether or not there's a direct link between the
13 specific accommodation requested and the equal
14 opportunity which the Federal Government requires us to
15 provide.

16 And the courts have come up with two
17 requirements that would show that there's a necessity for
18 equal opportunity. One is whether the required
19 accommodation is necessary to make the facility
20 financially viable. And two, whether the required
21 accommodation provides therapeutic benefit.

22 And these are both very important factors to
23 look at when you're analyzing the request from a large
24 group facility. Do they need a facility the size they
25 asked for and are they financial viable, which the courts

1 have said affords disabled individuals an equal
2 opportunity to live and enjoy the dwelling? And does the
3 required size that they say they need provide a
4 therapeutic benefit for the individuals?

5 Pacific Shores Properties has made five
6 separate requests. The first request submitted back in
7 September of 2008 was to be treated as a single
8 housekeeping unit.

9 The second request was to be classified as a
10 residential care facility.

11 The third -- not -- excuse me. -- not to be
12 classified as a residential care facility. Not to be
13 treated as one in our analysis.

14 The third request is to be classified as a
15 legal non-conforming use.

16 The fourth request was that all Zoning,
17 Building, Fire and other applicable Code provisions be
18 applied to the facility dwellings as if they were a
19 single or two-family use, rather than the use that our
20 land use classifications or the California Building Code
21 considers them to be;

22 The fifth request, which you received on March
23 13th, since the date of this staff report, is to be
24 exempt from the requirements of Newport Beach Municipal
25 Code Section 20.10.020, which is the land use matrix in

1 which we say the Code says that residential care
2 facilities -- that all residential care facilities that
3 are not six and under licensed must be located in MFR
4 residential districts with a use permit. As you know,
5 all licensed six and under facilities can be located in a
6 residential zone.

7 Request number one and number two will be
8 treated together. We analyzed it at the same time,
9 because the request to be treated as a single
10 housekeeping unit and the request not to be classified as
11 a residential care facility were basically rewordings of
12 the same request.

13 If you look at the land use classifications
14 entitled "20 and Residential Zones," of the land use
15 classifications available, other than single housekeeping
16 unit, there was no other land use classification that
17 would have been particularly helpful to this Applicant.

18 The only other available classifications were
19 day care homes, which was not applicable here, group
20 residential, which is not helpful to the Applicant,
21 because group residential uses, which is all other uses
22 not residential care that are not living as a single
23 housekeeping unit, all of those uses are provided in all
24 other residential zones -- all residential zones, period.
25 Let me correct that.

1 Integral facilities? We would analyze them as
2 an integral facility. That's another form of residential
3 care use. And the only remaining land use classification
4 was parolee/probation homes, which are also prohibited
5 throughout the residential zones.

6 Therefore, if we don't classify them as a
7 residential care facility, the only other land use
8 classification that they would fit into would be
9 single-family, two-family and multi-family.

10 And it's a prerequisite for that use to be
11 classified as that use, that the people living there be
12 living as a single housekeeping unit. So that's the long
13 way of saying we will treat those two requests the same
14 as one.

15 Single housekeeping unit. I'm not going to
16 read you the entire definition, but you can look at it on
17 the screen. There are certain aspects of the definition
18 that the facility may meet, including, probably, being an
19 interactive group jointly occupying a single dwelling,
20 may have joint use of and responsibility for common
21 areas, they may share household activities, they may
22 share meals and chores, although I believe the Applicant
23 reported that they are responsible for their own meals.

24 And our single housekeeping unit definition
25 goes on, however. If the unit is rented, all adult

1 residents -- see what happens when you don't proofread
2 your work? -- residents have chosen to jointly occupy
3 the entire premises of the dwelling unit under a single
4 written lease with joint use and responsibility for the
5 premises, and the makeup of the household occupying the
6 unit is determined by the residents of the unit rather
7 than the landlord or the property manager.

8 And the evidence that was submitted both to ADP
9 and to us in the past is that they are each on individual
10 leases with the landlord, and the landlord determines the
11 makeup of the unit.

12 The characteristics of single housekeeping
13 unit, outside of the definition, are single housekeeping
14 units can live in any residential district. There are no
15 occupancy restrictions within the home for a single
16 housekeeping unit, other than those imposed by -- under
17 the Zoning Code. There are some occupancy restrictions
18 under the California Building Code as to how many
19 individuals can live in a structure of a certain size.

20 So our analysis starts with, is the single
21 housekeeping unit request reasonable? A request to be
22 treated as a single housekeeping unit is essentially a
23 request to be exempted from all of our restrictions and
24 all of the conditions the City might impose on a large
25 facility to reduce the negative secondary impacts.

1 One the basic purposes of the Ordinance was to
2 mitigate the adverse secondary impacts which a
3 residential care facilities might cause in surrounding
4 neighborhoods.

5 As we mentioned, all other groups not living as
6 a single housekeeping unit are entirely prohibited in
7 other residential districts; therefore, in the City's
8 view, the City has essentially already made a reasonable
9 accommodation for residential care facilities.

10 We have allowed them a process in which, rather
11 than just being told, "You are not a single housekeeping
12 unit. You cannot locate in the City," we've made an
13 exemption. And we said, "Because of the special needs of
14 your handicapped residents, we have created a process, a
15 lengthy -- you know, many, many options by which a
16 residential care facility with disabled individuals may
17 locate within the City."

18 However, if the request is granted, if this
19 facility is treated as a single housekeeping unit, the
20 basic purpose of Ordinance 2008-05 is nullified entirely,
21 and that does create a fundamental alteration of what the
22 Zoning Code intends and what the Zoning Code has adopted
23 to achieve.

24 The next prong of the application -- excuse
25 me -- of the analysis is whether or not treating it as a

1 single housekeeping unit is necessary to afford disabled
2 individuals the ability to live in and enjoy a dwelling.
3 The combination would allow disabled persons to live in a
4 dwelling.

5 However, then we next look at, would the
6 disabled individuals be unable to live in the dwelling
7 without the specific accommodation? And our answer is
8 no. The question is unnecessarily broad.

9 There are many options that the Zoning Code
10 allowed -- present, through which a residential care
11 facility can house its residence without being treated as
12 a single housekeeping unit.

13 Furthermore, the necessity for financial
14 viability or the therapeutic benefit of being treated as
15 a single housekeeping unit has not been shown by the
16 Applicant.

17 Alternative requests which are more reasonable
18 could afford the individuals an equal opportunity to
19 be -- to live within the City of Newport Beach.

20 If you review the staff report, all 39 page of
21 it, you'll see the full analysis of what findings we made
22 and did not make as to the single housekeeping unit
23 request and the request to not be treated as a
24 residential care facility.

25 If you want me to go into more details about

1 that, I'll happy to. But we do have a lot of requests to
2 cover.

3 Move to request number three, the request to be
4 treated as a non-conforming use. The staff recommended
5 granting this request because essentially the City's
6 already treated Pacific Shores as if it were a
7 non-conforming use.

8 There are questions about establishment dates.
9 There's a possibility that one was essentially
10 established during a certain period. But the way we've
11 been treating this facility is the same way that we treat
12 all non-conforming uses within residential districts.

13 And I should add that there's been some
14 confusion about legal non-conforming and non-conforming.
15 In our Planning Department's parlance, we don't use the
16 term "legal non-conforming." It's either non-conforming,
17 which is legal to be there under certain conditions, or
18 it's an illegal use.

19 Non-conforming uses in residential districts
20 after the passage of the Ordinance 2008-05, had the
21 opportunity to apply for a use permit within a certain
22 period of time. They had the opportunity to apply for a
23 reasonable accommodation. They had the opportunity to
24 apply for an extended period of abatement. They could do
25 any one of those options at the same time or in sequence.

1 And Pacific Shores has been give those same
2 options. They have been given the same opportunities as
3 non-conforming uses in residential zones.

4 Request number four, which is their request to
5 have these Zoning, Building and Fire Codes applied to
6 their dwellings as if they were single-family or a
7 two-family use.

8 Staff applied analysis used in requests number
9 one and two and recommended denial. Applying the Zoning
10 Code to a residential care facility as if it were a
11 residential use is essentially the same as treating it as
12 if with a single housekeeping unit.

13 As we've already discussed, single-family,
14 two-family and multi-family uses are single housekeeping
15 units essentially. And so we did the same analysis
16 there for Zoning and recommended denial.

17 As to the Building Code, California Building
18 Code is the State law. It is adopted at the State level
19 under the authority of the California State Legislature.
20 And it is adopted and enforced by the City of Newport
21 Beach. The Building Official and our Fire Marshal are
22 the individuals in the City staff that are responsible
23 for enforcing the State code.

24 Pacific Shores has requested to be treated as
25 an R-3 use, essentially. Switching gears a little, you

1 have not heard us talk before about Building Code
2 occupancy.

3 Essentially, when the Building Code use the
4 word "occupancy" in a way that is similar to the way the
5 Zoning Code uses the word "use." They are different
6 terms, but they apply to what's the use that's going on
7 inside the building.

8 State law establishes construction standards
9 and life safety requirements for the different occupancy
10 types, based on their operating characteristics and the
11 needs of the residents. So R-3 under the Building Code
12 are single and two-family occupancy. That would be a
13 single-family home or a duplex.

14 R-4 are recovery facility occupancies housing
15 seven or more in a building. And R-3.1 are recovery
16 facility occupancies housing six or less in a building.

17 Essentially, as the Applicant proposes to house
18 more than seven in each of its buildings, every one of
19 their occupancies are classified as an R-4. They would
20 like to be treated as an R-3 and have the standards for
21 those -- the lower standards of Safety Code of R-3
22 applied.

23 The life safety standards for residential care
24 facilities uses were established by the State Fire
25 Marshal, not our Fire Marshal. And the State Fire

1 Marshal adopted them under the authority of the State
2 Legislature, which expressly directed him, in Health and
3 Safety Code 13135, to adopt specific standards for
4 alcohol and drug recovery facilities.

5 The City has the authority to substitute
6 alternate materials and methods that will provide an
7 equivalent level of protection, but we do not have the
8 authority to waive the level of protection or change the
9 level of protection. And we do not feel it is
10 appropriate in any way to lower the standards of safety
11 for the residents of these facilities.

12 Those standards were adopted for a reason. And
13 they were adopted because, at the State level, the
14 determination was made that there were operational
15 characteristics for the special needs of the individuals
16 in the facility that required that extra protection. We
17 feel the Applicant should raise that extra protection.
18 It should be willing to provide it rather than seek to
19 lower it.

20 The City Fire Marshal enforces the State Fire
21 Marshal's regulations. He does not create them himself.
22 He does, however, have the authority to determine the
23 equivalent level of protection that might be there.

24 And I'm going to see rather quickly if
25 Mr. Bunting is here. He's not. If the Applicant has any

1 specific questions about why the Fire Marshal is
2 requiring what he is requiring, I can answer them to the
3 best of my ability when the time is appropriate.

4 But I can say that he has looked at some of the
5 facilities and has determined that they have the wrong
6 type of sprinkler in them. In a residential facility, a
7 residential type of sprinkler would be required.

8 In an R-4 occupancy -- I said "residential
9 facility." It's not a facility.

10 In an R-4 occupancy, a commercial sprinkler
11 systems are required. And the reason that's required is
12 that a residential sprinkler is in place to suppress the
13 fire long enough for the residents of that dwelling to
14 exit safely.

15 In a commercial facility, a commercial
16 sprinkler system is in place to prevent the spread of
17 fires and suppress the fires to prevent -- to protect
18 neighboring facilities, so the fire does not spread from
19 one dwelling to another, which is one of the reasons that
20 we could not make finding five in this analysis either.

21 We did feel that it would create a risk to
22 neighboring properties, as well as to -- the risk to the
23 residents of the facilities. Therefore, staff strongly
24 does not recommend granting request number four.

25 Number five, waiver of the requirement of

1 location in MFR with use permit.

2 At this level, we had a number of different
3 analyses that we did. We looked at whether the request
4 was necessary and reasonable for the current residents of
5 the facility. Because it is our feelings that if there
6 are current residents there, and they are staying for a
7 limited period of time, that's a different analysis as to
8 the necessity, you know.

9 First, someone who is already there who would
10 be deprived of housing if abatement proceeded. And two,
11 reasonableness, if it's a short period of time. The
12 facilities told us the average stay is, I think, 45 to
13 180 -- yeah. Approximately six months. So we didn't
14 feel that allowing current residents to remain for up to
15 six months maximum undermines the basic purpose of the
16 Zoning Code.

17 We also analyzed at the population level that
18 was requested specifically by the Applicant. The
19 Applicant would like to house 50 individuals, 12 of them
20 at 3309 Clay, 18 of them at 492 1/2 Orange, and 20 of
21 them at 492 Orange, based upon the number of bedrooms
22 that they represented are in these facilities.

23 Staff looked at this in detail, as you can see
24 in the staff report, and determined that -- I can go into
25 this a little bit more -- but determined that that level,

1 that number, was not necessary, and that number
2 fundamentally undermined the purpose of the Zoning Code.

3 Staff also analyzed what number and what
4 circumstances might be imposed that would enable this
5 particular facility to not being undermined the basic
6 purposes of the Zoning Code, and I'll talk about that
7 now.

8 So beginning with a necessity prong, is the
9 accommodation necessary to afford a disabled individual
10 an equal opportunity to use and enjoy a dwelling?

11 We looked there at whether or not -- and this
12 is from case law that we discussed earlier -- whether or
13 not the facility required the requested accommodation,
14 and whether the requested population level was required
15 to achieve financial viability and the therapeutic
16 benefit? Which is what a number of circuits have found
17 necessary to demonstrate the necessity prong.

18 We haven't seen any evidence of what the
19 financial needs are of the facility. We have requested
20 it, and the Applicant specifically objected to the
21 request and declined to present it in the past. Any time
22 the Applicant would like to present us with financial
23 information, we would will be more than happy to analyze
24 it and advise accordingly.

25 The Newport Beach Municipal Code allows the

1 City to consider four factors in determining necessity:

2 Whether the accommodation will affirmatively
3 enhance the quality of life of individuals with a
4 disability -- that's the therapeutic benefit analysis;

5 Whether the disabled individuals will be denied
6 an equal opportunity to enjoy the housing type of their
7 choice without the accommodation;

8 And whether the accommodation is necessary for
9 financial viability;

10 And whether the existing supply of facilities
11 of a similar nature and operation is sufficient to
12 provide individuals with an opportunity to use and enjoy
13 a dwelling in Newport Beach.

14 And that addresses the portion of the necessity
15 prong that I provided in the letter to you and to
16 opposing Counsel.

17 Staff analyzed the reasonableness and necessity
18 of this request with regard to the following categories:

19 Current residents of 492 and 492 1/2 Orange.
20 Because at this time, there is no one residing in 3309
21 Clay. That building has been red tagged pending
22 resolution of the Building Code issues.

23 And prospective residents at 50, and at staff's
24 recommended level 12 residents, one dwelling unit. As we
25 discussed in the staff report, without further input from

1 the public and from the Applicant, we didn't want to make
2 solid recommendation on which specific dwelling unit to
3 recommend for the one unit.

4 My analysis was that the most appropriate was
5 492 1/2 Orange, which is the back unit on the duplex at
6 the corner of Clay and Orange. And the reason for this
7 was that it's surrounded on two sides, one side by a
8 commercial office building, two sides by a Pacific
9 Shores' dwelling unit, and that would insulate the
10 neighbors from any secondary impacts.

11 And also that that was a use that was
12 established prior to the moratorium. That did not
13 violate the moratorium to the best of our knowledge, that
14 particular unit.

15 We move on to whether or not the accommodation
16 request is reasonable. The fact that we're allowed to
17 consider it is not the same as the findings. These are
18 factors that we can think about while we're making the
19 findings. These guide us in the analysis.

20 Whether the accommodation would fundamental
21 alter the nature of the neighborhood;

22 Whether the accommodation would result in
23 substantial increase in traffic or insufficient parking;

24 MR. ALLEN: Just quickly.

25 You're now going back and analyzing the request

1 as they made it, not how you're suggesting it would be
2 modified, right?

3 MS. WOLCOTT: In the staff report, we did both.
4 So if you go through the staff report, there's, you know,
5 category four as to prospective -- as to current
6 residents, and then we have two categories under
7 prospective residents, one of which is at the staff -- at
8 their requested level, and another is at the staff's
9 recommended level.

10 So as we went through it, we went through the
11 analysis, in a number of places we could not make the
12 required findings as to 50 individuals and three dwelling
13 units.

14 It didn't -- there were requirements about not
15 creating an overconcentration in the neighborhood, not
16 creating a clustering of facilities. And with three
17 dwelling units and 50 people, we could not make that
18 finding.

19 So then we analyzed with 12 people, one unit.
20 And specifically, we looked at the size of the unit. And
21 if, as staff recommended, that unit was taken back to the
22 way it was illustrated on plans that the City saw and
23 approved, that would give a recovery environment that is
24 much less compressed than any other we're aware of. It
25 would have 12 people with a facility that had only six

1 bedrooms and a bonus room and game room and offices. So
2 it would be spread out more, less density of the unit.

3 Other factors there, whether the accommodation
4 would create an institutional environment due to the
5 number and proximity of similar uses. Obviously, from
6 our perspective, 50 people looked like a sober living
7 institution. Eighteen people, 20 people in one dwelling
8 unit looked like a sober living dormitory, not like a
9 sober living home.

10 We are trying to make a recommendation that
11 allowed it to be a sober living home, if that's what
12 Federal law requires us to accommodate.

13 We went through the required findings. Would
14 granting the request impose an undue financial or
15 administrative burden? In most cases, no. At the
16 staff's recommended level, no.

17 However, at the level requested by the
18 Applicant, due to our history with this Applicant, due to
19 the past Code Enforcement issues that we have had and
20 continue to have, due to some of the misrepresentations
21 made by the Applicant about what exactly the facility was
22 early on back in Spring of 2007, because of those, we
23 could not make that finding as to a facility with 50
24 residents.

25 We felt that we could make it as to 12

1 residents, if the Applicant agrees to work carefully with
2 us, if inspection is allowed once a year. As you'll see,
3 that's one of the conditions that staff proposes, so that
4 we can monitor the -- or not monitor, to confirm every
5 year that the occupancy is what we've agreed to.

6 Then we look at whether granting the request
7 would result in a fundamental alteration in the nature of
8 the zoning program?

9 Would allowing the use to continue in an R-2
10 zone undermine the basic purpose R-2 zoning seeks to
11 achieve?

12 We also look at whether allowing the use to
13 continue without a use permit undermines the basic
14 purpose that the use permit requirement seeks to achieve?

15 The purposes of the R-2 and MFR zones. R-2 is
16 intended to provide areas for single- and two-family
17 residential uses. This is medium to high density,
18 depending on location. In the Santa Ana Heights area,
19 the Planning Department says this is medium density.

20 MFR is to provide single-, two- and
21 multi-family residential uses. Also at medium to high
22 density. At staff's proposed level of density, which
23 would be 12 residents in a six- to nine-bedroom facility,
24 felt the medium level of density would be achieved, given
25 the size of the lots in that area.

1 The use permit environment is also very
2 important. Use permits are required for uses that have
3 operating characteristics that require special conditions
4 to keep them from having an impact on the neighborhood
5 around them and changing the residential character of
6 that neighborhood.

7 Ordinance 2008-05 requires use permits for
8 non-conforming uses in residential areas. And the
9 purpose of that is to ensure that the purpose of the
10 Zoning Code is achieved, and adverse secondary impacts
11 from non-conforming uses can be mitigated.

12 The purpose of the permit -- I'm not sure if
13 it's on the next slide.

14 The purpose is to -- that's the general use
15 permit reason. And this is the special -- the use permit
16 that has -- the procedures of 20.91A.

17 The purpose is to promote public health and
18 safety and implement goals of general plan by ensuring
19 that conditional uses do not change the character of
20 residential neighborhoods.

21 And the second purpose is to protect and
22 implement the recovery and reintegration of the disabled,
23 in part by avoiding overconcentration that would lead to
24 institutionalization of an area.

25 And in the mind of staff, that second prong is

1 as important as the first. We don't feel that it is to
2 the benefit of recovering individuals to be in an
3 overcrowded or institutionalized condition.

4 From our conversations with recovery experts
5 and reading cases, one of the purposes of community-based
6 care is to allow the recovering individual to learn to
7 reintegrate into a neighborhood, to have interaction with
8 individuals who are not in the facility, so that they can
9 start relearning the standards and norms of a regular
10 neighborhood and learn how to enter the mainstream of
11 society again. The purpose is to learn how to live in a
12 neighborhood, not to learn how to live in an institution.

13 Is the use permit purpose undermined if the
14 accommodation is granted at the level staff recommended
15 and the level that the Applicant has requested?

16 One of the reasons we found that the use permit
17 might not be undermined by granting a similar
18 accommodation in the past is that reasonable controls,
19 which the Hearing Officer can impose through a use
20 permit, can also be imposed through a reasonable
21 accommodation. The Municipal Code allows the reasonable
22 accommodation process to have conditions attached to it.

23
24 The reasonable accommodation is not a land use
25 entitlement. It does not run with the land. It is

1 specific to a particular applicant at a particular
2 location under particular conditions.

3 Our analysis was that with the
4 conditions -- and I stress with the conditions -- all the
5 findings required to issue a use permit could be made for
6 this facility, with the exception of one item, which I
7 would like the Applicant to address.

8 One of the findings for a use permit,
9 operational standards, 20.91A.050, is that no individual
10 affiliated with the facility has a past pattern and
11 practice of operating similar facilities in violation of
12 state and local law.

13 You can parse out the word "similar facilities"
14 and whether or not it means the same facility. But
15 because some of the misrepresentations of the Applicant,
16 this specific Applicant, in the past, or one member of
17 the family that is affiliated with the facility, staff
18 would like reassurance from Counsel and the Applicant
19 that either that individual will not be involved in the
20 operation or present us with an explanation of why not
21 being able to make this finding does not undermine the
22 purpose of our Zoning Code.

23 This is not a use permit. We're not requiring
24 that you apply for a use permit. But we do have to
25 analyze, so we have some flexibility with the reasonable

1 accommodation standards. But we do have to analyze why
2 that prong is not undermined.

3 MR. ALLEN: Would you expect to do that on the
4 record in a hearing, or is that something that you
5 suggesting otherwise?

6 MS. WOLCOTT: I don't know that that needs to
7 be on the record at this hearing. I think it could be in
8 the public record. It would be part of the Resolution
9 that's adopted. Is that acceptable to you?

10 Proposed conditions. A bed count of no more
11 than 12 clients with one resident manager on-site to
12 control the activities and to enforce the rules of the
13 facility.

14 The facility will not occupy the second or
15 third dwelling unit for residential care purposes.

16 Weeknight curfew of 10 p.m.

17 Weekend curfew of 11 p.m.

18 Quiet hours of 10 p.m. to 8 a.m.

19 Staff report also has some other conditions
20 that may not be included in here, which include quiet
21 hours for television at a certain hour. I think it's
22 after 10 o'clock and before 8 a.m.

23 No secondhand smoke detectable off the
24 property.

25 Twenty-four-hour contact provided to address

1 the neighbor concerns. As in other accommodations and
2 permits that have been given, that would be a number that
3 residents could call and receive an answer within 24
4 hours from the facility operator that would address,
5 acknowledge the concerns, and give information on how
6 those concerns would be addressed.

7 Providing a list of similar facilities owned or
8 operated in the past five years, and certifying that no
9 person operating such facility has done so in violation
10 of law, or providing an explanation that was satisfactory
11 to staff and the Hearing Officer of why this would not
12 undermine the basic purpose of the Zoning Code.

13 No more than six residents with personal
14 vehicles. In the staff report, we address the parking
15 and the traffic issues. And if you'd like me to go into
16 that, I can. If you'd like me to spare you that, I will
17 summarize by saying that there are enough parking spaces
18 on-site to accommodate at either one of the units only
19 six residents under the parking standards required in the
20 Zoning Code.

21 Therefore, we, staff, would require that the
22 facility, which says that not all residents have cars,
23 limit the personal vehicles of the residents present to
24 no more than six, only six. And we would require that
25 the garage be open and accessible for vehicle parking,

1 and that those four residents who might have cars, if
2 they are not parking on-site, park only on Old Newport
3 Road or the commercial section of Clay Street -- excuse
4 me, Orange Street, and not park on Clay at all.

5 All other dwellings return to use single
6 housekeeping unit use. We would require, as we do with
7 all the use permits and accommodations, that we be given
8 the required compliance with all state and local laws,
9 including the California Building Code.

10 And if they are not in compliance at the time
11 that the Resolution -- any Resolution the Hearing Officer
12 would approve or not approve is executed, then they would
13 need to enter into a schedule with our Fire Marshal and
14 bring it into compliance to his satisfaction within a
15 certain period time. I believe we discussed six months.

16 We would also require an annual inspection to
17 confirm occupancy for a set period of years, and that is
18 because of the history that we have with this Applicant.

19 Okay. So we found that with conditions, the
20 use could conform to the operational standards of
21 20.9A.050, with the exception of that last one, which we
22 still are requiring an explanation for.

23 MR. KIFF: This may be where you're done.

24 MS. WOLCOTT: Okay. If you have any questions,
25 I'd be happy to answer it.

1 MR. ALLEN: All of this last information with
2 respect to request number five has been done virtually at
3 the last minute with no input from between you and the
4 Applicant, as I understand it. And so it's all being
5 presented today. And there are certainly a number of
6 questions about that from my standpoint of negotiating
7 permit in this setting.

8 So would you, staff, please think about that?
9 And you don't need to respond right at the moment, but
10 that's not -- this isn't the proper forum to negotiate a
11 resolution, in my estimation. So this needs to be worked
12 out.

13 MS. WOLCOTT: Can I address that?

14 MR. ALLEN: You sure can.

15 MS. WOLCOTT: We received this particular
16 request for accommodation on March 13th, when we were in
17 the middle of several other use permit and reasonable
18 accommodation applications. And so yes, that did push
19 back the time for the preparation of the staff report.

20 We also asked for more information that was not
21 provided until, I believe, the 18th of March, because
22 there were items that they had declined to give us,
23 information that they hadn't presented before that we
24 needed in order to do an analysis that's consistent with
25 a level of analysis we've done with other facilities.

1 So yes, staff came up with these
2 recommendations without further input from the Applicant.
3 And we did say in the staff report that we recognize that
4 this has just been presented to them, to the Hearing
5 Officer, and to the public.

6 And if the Applicant wanted to request a
7 continuance as to this particular -- or any member of the
8 public wanted to request a continuance as to this
9 particular prong of the analysis, this particular request
10 number five, we would not object.

11 MR. ALLEN: Okay. Okay. What's next from the
12 staff?

13 MR. KIFF: That's the end of the staff section,
14 Mr. Allen.

15 MR. ALLEN: Just a few quick questions.

16 Those occupancy R-4 standards have been applied
17 to all of the group facilities of seven or more in the
18 City, right? This wouldn't be the first time you're
19 suddenly applying R-4 standards?

20 MS. WOLCOTT: Our Fire Marshal has been sending
21 letters to all facilities of seven or more per building
22 for over a year requesting plan analysis, code analysis
23 of the particular building that they are in, so they can
24 assess whether or not they are in compliance either with
25 the 2007 Building Code, which was the new Code adopted in

1 2007, or with the standards which were applicable when
2 the use was established. That is an ongoing process, and
3 it is still a requirement.

4 MR. ALLEN: Just a question of physical
5 characteristics. I just went by this facility yesterday
6 a couple of times, and I really couldn't tell whether
7 492, I think it is, and 492 1/2 are actually attached
8 dwellings or whether there is a separation between the
9 two, your 18 and 20 there.

10 MS. WOLCOTT: They look like two separate
11 buildings. And Ms. Brown can probably address this
12 better than I can. They are classified as a duplex, and
13 Janet will tell you why.

14 MS. BROWN: The Zoning Code requires a
15 separation between detached structures, or they may be
16 attached by a solid roof 4 feet in width or more. And
17 when the buildings were constructed, they were attached
18 with a solid roof towards the rear of the property about
19 where Mr. Kiff is pointing right now. So there's just a
20 single solid roof attaching these two structures to each
21 other.

22 MR. ALLEN: So you can't go back and forth
23 between the two building --

24 MS. BROWN: No.

25 THE COURT: -- interiorly?

1 MS. BROWN: No, sir, you cannot.

2 MS. WOLCOTT: I would add that we looked at the
3 populations of this block. And we look at the 2000
4 Census to try to compare density. And I think our
5 analysis was that, one, they have turned
6 approximately -- with all three units in operation, they
7 would return approximately one-quarter of this block area
8 to -- that block that's there and that block that's over
9 there -- would be put to residential facility use.

10 Ms. Brown did an analysis from the 2000 Census
11 of how many parcels there were, and came up with an
12 analysis of -- let's see. I'll have Janet do this one.

13 MS. BROWN: On the side of the street with the
14 residential buildings facing along Clay Street, and then
15 it goes down -- the block goes down Broad Street, which
16 you can't see this in aerial photo, but along that block,
17 there were 20 lots or parcels. And the -- 20 blocks or
18 parcels that are residentially zones, there are 37 lots
19 or parcels on the other side, back-to-back properties,
20 that were commercially zoned.

21 So -- and the 2000 Census recognized that there
22 were 70 persons in that particular block. If I counted
23 just the number of residential parcels divided by 70
24 persons, that would be 3.5 individuals per lot or parcel.

25 Across the street from Clay, which you can see

1 a portion of it in this photo to the right here, that
2 block is a smaller block defined by the census, a total
3 of 12 lots or parcels. There were 43 persons in that
4 block. So based on that count, that would be 3.58
5 persons per block in the 2000 Census.

6 MS. WOLCOTT: So those were the numbers that we
7 were comparing the density for a proposal that housed 50
8 people in that portion.

9 MR. ALLEN: All right. From an
10 overconcentration point of view, there really -- there
11 wasn't much. There was a reference to overconcentration
12 in the staff report, but no real analysis. Just, why was
13 that the case?

14 MS. WOLCOTT: Maybe in my mind, it went without
15 saying that three units on a block housing 50 people
16 created an overconcentration. I'm sorry if I didn't make
17 that clear in the staff report.

18 MR. ALLEN: I mean, is that a finding that
19 would be included here independently? I understand you
20 made reference to institutionalization, which is
21 understandable, but --

22 MS. WOLCOTT: Let me another take another look
23 through the 39-page staff report and see if I can find
24 where I would have referenced that.

25 MR. ALLEN: Very good, thank you.

1 Okay. Anything else from staff right now?

2 MR. KIFF: No, sir.

3 MR. ALLEN: Would the applicant like to make a
4 presentation at this time?

5 MR. POLIN: I would. I would also like to take
6 a five-minute recess before I begin.

7 MR. ALLEN: Let's take a five-minute recess.

8 MR. POLIN: Thank you.

9 (Pause in proceeding.)

10 MR. ALLEN: All right. We're going back on the
11 record.

12 Would conversations please continue outside?

13 Applicant ready to proceed?

14 MR. POLIN: Thank you, Mr. Allen. My name is
15 Steven Polin, and I'm one of the attorneys for Pacific
16 Shores.

17 As a preliminary matter, Pacific Shores is
18 currently in litigation with the City of Newport Beach in
19 Federal Court where we have challenged the requirements
20 of the use provisions and the reasonable accommodation
21 provisions as being violations of the Federal Fair
22 Housing Act.

23 Pacific Shores did not apply for a use permit,
24 and I strongly object to the interjection into this
25 reasonable accommodation proceeding by the City of any of

1 the requirements of the elements of a use permit. And
2 you, Mr. Allen, if you're going to decide this and
3 consider the factors of a use permit and our request for
4 a reasonable accommodation, then it's basically -- this
5 hearing is tainted.

6 Reasonable accommodation. The Federal Fair
7 Housing Act states that handicapped people -- handicapped
8 persons can request a reasonable accommodation from any
9 rule, policy, practice or procedure from any entity.

10 Reasonable accommodation, put in layman's
11 terms, is either asking for a waiver of a condition or
12 requirement or a change in a condition or requirement or
13 doing something out of the ordinary.

14 Now, we have made five separate requests for
15 reasonable accommodation from the City.

16 One of them is to be treated as a single
17 housekeeping unit.

18 Another one is to not be -- is to ask the City
19 not to classify us as a residential care facility.

20 Another one would be to say that we're a legal
21 non-conforming use or the City recognizes us as a
22 non-conforming use that is not in violation of the City's
23 Zoning Ordinance.

24 The other is to treat Pacific Shores in the
25 provision of all Codes, Zoning, Building, Fire, Life

1 Safety, as if it were a single family use.

2 And finally, that we're not -- that the City
3 waive the requirement that unlicensed residential care
4 facilities may be located in only a residential
5 multi-family zone with a use permit.

6 Now, we have three houses with approximately 50
7 beds. What the City has come forward and told you is
8 we're willing to give them an accommodation, but only for
9 12 beds. That's not acceptable. That is not what our
10 request is. And to grant that, to give the City what the
11 City is recommending, is a denial of our request for
12 reasonable accommodation. Let me tell you why.

13 The City and yourself is required to take our
14 request as being reasonable. And reasonable is given a
15 very, very wide interpretation. As a matter of fact,
16 Justice Bryer, in the case of Barrett versus
17 United -- United -- U.S. Airways, said that you have to
18 look at the dictionary to see what reasonable is. And
19 it's given a great deal of leeway.

20 So to say that we're going to say that
21 you -- we're going to take 38 beds away from you is not
22 reasonable. And the City hasn't proffered any reason,
23 under the Fair Housing Act, as to why 38 people should be
24 evicted and lose their place to live and recover from
25 alcoholism and drug addiction. So first of all, you have

1 to take our request and each of our requests as being
2 reasonable.

3 Second of all, once it's found to be
4 reasonable, then it can only be found not to be
5 reasonable if it creates or causes an undue burden
6 financially, if it causes an undue burden
7 administratively, or if it fundamentally undermines or
8 alters the scheme.

9 Now, the City has arguing to you and putting
10 forth that there is no undue burden financially, there is
11 no undue burden administratively. However, three of our
12 five requests cause a fundamental alteration of the
13 zoning scheme.

14 And the reason the City says that is because
15 its zoning scheme is under attack. All right? It is
16 under attack for being in violation of the Fair Housing
17 Act. So if they grant an exception, if they say Pacific
18 Shores can operate as a single housekeeping unit, well,
19 what kind of signal is that going send to the people who
20 are opposed to Pacific Shores and to group residential
21 uses in general in the City?

22 And what kind of signal -- and the City, I
23 believe, their position is, what kind of signal is that
24 going to send to the other residential -- to the other
25 providers of housing? And they are going to say, "Well,

1 Pacific Shores can walk in there and get this, then we
2 can get this, too."

3 Well, the thing about reasonable accommodation,
4 Mr. Allen, is that it's a fact-intensive, basically
5 one-time deal only. It is to be considered by the
6 Applicant on the facts that are presented and
7 circumstances that are presented. It may have
8 precedential value in later proceedings if there are
9 similar situations.

10 But it doesn't lock the City into anything, all
11 right, other than, in this particular instance, a request
12 for reasonable accommodation was granted.

13 So to follow the City's logic that if you grant
14 our request to be treated as a single housekeeping unit
15 their whole Zoning Code is undermined is a fallacy.
16 Because other courts have said in similar
17 situations -- in similar situations -- and I'll give you
18 an example called Tsombanidis -- for the Court Reporter,
19 it's T-s-o-m-b-a-n-i-d-i-s -- versus City of West Haven,
20 which is an Oxford House case.

21 "Where the Court finds that the requested
22 accommodation was reasonable in light of the
23 fact that Oxford House Jones Hill operates in a
24 manner similar to a single family residence,
25 and the residents need to live in group homes

1 located in single family districts removed in
2 the areas where persons in recovery can readily
3 obtain drugs or alcohol.

4 "Moreover, the city's zoning regulations
5 already treat unrelated persons as a single
6 family so long as they are three or less in
7 number, and the regulations impose no numerical
8 limitations on the number of related persons
9 who can give live together a single
10 neighborhood."

11 So it's illegal in California to place
12 numerical limitations on what constitutes a family.
13 There's a case called Adamson versus City of Santa
14 Barbara, and that case involved 12 people living in a
15 house.

16 And the City has crafted an Ordinance for a new
17 definition of single housekeeping units that pretty much
18 tracks every other municipality in the State of
19 California that uses it, except they put in a provision
20 that says, "Unless they have a unitary lease, that they
21 can't be considered a single housekeeping unit."

22 Well, with group homes and with providers of
23 housing for people who have disabilities, particularly
24 with alcoholism and drug addiction, it is impossible to
25 have all the residents on one lease. They all come in at

1 different times. They leave at different times. They
2 get kicked out for violation of the rules.

3 So a reasonable accommodation in terms of the
4 single housekeeping unit would be to request a waiver of
5 this particular provision. And that doesn't undermine
6 anything. What it does is it is a recognition that group
7 homes and group home providers have special and unique
8 needs that need to be addressed.

9 Now -- and that is the reason why the City has
10 recommended that Pacific Shores not be granted a
11 reasonable accommodation to be a single housekeeping
12 unit. And that's the reason that the City proffers is
13 undermining its Zoning Code. And I submit to you,
14 Mr. Allen, that that those are insufficient reasons.

15 And unless the City can demonstrate how the
16 entire fabric of the Ordinance 2008-05 would be
17 undermined by the granting of that, then I think you are
18 compelled, sir, to grant our request for reasonable
19 accommodation in terms of that.

20 The City says that we should not be -- our
21 request not to be treated as a residential care facility
22 should also be denied, because the City has enacted a
23 zoning scheme that only classifies people with
24 disabilities as being a residential care facility.

25 It does not apply to families. It does not

1 apply to non-disabled people. It is only a
2 classification of those residences and those -- and that
3 type of housing that provide housing or housing or
4 services to people with disabilities.

5 This isn't the forum to litigate this,
6 or -- but I'm going to tell you that that is
7 discriminatory on its face. It's treating groups of
8 disabled people differently than group of non-disabled
9 people, and the Fair Housing Act prohibits that.

10 So when you have a classification as a group
11 residential facility and say that they can only set up as
12 a matter of right in certain zones, then that is denying
13 housing opportunities to those types of people.

14 And to say that Pacific Shores should not be
15 granted a reasonable accommodation, or at least a waiver
16 from that classification, merely because -- merely
17 because disabled people live there is not a reason to
18 deny the request for a reasonable accommodation, because
19 that is discriminatory.

20 The City has police powers to regulate rooming
21 houses, boarding houses, fraternities, sororities,
22 private clubs, in part because these types of uses do not
23 provide housing to persons with disabilities. And
24 persons with disabilities are specifically a protected
25 class under the Federal Fair Housing Act.

1 I often get asked about, well, what about the
2 students that live together? Don't they get the same
3 thing? And the answer is no, they don't, because they
4 are not protected under the Federal Fair Housing Act.

5 So when you start classifying uses based on
6 a -- based on the class of people that are living there,
7 and that those classes are specifically enumerated in the
8 Fair Housing Act, then you start running into problems.

9 If the concept is difficult to grasp, I often
10 say, "If you don't understand it, just substitute 'race'
11 for 'disability.'" So if you had -- if this was a matter
12 of race or national origin, people would be standing up
13 and saying, "This can't be." But because it's people
14 with disabilities, it's okay? No, it's not.

15 I don't think there's any question that the
16 population that Pacific Shores provides housing to is
17 disabled. I don't think that's in question in any of
18 these -- in any of these findings or any of the
19 discussion in the report.

20 The City admits that -- the City does not
21 question the need for sober housing, but the City also,
22 at the same time, says, "But we need to regulate it. We
23 need to put conditions on them. We need to keep them out
24 of sight, because people in our City don't like the fact
25 that they're present. But we can't kick them out, so

1 what we're going to do is make it as difficult as
2 possible for these facilities to exist in Newport Beach,
3 and maybe they will get tired of having to come in and
4 ask for permission to live here."

5 Because basically this is what the City has
6 created is a zoning scheme that requires providers of
7 housing for people with disabilities to ask for
8 permission to come in and either stay where they are or
9 ask for permission to have a certain number of people
10 living there.

11 Now, this isn't asked of anybody else in the
12 City of Newport Beach, and I don't believe the Fair
13 Housing allows in these circumstances a provider of
14 housing to ask for permission.

15 Pacific Shores has been where it's been prior
16 to the enactment of this Ordinance. This is part of the
17 reason why we asked as an accommodation that it be
18 treated as a non-conforming use. If you grant our
19 request that it is a non-conforming use, then I think
20 what that means is we go back to what it was prior to the
21 enactment of this Ordinance and apply those standards as
22 if this were 2007 or 2006, and not 2009.

23 Let me just say this, Mr. Allen, in all group
24 home situations, parking is always problematic. It's the
25 type of problem that can always be -- in my experience,

1 can always be remedied. It can always be worked out with
2 the housing provider, with the residents, in terms of
3 what's reasonable. And I don't think you need to be
4 acceding to the City's request to put parking
5 restrictions on us. I think that can be worked out
6 without the imposition of any kind of conditions.

7 The City says it has authority treating Pacific
8 Shores as a legal non-conforming use. I disagree with
9 that. If it was a non-conforming use, then we wouldn't
10 be here. If the City was treating it as being legal, we
11 wouldn't be here. We wouldn't have to be asking for a
12 reasonable accommodation. We wouldn't have to be asking
13 that the provisions of the Ordinance not be applied to
14 Pacific Shores.

15 Let me just say something about the Code
16 provisions that we're asking a waiver of. The Code
17 provisions -- and Ms. Wolcott spent a lot of time about
18 the Fire Code and about the fire classifications. I can
19 tell you this. These Codes are not tailored, narrowly
20 tailored to the specifics needs of this specific
21 population.

22 Courts have looked at across the board fire
23 restrictions. And there's a case called Marbrunic versus
24 City of Stowe. It's a Sixth Circuit case. And the Sixth
25 Circuit said, "When you look at the imposition of Life

1 and Safety Codes, you have to take into consideration the
2 nature of the disability, and you have to narrowly tailor
3 those Life and Safety Code provisions to the ability of
4 the residents to respond to an emergency."

5 So basically what Ms. Wolcott is asking you to
6 do, Mr. Allen, is to impose commercial Fire Code
7 requirements because the State Code says so. I'm saying
8 that that is not so. Because reasonable accommodation
9 can be made to tailor those requirements.

10 And part of what we've asked -- and maybe this
11 is something that can be worked out -- is to treat -- is
12 the application of the Fire Codes as if it were a
13 single-family or two-family use, which was our request
14 was.

15 The City goes the other way and says, "It has
16 to be done as an R-3 or maybe an R-4," whichever one
17 deals with sober facilities of this size, which is
18 basically the imposition of a commercial Fire Code
19 requirements. This is not narrowly tailored. It's just,
20 "You look at the book. This is what it says. You apply
21 it."

22 That isn't what the courts say. That isn't how
23 the courts say that you have to deal -- that the -- how
24 these type of code requirements are applied to groups of
25 people with disabilities, that the nature of the

1 disability has to be taken into account, and their
2 ability to respond to the particular emergency has to be
3 taken into account.

4 And I would submit that if the City, you know,
5 that if this were -- if the house is a -- one, is a legal
6 use in an R-2 -- R-2 zone, and it's got all the Life and
7 Safety requirements that is required of a use in an R-2,
8 that that should be sufficient, because that will take in
9 consideration what the City feels is protection for the
10 other dwellings in the neighborhood.

11 This is not an institution. And I take great
12 exception to Ms. Wolcott talking in terms of Pacific
13 Shores being an institutional use. This is not a campus,
14 all right? If we had the diagram back up there, this is
15 on the corner of Orange and Clay.

16 Directly across the street, which is cut off at
17 the top of the photo, are commercial uses. There's a
18 power plant across the street. There's multi-family
19 dwellings across the street. Orange Avenue is the
20 dividing line between either multi-family and commercial
21 use and R-2 uses. So right there on the corner is where
22 it changes. So when you look across the street, you've
23 got different uses.

24 Now, this is the zone that it's located in.
25 This is the zoning that the City is discussing. However,

1 when the overall neighborhood is taken into
2 consideration, you need to take into consideration that
3 directly across the street is an office building, is a
4 power plant, and is a multi-family structure.

5 So -- and to say that those three houses are
6 somehow or another have an overconcentration of the
7 disabled people living there and that creates an
8 institutional use is truly affecting a disservice to
9 those people who live there.

10 Because they work. They get out in the
11 community. They take care of the houses. The houses are
12 absolutely immaculate. They are beautiful. The insides
13 of the houses are beautiful. And to say that somehow or
14 another this creates an institutional use is really
15 coming to the typical stereotyping of having groups of
16 disabled people living under the same roof.

17 Let me just say this. There is an
18 ongoing -- ongoing issue with this construction and what
19 the State Fire Marshal has done. I believe that if our
20 requested accommodation is resembling somewhat in the
21 form in the numbers that we're requesting, these issues
22 can be resolved and can be resolved peacefully.

23 There's ongoing controversy about this
24 unpermitted construction. As to when it started, we
25 believe that it was brought into play when the City cited

1 Pacific Shores with violating the moratorium. The
2 moratorium is also -- and that conduct is also part of
3 our lawsuit.

4 So to a certain extent, yes, this is relevant
5 information for you to have; on the other hand, the
6 nature of the controversy and how the City has gone about
7 it is a matter that's being litigated, and we would hope
8 that if our request for accommodations are requested,
9 that those will easily be resolved.

10 MR. ALLEN: What is your understanding of where
11 this Code enforcement issue with that single-family
12 dwelling stands? And what is your client doing or not
13 doing to seek to gain approval of the work that was done,
14 if you know?

15 MR. POLIN: Well, to a certain extent, it's a
16 situation of the dog chasing the tail. We believe that
17 we have submitted what has been required. The City says
18 otherwise. So we're in this ongoing debate as to what
19 it's going to take to satisfy the City.

20 MR. ALLEN: Has been going on for well over a
21 year, it looks like.

22 MR. POLIN: Yes.

23 MR. ALLEN: It puzzled me as to why you would
24 be here making application and when you were at that
25 stage?

1 MR. POLIN: Actually, the thing with the Fire
2 Marshal is a recent event. That happened last fall.
3 Before that, it had to do with unpermitted construction.
4 We believe that we had the requisite permits to do the
5 construction. The City says that we didn't.

6 That we believe that the construction
7 started -- that we got permission to start the
8 construction in 2006. The City said that you've got the
9 permits, but you didn't do the construction. It's really
10 an issue that doesn't have a place here.

11 The Fire Marshal and the reclassification is a
12 recent event, which I don't want to -- to be honest with
13 you, Mr. Allen, I don't want to get into it, because
14 it -- there are legal issues involved in it that aren't
15 really necessary, other than the fact --

16 MR. ALLEN: I wasn't asking so much about the
17 Fire Marshal thing, as such I'm puzzled why it's taken so
18 long to get Code compliance with a use that you want to
19 take.

20 MR. POLIN: It's a situation where, at one
21 point, we thought it was resolved. City tells us
22 otherwise --

23 MR. ALLEN: Okay.

24 MR. POLIN: -- all right? We're trying to get
25 it resolved.

1 This brings us to the last issue to continue
2 operating in an R-2 zone when this is only a permitted
3 use in an MFR with a use permit.

4 If you go along with what the City is proposing
5 with the reasonable accommodation, that is a denial of
6 our reasonable accommodation request. We're not
7 requesting an accommodation from one house. We're not
8 requesting an accommodation from 12 beds. We're
9 requesting an accommodation for all three houses. The
10 City is proposing to you to basically close down the
11 other two houses. That's not an accommodation. It's
12 does not even come close to being an accommodation.

13 Let me say this. I know Ms. Wolcott told you
14 what was going on with our reasonable accommodation
15 request. I didn't get this report until late Monday
16 night. We made our request last September. Between
17 September and now, there have been intermittent requests
18 for additional information.

19 Some of the information we do not -- we did not
20 provide, because we do not believe the Fair Housing Act
21 requires us, as an Applicant or a request for a
22 reasonable accommodation, to provide such information.

23 MR. ALLEN: Do you believe you do not have to
24 supply that financial information in order to analyze the
25 issue about hardship, and that's part of this?

1 MR. POLIN: It depends. The financing
2 information -- our thrust of the request for reasonable
3 accommodation had to do with -- our initial thrust had to
4 do with we wanted to be treated as a single housekeeping
5 unit.

6 We weren't claiming the financial necessity.
7 That's where that information -- that's where that
8 information would come into play, if we said it was
9 necessary to have X amount of people because it was
10 financially viable to have X amount of people in the
11 house.

12 What we wanted it treated as is a single house.
13 That's what our initial request was. There's been a lot
14 of back and forth between myself and Mr. Brancart, who is
15 my co-counsel, and the City about amending. And as you
16 can see, there have been subsequent amendments to our
17 request for reasonable accommodation, because we're
18 trying to work with the City on this. Now,
19 nowhere -- this notion of, "We're only going to recommend
20 12 beds," came out of the blue.

21 The other thing, Mr. Allen, is that the law is
22 pretty clear about request for reasonable accommodation
23 being acted on promptly. This zoning scheme -- this
24 Ordinance is the City's creation. It's not my creation,
25 all right?

1 And so whatever issues that the City has in
2 terms of implementing the Code, in terms of processing
3 either use permits or request for reasonable
4 accommodation, is not my problem. Any undue delay in
5 acting on a reasonable accommodation request is
6 considered to be a denial of that request.

7 And I'll cite you to probably the seminal case
8 that's called Groome versus Jefferson Parish. It's a
9 Fifth Circuit case. Even if you were to grant the
10 request today as we requested it, our request is the
11 courts would still say it doesn't make any difference,
12 because your request was denied, because there's been an
13 eight-month delay or seven-month delay in acting on the
14 request. I don't want that to happen.

15 All I can tell you is that the way the City
16 loaded up the conditions and the information on this
17 fifth request isn't a reasonable accommodation. Bringing
18 in the use permit requirements to ask you to consider
19 those requirements as part of our reasonable
20 accommodation request is not a reasonable accommodation.

21 And basically, I believe it taints the hearing
22 and undermines the purposes, according to USC 3604BF3,
23 which is the reasonable accommodation provision. And I
24 don't believe the courts allow that type of interjection,
25 because it's not necessary to the analysis for reasonable

1 accommodation requests.

2 To compare us -- to compare Pacific Shores to
3 those -- to those applicants that have applied for a use
4 permit and say, "Well, this is what -- the information
5 they have provided because it's required in the use
6 permit," when the Code -- when their own Code provision
7 says this is what you are to consider in terms of the
8 information, and me, being the Applicant, is required to
9 provide, sort of like stands the reasonable accommodation
10 provision and the reasonable accommodation process on its
11 head.

12 And the City can't come in here and say "Ignore
13 what Title 20" -- and I think it's .94, I may be wrong,
14 "says, because this is what we want you to consider.
15 This is how you should evaluate this." That's wrong, and
16 it's not -- they are the ones who wrote the Ordinance.

17 You, as a Hearing Officer, should hold their
18 feet to the fire as to what they wrote and what is
19 required, and not just bring in the dump truck and dump a
20 bunch of stuff that doesn't belong in here. Like I said,
21 we've applied for an accommodation for all three houses.
22 The City is saying that we'll only give you an
23 accommodation for one house with 12 beds.

24 Let me tell you something else, Mr. Allen,
25 because the City brought this up. This occupancy

1 requirement that the City has, two per bedroom, plus one
2 house manager, that's how they covered it, it's illegal.
3 Case called City of Edmonds versus Oxford House, 514 U.S.
4 something. It's a Supreme Court case.

5 It dealt with occupancy requirements. It says,
6 "It is illegal to treat -- to impose occupancy
7 requirements on unrelated people that are different from
8 related people. It has to be uniformly across the
9 board."

10 What the City is doing is saying that groups of
11 disabled people are being treated in terms of occupancy
12 differently than groups of either unrelated, non-disabled
13 people, or related people, or maybe even related disabled
14 people. It's illegal.

15 And for them to come in and say, "The number
16 that they are entitled to is 12 because they have six
17 bedrooms," is not only illegal but it's unreasonable, and
18 it cannot be sustained on a reasonable accommodation
19 analysis.

20 MR. ALLEN: Maybe the City will address that
21 when they get back up. I thought those standards applied
22 to all uses, not just to the --

23 MR. POLIN: No.

24 MR. ALLEN: -- disabled.

25 MR. POLIN: No, they don't.

1 Okay. So what we're asking for, Mr. Allen, is
2 that our request for reasonable accommodation be granted.
3 And if it's going to be the City said that it should
4 be -- we should be recommended under our request number
5 three and number five, if it's under either of those
6 requests, then we want our accommodation for all three
7 houses.

8 If you think that we're entitled to a
9 reasonable accommodation to be treated as a single
10 housekeeping unit because what we're asking for is to be
11 treated like a family and to waive this unitary lease
12 requirement, then I would be very happy if you did that.

13 Nevertheless, we have five requests that we've
14 made. Two of them the City has said they don't oppose.
15 One of them, though, which they don't oppose they have
16 such a litany of conditions on it that if you granted
17 what the City is asking, that, in effect, denies our
18 request for reasonable accommodation.

19 And basically what the effect will be when we
20 talk about what may be necessary to afford a person an
21 equal opportunity to enjoy and use a dwelling will be
22 denying 38 people, potentially, maybe less than that, an
23 opportunity to use and enjoy the dwelling that they are
24 currently using mainly because they have to be evicted.

25 And I don't think the Fair Housing Act will

1 allow the granting of an accommodation that results in
2 people being denied -- who are already living there
3 denied the opportunity to use and enjoy the dwelling of
4 their choice. Not just any dwelling, the dwelling of
5 their choice.

6 Thank you.

7 MR. ALLEN: One quick point. With respect to
8 non-conforming use, you said the City granted you number
9 three, non-conforming use, that you'd be perfectly happy.

10 As I hear the City describing that, they are
11 saying that if -- you are a non-conforming use according
12 to their standards, but that it would be required for you
13 to obtain one of the use permits if you were a
14 non-conforming use in that zone.

15 MR. POLIN: Well, I think what we're asking for
16 is that we be treated as a non-conforming use, and there
17 be a waiver of the use permit requirements. If you grant
18 that accommodation, I don't think we would be subject to
19 the use permit requirements. I think we'd go back to the
20 pre-2008, basically. That's what we're asking for.

21 We're asking to be granted -- actually, what
22 the request was, which they didn't put it in here, is so
23 that we be grandfathered in. We want to be grandfathered
24 in.

25 MR. ALLEN: I saw that your request said you

1 wanted to be grandfathered in, and that artful legal term
2 caught me. But I do understand, and maybe the City can
3 respond to that when they respond to your comments.

4 MR. POLIN: Thank you.

5 MR. ALLEN: Thank you.

6 MR. BOBKO: Mr. Allen, would you like me to
7 respond now, or would you like to take public comment?

8 MR. ALLEN: I think that we have a lot of
9 people here. And if you can -- if you have your notes,
10 let's get started with the public hearing, with the
11 recognition that both you and the Applicant will, after
12 we close the public hearing, have the opportunity to
13 comment.

14 So, please state and spell your name for the
15 record.

16 MR. SOYLEMEZ: Sure. My name is Mustafa
17 Soylemez, S-o-y-l-e-m-e-z. I live at 407 Bolsa Avenue,
18 and I do have a written prepared statement for the record
19 that I'd like to read to you.

20 However, before I get there, Mr. Allen, I'd
21 like to make two points, actually counter-points, to the
22 Applicant's claims. And they are very, very specific,
23 but they are just fallacies as he described them.

24 First of all, he stated that Orange Avenue, the
25 top of that graphic or picture you see there, is mixed

1 use and that is patently false. There are townhomes
2 located right across there.

3 What I believe the Applicant was trying to say
4 is that Old Newport Boulevard, which is actually on the
5 left side of the picture, is multi-use, and that is, in
6 fact, true. However, as you can see, the properties in
7 question are Orange and Clay, not Old Newport Boulevard.
8 So that's number one.

9 MR. ALLEN: Right.

10 MR. SOYLEMEZ: Number two, I challenge his
11 definition of what a complex or an institution is. One
12 thing he artfully neglected to mention to you is that the
13 back of all three properties are open, meaning it's an
14 adjoining property. This, by very definition, creates a
15 campus feeling. That is what a campus is, okay? It is
16 unrestricted access. That's, in fact, where most people
17 go to convene and smoke and talk and discuss, and things
18 like that. Those are the two points.

19 Okay. Now, I'll read my written statement.

20 As the City is aware, the owner is operating
21 without permits.

22 MR. ALLEN: I'm going to give you an extra ten
23 seconds, but I wanted to say -- because I forgot to say
24 it in the beginning -- each person has three minutes to
25 make their comments.

1 MR. SOYLEMEZ: This is exactly three minutes,
2 so let's start right now, okay?

3 As the City's aware, this owner is operating
4 without the permits. Whether it's NBMC or others, there
5 are also many Building Code, Fire and Zoning violations.
6 This operator opened a facility during the moratorium,
7 and has been violating not only the letter but the spirit
8 of our law since Day One.

9 I know all this, because I have lived 25 yards
10 away at 407 Bolsa for the last four years, and I see what
11 goes on there daily. Today, I'm not going to speak about
12 those violations. The City will address those issues.

13 Rather, I'll focus on the direct negative
14 impact the situation has had on my home life and
15 community. Most importantly, it's altered the
16 composition of our neighborhood, which I believe is at
17 the very heart and crux of this hearing.

18 There are now approximately 40 living in a
19 footprint that was designed and zoned for two
20 single-family homes. This operator has illegally
21 transformed two dwellings originally designed for 12 or
22 less, six in each home, into an illegal complex that
23 houses 40.

24 What kind of impact does this thing
25 overcrowding have on me? Consider the metaphor. Think

1 of a car on a side street joining traffic on a highway.
2 During non-peak times, there are generally no problems.
3 A car simply gets on the ramp and joins traffic
4 seamlessly.

5 But what happens, say, at 5 p.m., during rush
6 hour? The amount of cars wanting to get on the highway
7 doubles, quadruples. And pretty soon, cars are
8 completely backed up. Traffic stops. Noise increases.
9 Pollution increases, and the delays melt.

10 Why does this happen? Because the roads and
11 the area in general just aren't built to handle this.
12 It's inevitable. When you exceed something's design
13 specs, you'll get systematic failure. That's exactly
14 what's happening in Orange and Clay, and it pervades into
15 all parts of our essential life.

16 People coming up at all hours, foot traffic,
17 noise, smoking, trash, constant deliveries, cars
18 doubled-parked. It's incessant and it's completely
19 disrupted our neighborhood. Here's some specific
20 examples.

21 First of all, there's always lots of noise. At
22 least four times in '08, I've walked over there to ask
23 members to be quiet. Or on one occasion, when I asked
24 for the person's name, they refused. This happened in
25 late July of '08.

1 Second, there's always trash on the street on
2 the front. There's no one that can help over there.
3 There's no super. There's no manager. There's no
4 accountability.

5 Third, we have Bolsa Park where children are
6 very close by. It is 40 by 50 feet long. Group home
7 residents like to walk over there, smoke, and then
8 discard butts in the stand, even in front of kids. I
9 know these individuals --

10 MR. ALLEN: You need to wrap, and you're going
11 to submit your written comments?

12 MR. SOYLEMEZ: Yes, sir. I know these
13 individuals are from the complex, because I personally
14 have seen them walk from the homes to the park. Just
15 today, as I measured the dimensions of the park, I found
16 these. The pack was on the slide, and the butt was in
17 the sand. And this is very common. There are more
18 example, but others will share them.

19 To close, I ask the fancy, high-priced attorney
20 over there, how long did he spend at the property really
21 witnessing these things? Did he spend years? Months?
22 Weeks? Even days? Okay. Did he spend any time there at
23 all? Well, guess what? I have been there, and I live
24 there. And, therefore, I've been noticing these things
25 day and night for years.

1 As such, I believe any defense of the situation
2 by the attorneys and operator must be heavily discounted.
3 Whose testimony is more material? Who's in a better
4 position to account for the communities impact than me
5 and my other fellow residents? Attorneys who fly in from
6 D.C. on the day of hearing, or people who actually,
7 honestly and legally live there day in and day out?

8 As such, I hope you'll strongly consider my
9 request to not grant this operator the reasonable
10 accommodation.

11 Thank you.

12 MR. OBBAGE: Good afternoon. My name is David
13 Obbage. Last name is spelled O-b-b-a-g-e.

14 I would also like to respond to one of the
15 things that the Applicant's attorney had just mentioned,
16 but I'd like an extra 10 seconds, if I may.

17 I'd like to talk about that concept of loading
18 up. Well, the Applicant is accusing the City of loading
19 up on the conditions and requirements imposed on this
20 property. The loading up actually started when the
21 operator decided to load up the number of occupants on
22 this corner at Clay and Orange.

23 As I said, my name is David Obbage. I live at
24 3307 Clay Street, which is next door to the three
25 building sober living compound located at the corner of

1 Clay Street and Orange Avenue in Newport Heights.

2 Over the past two years, our community has
3 expressed its concerns about the operation of this
4 facility and the negative impacts that it has had on our
5 neighborhood. The primary reason that we are opposed to
6 this group home facility is based on facts and not
7 speculation.

8 For example, on the morning of November 6,
9 2007, an officer from the Orange County Sheriff's
10 Department came to my home at 7 o'clock in the morning
11 looking for information about a resident from 3309 Clay
12 Street, which is located directly next to me and is part
13 of the boarding house sober living facility that we are
14 viewing today.

15 The officer informed me that the individual
16 they were looking for was being sought by law enforcement
17 for misdemeanor and felony drug-related charges. The
18 officer also informed me that these type of suspects are
19 allusive and hard to find because they move from house to
20 house within the drug and alcohol group network in
21 Newport Beach.

22 What about the issue of overconcentration?
23 We're not sure how many recovering addicts are actually
24 living in this facility. And we're now estimating that
25 there are almost 40 people that are living in the three

1 houses at any one time.

2 This corner used to have two homes with two
3 families living on them when I bought my house. Now we
4 have three buildings, accommodating up to 40 people
5 living there. And is this what the City of Newport Beach
6 intended when they established the R-2 Zoning District
7 for this area and this neighborhood?

8 Another legitimate concern we have is that the
9 triplex of sober living homes is located one block from
10 our local nursery school. Who is conducting the
11 background checks on the individuals that are living in
12 the facility?

13 There have been several other instances of loud
14 profanity, secondhand smoke problems, and suspicious
15 activity that have occurred since this operator bought
16 the property and started operating a boarding house, and
17 now it's a sober living facility.

18 I urge to you deny this application and force
19 the Applicant to adhere to the zoning requirements and
20 Building Codes that are in place for our community. I
21 appreciate your giving me the opportunity to address you
22 today at the hearing.

23 Thank you very much.

24 MS. FABIAN: Good afternoon, Mr. Allen. My
25 name is Lisa Fabian, F-a-b-i-a-n, F, as in Frank. I

1 reside at 3301 Clay Street, which is right on the corner
2 closest here. And I want to share a couple of issues
3 that have impacted my neighborhood, myself, and my
4 family.

5 Number one, a couple of years ago, I observed a
6 young gentleman that was living in his car on the side of
7 my home on Bolsa and Clay. And for two weeks, I tried to
8 catch this individual, who, by the way, was doing drugs
9 in his car. I witnessed, from my second floor bedroom,
10 he was smoking. He had needles. I don't know all what
11 he was doing.

12 But I did report it to the Newport Beach Police
13 Department. And after two weeks, they finally found him
14 about 11 o'clock at night sleeping in his car. They
15 addressed this individual, and found in possession he had
16 some sort of an address stating that he was a resident at
17 3309 Clay Street.

18 They approached the residence, knocked on the
19 door. The gentlemen that were there would not open the
20 door, as they said they would be breaking the law or the
21 rule. So they were asked to come out through the back,
22 identify the individual. And sure enough, they had
23 identified that he was asked to leave the home, because
24 he was actually doing drugs, and he was kicked out. So
25 he started to live on the street next to my home.

1 Also, I did experience the 7 o'clock in the
2 morning knock on the door by the sheriff, you know,
3 interrupting our family lives. Also, smoking, trash. I
4 also I have two dogs that I walk two times a day. And I
5 also observe an individual leaving one of the residence
6 and hiding a bottle of liquor behind a plant at the park
7 where the children play on Bolsa Street. I did pull the
8 bottle out, and I don't have it as evidence right now,
9 but I can tell you that that did occur.

10 Also, there was an accident that occurred about
11 probably last year sometime, and my neighbor is not here,
12 but I'd like to read to you a statement that he gave to
13 me to represent on his behalf. His name is Tony Camacho,
14 and he resides at 3305 Clay Street. Camacho is
15 C-a-m-a-c-h-o.

16 Sometime in August of 2008, after an accident
17 of a drunk driver crashed into the home on -- it's 492
18 Orange Street, this is -- my neighbor spoke with the
19 owner, the senior and junior, regarding the crash.

20 And he smugly, as he was proceeding to clean
21 the damage, stated that he would not be surprised if the
22 City had sent or paid someone to crash in his property
23 with a drunk driver.

24 I'd like to submit this to you as evidence that
25 Mr. Camacho -- this was a conversation that he had with

1 this individual. And more importantly, this is the type
2 of person and type of individual that we're having to
3 deal with.

4 Thank you very much.

5 MR. RUSH: Bob Rush. Now that we've heard from
6 the residents local to the compound, I thought I'd come
7 up and just make a couple quick comments here.

8 As a 24-year resident of Newport Beach, I've
9 seen a lot of changes since 2000, the advent of
10 channeling drug and alcohol recovering addicts into our
11 neighborhoods. Some of this stuff -- some of the laws
12 are developing as we go forward.

13 I don't know that right out of the gate we're
14 going to be 100 percent, you know, fully developed in our
15 local Municipal Codes. So, you know, the expectation
16 that we have it perfect right out of the start is, I
17 think, unreasonable on the part of the Applicant's
18 attorney.

19 Regarding the Applicant's -- some of the
20 statements the Applicant's attorney mentioned, he wants a
21 broad qualification. He wants a broad approval to be
22 considered. He wants broad approval, excuse me, on
23 reasonable accommodation request, and he wants to be
24 considered a single-family residential unit.

25 But I don't know of any -- there's no structure

1 in the City, no single-family structure in the entire
2 City that houses 50 individuals. None. Yet, he wants
3 this accommodation now to be considered.

4 Even if you got this reasonable accommodation,
5 you still have basically -- you have basically two
6 buildings that were built more like dormitories or
7 boarding houses. And then you have a third -- you have a
8 single-family structure at 3309 Clay.

9 But when it comes to Building and Fire Code, he
10 wants to be specifically exempted because of some special
11 criteria that he wants to apply. So he wants broad
12 approving, but he wants specific exemption from the Fire
13 Code.

14 Now, Ms. Wolcott failed to mention that the
15 Fire Code -- State Fire Code and Building Code was
16 recently defended in Federal Court, May of 2008. I think
17 she probably had the specifics. But it was found to be
18 non-discriminatory in its state, and it is applicable to
19 all R-4's and all R-4.1's. That's Building Code and Fire
20 Code classification, not to be confused with Zoning Code
21 classification, which has this property as an R-2, which
22 two -- two units.

23 We are here today based on one individual's
24 word that he is treating drug and alcohol patients or
25 ex-patients in this facility, one individual by the name

1 of Mark Manderson, I believe. And without his testimony
2 or without his assertion that he's treating these
3 individuals, we wouldn't be here, because this might be
4 otherwise considered a boarding house or some other
5 structure.

6 So -- I mean, I think it's critical to the
7 hearing that we have some kind of attestation from the
8 Applicant that this is, in fact, one hundred percent of
9 these residents are truly drug and alcohol recovering
10 addicts, and that there's no admission of other
11 individuals that are not drug and alcohol.

12 And my last point that I'd like to make is
13 that -- and this is my one last point -- I don't believe
14 I've done a lot of -- I'm not an attorney. I've done a
15 lot of reading on reasonable accommodation. I don't
16 believe in all my readings of what reasonable
17 accommodation is trying to do, I don't believe reasonable
18 accommodation was designed to be an excuse for prolonged
19 and intentional violation of laws, and that's what we
20 have here.

21 We have a prolonged and intentional violation
22 of a number of laws for a number of years. And now at
23 the late stage, the Applicant is saying, "I'd like to now
24 qualify under reasonable accommodation, because I'm only
25 treating these addicts." And I don't think that

1 that's -- I think that's a misapplication of what the
2 intent of reasonable accommodation was designed for.

3 I'd like you to please consider that.

4 MR. ALLEN: Thank you. Let's see. It's 4
5 o'clock, and we're schedule to go until 4, but we
6 certainly have a ways to go with public hearings. Does
7 staff have any input on that?

8 MR. KIFF: We don't have our room conflict
9 today, Mr. Allen. So we can continue if you wish.

10 MR. ALLEN: Good. Should we take a
11 short -- let's let our ex-council member go, and then
12 we'll take a short break.

13 MR. NICHOLS: I'm Dick Nichols, and I'm from
14 Corona del Mar. I'm familiar with the property, but I
15 haven't reviewed everything in the last little bit.

16 I would like to first bring up the single
17 housekeeping unit. I believe that the Federal law says
18 that a single housekeeping unit of six or less is -- we
19 consider that as a special unit. When it's over six,
20 that dropped, okay?

21 He's talking about 50. Single housekeeping
22 unit of 50, all of a sudden, has -- so there's no upper
23 limit on this. This was decided also in the lawsuit by
24 the City just recently. I mean, that's how they rated
25 Sober Living By The Sea.

1 The second thing I would say is that this is
2 semi-ridiculous, because you've got two R-2 lots along
3 Clay, and that's 18 and 20, and a single-family on
4 Orange. And the point of the matter is, is that you
5 can't take lots in any city in existence and say, "Well,
6 I have these two, and they are altogether, so I just want
7 to have this considered an R-4." That has to go through
8 the City's zoning process.

9 And how in the hell is this guy has the
10 audacity to say, "Well, I can just combine these
11 altogether. And because I put sober living people in
12 this thing, I'll just say it's a single household"? Now,
13 there's no basis for any of those things to be done.
14 This shouldn't even have ever gotten this far.

15 Then the second -- then another aspect of it is
16 the two R-2 lots are joined. To my knowledge, that was
17 never rezoned in the City. I was on the Board at that
18 time, and that's not legal. And it wasn't enough room
19 between the lots.

20 Now, they did give a little bit of extra space
21 on Orange than I think that they needed to as a duplex
22 there, because that would a side yard. But nevertheless,
23 the space between the buildings is not 6 feet. And the
24 tying together of the two as R-2's -- individual R-2's is
25 illegal. I mean, that's not -- how that ever got through

1 this far is beyond me.

2 Now, when they did the R-1, then they wiped out
3 the property line in the back. Well, so now they made
4 this into a single lot, but it isn't zoned that way. I
5 mean, this is -- can I make an apartment building on any
6 three lots in the City?

7 Why don't I pick someone in Corona Del Mar?
8 That's good spot. Or somewhere else? And I'll just take
9 three lots, and I'll make an apartment building out of it
10 without rezoning or anything else. And I'll say, "Well,
11 gee. Depends on who I put in it." This doesn't make
12 sense at all is what I'm saying.

13 And the last thing I would say is as to Fire
14 Safety Codes. The Fire Safety Codes are designed to make
15 the people safe. These Codes are designed so that the
16 people living in these structures will not get burned to
17 death, that they will not have unreasonable lifestyle
18 because of the fact that they are not living in a safe
19 environment.

20 And so that's a State law, that the Fire Codes
21 come down from the Fed. They are known throughout, and
22 they apply to buildings depending on their usage. And
23 this is a usage of 50? This is a hotel environment.
24 This is not anything else.

25 Thank you.

1 MR. ALLEN: Thank you. Let's take five
2 minutes, and then get started again.

3 (Pause in proceeding.)

4 MR. ALLEN: All right. Back on the record.

5 MR. BROWNING: Good afternoon. My name is John
6 Browning. I live at 3256 Broad Street, which is just
7 around the corner from the compound.

8 And I would characterize this as -- it's not
9 really a request for a reasonable accommodation. It's a
10 request to allow a hotel or real a prison in our
11 residential neighborhood near a nursery school and down
12 the street, about three or four blocks, from Newport
13 Heights Elementary School.

14 The lack of parking around here, the street
15 parking, is something always filled. I've got a
16 6-year-old and an 8-year-old who are, you know, new bike
17 riders. Not very good bike riders. And this is an entry
18 to a residential neighborhood, so that's car traffic.

19 And when you have cars parked on both sides of
20 the skinny street, Clay Street, you try to cross over on
21 Bolsa, it's really dangerous. And it's because of these
22 cars, because there's 40 or 50 people living here parking
23 their cars out on the street.

24 The solution offered by the staff is to allow
25 them 12 units or 12 beds. But it's a solution that's

1 based on trust of people that have proven that they can't
2 be trusted. They have started these homes without
3 authorization by the City. They've violated Building
4 Codes. The staff report details many instances.

5 They've opened up a sober living home across
6 the street from my house that people walk from the Clay
7 Street address down Bolsa and left on Broad, back and
8 forth all the time. And that part -- that property is
9 not subject of today's hearing, but it's the same
10 property, the same people, and there's people going back
11 and forth all the time.

12 The concept of institutionalization is a
13 concept that's applicable to how these people are living.
14 The concept of a sober living home is to put people in a
15 residential neighborhood, in a residential setting, and
16 allow them to interact back into society, which is fine.

17 But when you put people in a hotel or a
18 dormitory with, you know, 40 people or 50 people in these
19 small houses -- these aren't 20,000 square foot hotels.
20 These are small. They swished them together. That's the
21 institutionalization aspect.

22 And then finally, I say that we need to stop
23 pretending that these are disabled people. They are
24 criminals. They are here on probation. The prisons are
25 crowded, and this is a slippery slope. Wait until the

1 Governor orders or the prison system orders the release
2 of drug offenders and felons.

3 Where are they going to put them? Out on
4 street? No. They are going to a sober living home
5 claiming that they have a drug addiction, when it's
6 really an addiction to money and an addiction to
7 committing crimes. And those are the people that are
8 going to be coming to our city. And it's just a matter
9 of time before one of these people commits a real serious
10 crime on a, you know, a kid from Newport Heights.

11 Thank you.

12 MS. MORRIS: Good afternoon. My name is Lori
13 Morris, M-o-r-r-i-s.

14 I just wanted to begin by saying that the
15 Applicant from the beginning has -- this has been many
16 years we've been watching this house, several years.
17 Longer than 2007. From the time they started building
18 this compound, you know, watching it as it's being built,
19 looking at the processes that it's going through, they
20 never followed City procedures as far as their
21 permitting.

22 I mean, I'm sure the City has brought forward,
23 you know, all -- and there's pages of these problems in
24 the permit with Clay. I was able to bring up -- this is
25 Clay, I think -- no, this is Orange and also Clay Street.

1 It's constant. And it was just like a
2 catch-me-if-you-can attitude. They would go about their
3 business. They would go into their offices until
4 somebody would report them. They would start building
5 without permits until somebody would report them.

6 So this Applicant from the beginning has been
7 untruthful in their putting forth what they want to have
8 happen at this facility, and it is a large group home
9 facility.

10 It began with "My parents are going to be
11 living there." Then it went to -- and this is said to
12 the City employees that asked, "Okay, what's going on
13 here?"

14 "My parents are going to be living here." Then
15 it's, "No, no. I'm going to turn it into a rental, but
16 I'm going to dictate what those renters are going to be
17 able to do. One of those is they can't drink."

18 I have a rental. I can't legally tell my
19 renter he can't drink. That's illegal. It's a rental.
20 He can do -- he's paying his rent.

21 Smoking, I think there's some issues with the
22 smoking back and forth. But each time he was caught and
23 said, "Well, you can't -- or you can't do that, or you
24 can't say this," he would then move on to what was the
25 next best beneficial answer there was for him.

1 We've got to this point -- I mean, by his own
2 admission, he's brought this up -- this informational
3 letter alone should be grounds for denial. Over and over
4 he has said, you know, "It's this one thing." You know,
5 "No alcohol. Most residents are using their bicycles or
6 will be using their bicycles."

7 How can he state that with conviction, say that
8 I've got this rental, and they are going to be using
9 their bicycles? You can't say that legally or put across
10 to the community, "I have 50 people, and they are all
11 going to be using a bicycle." That's not true. I mean,
12 that letter alone shows who the Applicant is. This is
13 what he put forth, and it's in the record.

14 Now, you know, you move forward with the
15 operating, and this is -- and he wants to operate it as a
16 family style. As Dick Nichols brought up, fifty people
17 is not family style. That's -- the definition by ADP and
18 everybody else, Federal and everybody else, six and
19 under. And that is agreeable.

20 No one here wants to discriminate against
21 people who want to get well, that have an addiction and
22 want to get well, and should and are allowed by Federal
23 law to do that in our neighborhoods.

24 What they have created with this is an
25 institutionalized medical facilities. Because these

1 people, even though they are after -- you know, they are
2 done being -- going through the process, they still have,
3 you know, issues that have to be accounted for.

4 So I would say that this Applicant has been
5 untruthful to the City. They cannot -- you cannot move
6 forward with what they are giving, even their attorney,
7 as truth. So I ask that you take that into
8 consideration, and I thank you for your time this
9 afternoon.

10 MS. KOHLER: Hi. It's Cynthia Kohler.

11 I've been doing this for quite a few years, and
12 that's just one thing, Mr. Allen, I wish you consider.
13 He wants to be considered a family. And there's 50
14 people in this home. And who knows who are in these
15 homes? How do we know who are in these homes? He
16 doesn't answer to anybody. He's not licensed. So how do
17 we know who is actually in these homes?

18 He's asking for special accommodation. Well,
19 he doesn't want to give up his information of who he is
20 housing. So why should we do this for him after he
21 hasn't followed the rules, and we have no idea who are in
22 these homes.

23 The other consideration is that every single
24 operator down here on the Web site advertises alternative
25 sentencing. That is my concern and has been my concern

1 all along. They get by probationary parolee because of
2 alternative sentencing. And not only do they have drug
3 and alcohol problems, they can have forgery, spousal
4 abuse. And they get that expunged if they go into these
5 homes. So I just wish you would consider all of that
6 when you take this in.

7 Thank you.

8 MS. OBERMAN: Denys Oberman. I'm a resident,
9 and I'm speaking on behalf of a citizens' group,
10 Concerned Citizen of Newport Beach.

11 The group became aware of this facility almost
12 three years ago, because the residents had contacted us
13 and told us that they had issues with this compound being
14 built, and that there were clearly issues of Code
15 violation, which they reported repeatedly to various
16 departments of the City in efforts try to get this
17 checked and get it under control before construction was
18 completed and was occupied, and there was no results that
19 were forthcoming.

20 During the Ordinance development process, the
21 attorney that we had gotten to help to work with the
22 City, which the City asked us to do and we did, to
23 develop ordinances also observed this facility and
24 reviewed the permits and physically reviewed the
25 facility, and -- along with the forensic architect, did,

1 in fact, confirm that the facility had numerous Code
2 violations.

3 You know, neither I, personally, or our group
4 are aware of all the things the City has done, but the
5 bottom line of it is, as a number of people have already
6 testified, this business operator has demonstrated
7 factually a disregard for the laws of the City. There is
8 nothing in the law anywhere, in Federal or State law,
9 that obligates the City to provide any sort of
10 accommodation to a business that deliberately thumbs its
11 nose at the laws of the City.

12 These laws are so far away from being
13 discriminatory to individuals, the City of Newport Beach,
14 and in particular in this impacted area where this
15 facility is located, is more overconcentrated than any
16 other city in California.

17 And furthermore, the City of Newport Beach for
18 the last nine or ten years has enforced no regulation
19 against group residential uses of this type, residential
20 care and treatment facilities, or non-state licensed
21 sober living homes.

22 The City endeavored to make a fair and
23 equitable Ordinance and also fulfill its duty to protect
24 the public when it enacted an Ordinance in 2007, actually
25 beginning of 2008. Unfortunately for us all, at that

1 point in time, there was already a condition of severe
2 overconcentration, which institutionalized the Balboa
3 Peninsula, West Newport, dense residential neighborhood.
4 And now we're confronted with trying to deal with that.

5 But the bottom line of it, Mr. Allen, is that
6 this operator, as a business -- has nothing to do with
7 the individuals in the facility -- the business has been
8 repeatedly in an illegal status.

9 And so we feel that the fair and reasonable
10 thing is to deny the reasonable accommodation, because
11 the business is there on an illegal basis and has been
12 since its inception.

13 Thank you, sir.

14 MS. HANNA: My name is Mary Hanna. I live at
15 511 Orange Avenue.

16 He addressed the complex across the street.

17 MR. ALLEN: Would you spell the last name,
18 please?

19 MS. HANNA: H-a-n-n-a.

20 MR. ALLEN: Thank you.

21 MS. HANNA: Just for the record, it's not a
22 complex. There are seven townhomes. There are 2.1
23 person per unit. So I don't think it's as dense as he
24 was talking about, the 50 people across the street.

25 I brought my property in 1998. At that time,

1 there was one single house on Clay. I, with all my other
2 neighbors, were concerned when they started building
3 these two huge homes. And you could tell from the
4 outside there was only one car garage. I mean, you can't
5 build a house like that in Newport Beach and not have but
6 a one car garage.

7 And I went to the City and said, "What is this
8 going on? We've got this huge home, supposedly, and no
9 parking for this home." And they said, "Oh, well, they
10 did this and they did that."

11 Well, unfortunately, I live across the street.
12 And my family and my visitors have no place to park,
13 because they're parking across the street. We have way
14 too much trash, way too much parking. It's impacted our
15 neighborhood.

16 It's terrorized our families, because these
17 kids and these young teenagers with tats, and everything
18 else that you see every place else, but they are nasty,
19 and they are very abusive, and have been to my family and
20 have been to friends of mine. And I just find it
21 almost -- I want to say terrifying to walk outside,
22 because you never know what you're going to see across
23 the street.

24 Anyway, I just I think you're doing a
25 disjustice to your citizen, to your people you pay taxes

1 here, and to the people that bought in and have lived in
2 here and wanted to go along and be family and take care
3 of a family and do the right things, and then you let
4 these people walk in and just destroy our neighborhood.
5 I just think it's despicable.

6 MR. ALLEN: Is that for today? No one else
7 needs to speak?

8 Okay. Let's close the public hearing. And at
9 this point, let's let the Applicant respond to these
10 comments, if he wishes to do so. And then the City can
11 respond to both the public hearing comments and the
12 comments that the Applicant has made both before and
13 after the public hearings.

14 MR. POLIN: Thank you, Mr. Allen.

15 Who asked me earlier about -- comment that the
16 City attorney made that we did not provide financial
17 information? This is -- let me tell you.

18 This is the question on the reasonable
19 accommodation application.

20 "If the applicant is a developer/provider of
21 housing for individuals with disability -- with
22 a disability, please explain why the requested
23 accommodation is necessary to make your
24 facility economically viable in light of
25 relevant market and market participants.

1 Please provide documentation, if any."

2 Our response was,

3 "Pacific Shores objects to this request, and
4 Applicant for reasonable accommodation is not
5 required to compare or make necessary in light
6 of" -- my printer went heywire here -- "in
7 light of relevant market and market
8 participants.

9 "Accordingly, it's not" --

10 Basically we said it's not our place. It's not
11 our job to provide data comparing the relevant market and
12 market comparisons in order to request this request to be
13 considered and be granted. Basically what it says is
14 they want to compare -- they want us to compare us to
15 other facilities.

16 First of all, it's not our job to go out and
17 compile this data. The relevant inquiry would be is, is
18 the accommodation -- are you requesting the accommodation
19 to make your facility financially viable? And leave it
20 at that.

21 If it was, we would have provided the
22 information, but that isn't what it requested. It wanted
23 a comparison of surrounding facilities, and do we -- and
24 for us to gather data. That is not the responsibility
25 nor -- of an Applicant or requested for reasonable

1 accommodation, nor is it, I believe, required by the Fair
2 Housing Act to do so. This is something the City created
3 and made as a condition, and we objected to it. And it's
4 not necessary to provide.

5 So, it is misleading for the City to say that
6 we refuse to provide financial data when that is not what
7 the question was. And that is not what the requested
8 information was.

9 Mr. Allen, I've been doing this kind of work
10 for almost 20 years. I participated in numerous -- been
11 present at numerous hearings, either Zoning hearings or
12 hearings before City Council. I have heard citizens who
13 have a stake in their community come forward and say what
14 they believe should be done, expressed their fears,
15 expressed their concerns.

16 And to be honest with you, sir, it doesn't
17 change from community to community. I'm not saying that
18 what has been said here is right. I'm not saying what
19 has been said here is wrong. What we have here is the
20 essence of participatory democracy. Everybody gets an
21 opportunity to come up here and say their peace,
22 regardless of if I agree with their opinion or regardless
23 if I disagree with their opinion.

24 However, you have a different job as a
25 decision-maker. Because your job is to put aside the

1 unsubstantiated fears and unsubstantiated stereotyping
2 that you hear, and deal with this issue on the facts that
3 are presented and the law as presented to you.

4 It puts you in a difficult position, because
5 you're not supposed to be swayed by emotion and not
6 supposed to be swayed by numbers, comparing the numbers
7 for or comparing the numbers against and the reasons for
8 it.

9 This is comes as no surprise to you that this
10 is a hot button issue in Newport Beach. It has generated
11 a lot of anger. It's generated a lot of animosity. It's
12 generated rooms and rooms and rooms and rooms and rooms
13 and rooms of paper, as I can attest to. I have to carry
14 what I -- the City provides me on a flash drive, because
15 the paper is too much.

16 It boils down to what the law requires and what
17 the facts are. And sometimes what the law requires and
18 what the facts are don't go along with what the public
19 sentiment is. And that's basically what we have here.

20 I don't think it's necessary for me to address
21 anything that the people have said here, because, as I
22 said before, they have a right to say it, whether I agree
23 with it or whether I don't agree with it. I think what
24 the City has compiled, what the City has brought forward,
25 what I have compiled, what I have brought forward, is

1 what you need to consider.

2 I will say to you -- and at the sake -- at the
3 risk of repeating myself from what I said earlier, the
4 City's recommendation of granting a reasonable
5 accommodation that reduces -- that basically shuts down
6 two houses and reduces one house to 12 beds is not a
7 reasonable accommodation. I'm not saying, maybe, 50 beds
8 is a reasonable accommodation.

9 However, I think it's necessary that all three
10 houses remain in play; that they be available to provide
11 housing for the recovering addict and alcoholic. The
12 Fair Housing Act recognizes the commercial nature of
13 providing housing and providing -- group home
14 providers. It recognizes that -- recognizes not
15 everybody is doing this for strictly altruistic motives.

16 Not everybody who comes and applies for
17 reasonable accommodation is a nonprofit. And sometimes
18 the only choice is to go to a -- what some courts have
19 called a commercial facility. But commercial facilities
20 are entitled to a reasonable accommodation just as much
21 as a non-commercial facility is.

22 There are issues that have been raised by the
23 City. And to a certain extent, I think by the citizens
24 as to who is running this, is it how it's going to be
25 run, that, you know, can be sat down and discussed with

1 the City and worked out. We're not trying to say that,
2 you know, we're above the law. But I don't think the
3 City is above the law either.

4 Is there issues that, obviously, in terms of
5 condition that the City wants imposed, that I don't think
6 are necessarily, reasonable or legal in terms of what it
7 wants to do. But those are things that can be worked
8 out.

9 The bottom line is, Mr. Allen, is our request
10 reasonable? And I submit to you that it is. Regardless
11 of which way you go, Mr. Allen -- and it's not going to
12 cause an undue burden, financially or administratively.
13 I think that's already been conceded. And it's not going
14 to fundamentally alter the City's Zoning Code.

15 And it's necessary so that people who are
16 living there can continue to live there and know that
17 their sobriety and their recovery will not be interrupted
18 because of eviction.

19 What the City wants you to do is say, "We'll
20 give you 12 beds. Everybody else has to leave." Well,
21 that's causing a massive disruption in the continuity of
22 one's recovery. And the eviction is not because of being
23 forced to leave, and it's not because of anything these
24 individuals have done. It's because this is what the
25 City wants it to be done. It's forced loss of housing.

1 But one of the things that the courts always
2 analyzed is that, is the Applicant requesting the City to
3 provide them with housing, or they asking for an
4 accommodation? We're not asking the City to provide us
5 with housing. We're not asking the City to build us
6 housing. We're asking the City to let us remain. That's
7 what we're asking the City to do.

8 Thank you. I don't know if you have any
9 questions. All right.

10 MR. BOBKO: Good afternoon, your Honor. Just
11 going to make a couple of quick comments.

12 First one is, is Mr. Polin, with the rhetorical
13 flair, said, "We can just substitute 'race' any place
14 where we are talking about disabled people." And I'd
15 like to bring that back down a little bit and say let's
16 substitute single housekeeping unit, because that's
17 really what we're talking about here, and it has nothing
18 to do with anything else, really.

19 And to that more directly, the idea that
20 somehow folks are being denied the right to live in
21 specific zones is actually not true. The only people who
22 have the opportunity to have a group residential use in a
23 residential zone are folks who are able to seek a
24 reasonable accommodation or sober living homes. We don't
25 allow any of the other types of uses there.

1 We don't allow boarding homes, sororities,
2 fraternities. None of those type of uses are allowed at
3 all. So this type of use has actually gotten a more
4 favorable treatment under our Ordinance than any other
5 type. In fact, no other type is permitted at all.

6 The idea that this is a one-time event, and,
7 well, if we let this go with the single housekeeping
8 unit, you know, it's just this one time. There's an
9 Ordinance that the City Council has agonized over where
10 the -- where the complete the call of the Ordinance, the
11 subject to which the Ordinance is directed, is this
12 specific situation.

13 So the City -- again, I don't think we need to
14 emphasize this too much, but our position is that if we
15 do toss the single housekeeping unit requirement
16 overboard, then, in fact, this is going to fundamental
17 alter the purpose of this Zoning Code.

18 The idea that someone is going to be put out on
19 the street tonight if your decision is not what the
20 Applicant asks for, I think is, again, somewhat inflated
21 rhetoric. In fact, that's not the case at all. No one
22 will be evicted.

23 The City has undergone this process over quite
24 a period of time, and there has been due notice given to
25 the Applicant, whereby the implementation -- and

1 Mr. Kiff, I'm sure, can go through this in atomic detail.
2 But there's really three different things that can
3 happen.

4 The implementation of the Ordinance would not
5 take effect until the last contract with the business
6 expired, the lease expired, they could seek an
7 amortization period, which would extend the time period
8 so that no one was put out, or they could seek a
9 reasonable accommodation or use permit. And, of course,
10 as the Applicant has already stated, they did not seek a
11 use permit.

12 So that the idea that someone is in a bed
13 tonight or might not be in that bed tomorrow is a bit of
14 an exaggeration, I believe. There will be no immediate
15 impact on these folks. In fact, the Applicant has had
16 time to plan through that.

17 The last point I want to make is the Applicant
18 has suggested that the case of Oxford versus City of
19 Edmonds stands for the proposition that it is illegal for
20 the City to state how many folks can be in a particular
21 house or room and what not.

22 And although I claim -- I think I'm sure,
23 Mr. Polin might have been the one to actually argued that
24 case, and I don't claim to have the intimate knowledge of
25 it that he does, I do have the case here in front of me.

1 And as I read through the Code that was actually
2 questioned there -- and this is from 514 U.S. 725,
3 Supreme Court case, 1995, the Code at issue there said,
4 and I'm quoting now:

5 "The Code provides that occupants of a
6 single-family -- of single-family dwelling
7 units must compose, quote, a family. And
8 defines family as, quote, persons without
9 regard to number related by genetics, adoption
10 or marriage, or a group of five or fewer
11 unrelated persons."

12 I don't think the City of Newport Beach is
13 anywhere close to that. We're talking about a single
14 housekeeping unit, where the only thing that has -- the
15 only relation has to be a common lease, really, when you
16 get down to it.

17 The other thing, if you look at our Code
18 Section 20.91A.050, the section where we talk
19 about -- and the exact -- I'm sorry. Let me go back,
20 20.91A.050(c)(2). And our Code states:

21 "There shall be no more than two residents
22 per bedroom, plus one additional resident.
23 Notwithstanding upon request by the Applicant
24 for additional occupancy, the Hearing Officer
25 has the discretion to set occupancy limits

1 based on the evidence provided by the Applicant
2 that the additional occupancy is appropriate at
3 the site."

4 So there's no hard and fast rule. We're not
5 asking for blood tests. The Hearing Officer has the
6 discretion to find up or down from that.

7 Moreover, the whole title of that section is
8 Development and Operational Standards. This is simply a
9 planning guide. So it gives the planners an opportunity
10 or a chance or a baseline from which to make
11 determinations that otherwise would be, you know, almost
12 unmakeable.

13 So the idea that the City has gone and asked
14 these operators only to put so many people in each
15 bedroom and has somehow related that to the genetics,
16 adoption, marriage, or a group of five or fewer persons,
17 that question in the City of Edmonds case, is again
18 making a bit of a stretch.

19 So I will now lateral to staff, if they have
20 any of the particular building or staff-type related
21 questions that perhaps you'd like to have addressed. I
22 will relinquish it to them.

23 MR. ALLEN: Ms. Wolcott, are you going to talk
24 at all?

25 MR. BOBKO: She is, of course.

1 MR. ALLEN: Will you allow that?

2 MS. WOLCOTT: Try to stop me.

3 MR. BOBKO: I won't.

4 MS. WOLCOTT: I wanted to clarify the
5 recommendation as to the current residents. If you look
6 at page 38 of the staff report and the summary of request
7 number five, it says,

8 "As to the current residents, all five
9 required findings can be made. The Applicant
10 did not report the average length of resident
11 stay. Staff recommends granting an
12 accommodation that permits all current
13 residents to reside in the facility for the
14 remaining duration of their stay, to a maximum
15 of six months. Staff recommends that as
16 current residents complete their stay and
17 clients move out, facility operation be
18 consolidated into a single dwelling unit with
19 12 resident clients and one resident manager.
20 Consolidation should occur as soon as possible,
21 within a maximum period of six months from the
22 day the Resolution of Approval is adopted by
23 the Hearing Officer."

24 So that was the staff recommendation. There
25 was no move to evict current residents.

1 MR. ALLEN: What if it's not adopted by the
2 Hearing Officer?

3 MS. WOLCOTT: If it's not adopted by the
4 Hearing Officer, then that is something that would be
5 dealt with in an abatement setting and amortization
6 extension. There's a number of ways to deal with that in
7 the Municipal Code.

8 MR. ALLEN: Okay.

9 MS. WOLCOTT: I would also add one thing on the
10 necessity element. Mr. Polin has discussed the fact that
11 he feels that the reasonable accommodation, because it is
12 it has been asked, has to be granted. And I would remind
13 the Hearing Officer of the requirements of necessity and
14 of reasonableness.

15 What's reasonableness? A finding of
16 reasonableness requires, as we've discussed, that it not
17 fundamentally undermine the purpose the Zoning Code.

18 And necessity, if you look at the case of
19 Lapid-Laurel, LLC, v. Zoning Board of Adjustments of the
20 Township of Scotch Plains, 284 F.3d, page 442, 3rd
21 Circuit, the Third Circuit Court of Appeals held that
22 it's the plaintiff's burden to show necessity, and said,
23 "The necessity element requires the demonstration of the
24 direct linkage between the proposed accommodation and the
25 equal opportunity to be provided to the handicapped

1 person."

2 They specifically, in the Lapid-Laurel case,
3 look at a 95-bed elder care facility. And they did find
4 that in this case, the elder -- the elderly disabled
5 people did require accommodation in order to live in a
6 residential zone. In that case, it's specifically a
7 single-family residential zone.

8 However, the Court specifically said that as to
9 the size of the facility, they had not demonstrated
10 necessity as to the size. They had said that in order to
11 show that, the applicant would have to show that the size
12 would serve a therapeutic purpose and would, therefore,
13 ameliorated an effect to the hardship of the handicapped.

14 And second, that the facility's size was
15 necessary for the facility's financial viability. And
16 the Court equated financial viability with giving the
17 disabled equal opportunity to live in a residential
18 neighborhood.

19 And I agree with Mr. Polin that the question on
20 the reasonable accommodation application is perhaps not
21 stated as clearly as it could be. But the information we
22 were looking for is, what do you need to be financially
23 viable? Because that is what the Federal cases require
24 us to look at.

25 Thank you.

1 MR. ALLEN: One question. You're recommending
2 the Hearing Officer grant the non-conforming use
3 determination; is that true?

4 MS. WOLCOTT: As we interpret it to be.

5 MR. ALLEN: Well, that's what we need to
6 address. Because it's clear that Mr. Polin has quite a
7 different interpretation of that than you do.

8 MS. WOLCOTT: After hearing Mr. Polin's
9 interpretation, it sounds like he would like to have the
10 laws that were in place prior to January 22, 2008,
11 applied to his client's facility --

12 MR. ALLEN: Right.

13 MS. WOLCOTT: -- which he was welcome to try to
14 comply with any time prior to January 22, 2008.

15 And I don't believe that the way the Code is
16 written is that non-conforming uses in residential
17 districts, any of them, go through this process. That's
18 what our Code allows. And we have not analyzed an
19 accommodation from that and treating them as they would
20 have been treated in 2007-2006, because it was not clear
21 that that was what the request was.

22 MR. KIFF: Clarification, Mr. Allen,
23 Ms. Wolcott?

24 It's my understanding that if they were granted
25 the right to be a non-conforming use, they would go back

1 to the point at which many of the folks who have gone
2 through the use permit process would, in other words, be
3 required to go through that use permit process. Because
4 that ordinance is non-conforming uses in residential
5 districts, and it sets forth the use permit process.

6 Is that your understanding, too?

7 MS. WOLCOTT: Yes. We went through the
8 on-the-spot analysis of how we would treat this facility
9 if it was 2007. Every facility that had more than seven
10 residents and was reported by the Applicant, and that
11 appears to be all of them, would have been required to
12 apply for a Federal Exception Permit from the City.

13 The Federal Exemption Permit had some different
14 standards. We still, you know, have those standards
15 around. But it was very similar to a combination -- the
16 FEP was very similar to a combination between a use
17 permit and a reasonable accommodation. And it did have
18 some elements in it that could be considered -- they
19 weren't required to be considered.

20 But an element -- one element that could be
21 considered is whether a campus was created. Under the
22 definition in place at that time, this would have created
23 a campus, because it was three or more buildings that
24 were using one building for a common purpose for all the
25 rest of the residents. As I understand, they were all

1 using the pool and patio area.

2 MR. ALLEN: Okay. All right. Thank you.

3 MR. KIFF: I have just one question of the
4 Applicant. I'm confused as to how many people reside
5 there today. Mr. Polin spoke about -- he had a couple
6 different statements where he said 38 people would be
7 evicted. I just want to understand how many people
8 reside there today, and if 3309 is not occupied, but 492
9 Orange and 492 1/2 Orange are occupied?

10 MR. POLIN: We don't have that information
11 today. As to the exact numbers, we think it's somewhere
12 in the neighborhood of between 30 and 40.

13 MR. KIFF: Thank you.

14 MR. POLIN: And there's I want to correct the
15 record on something. And I'm always doing this about the
16 City of Edmonds case.

17 City of Edmonds case was about an
18 occupancy -- it was about an exemption in the Fair
19 Housing Act that had to do with occupancy standards. It
20 didn't have to do with the definition of family that
21 Mr. Bobko read. The City of Edmonds tried to state that
22 their definition of family and their cap of unrelated
23 persons in there constituted an occupancy requirement
24 which would exempt it from the Fair Housing Act.

25 Supreme Court said no. An occupancy

1 requirement is basically a square-footage-type
2 requirement as applied equally to related and unrelated
3 persons alike. It has nothing to do with the definition
4 of family. So I just wanted to correct that.

5 Thanks.

6 Oh, one other thing in terms of what
7 Ms. Wolcott said. This notion of we're not kicking
8 anybody out today is somewhat of a misnomer. Basically
9 they are saying you've got six months to leave. It has
10 nothing to do with the preparation of what's going on.

11 We have applied for a reasonable accommodation.
12 We expect to get a reasonable accommodation. So, what
13 has occurred and what are -- what is required of Pacific
14 Shores and the people who live there has nothing to do
15 with, "Well, you know, they didn't apply for a use
16 permit, so they are out of luck." You know, the Code
17 provides another mechanism for dealing with this, and
18 that's with a reasonable accommodation process.

19 So why should the residents be penalized
20 because they opted to go for reasonable accommodation as
21 opposed to a use permit? And why should the residents be
22 penalized and be able to go to sleep tonight knowing
23 that, "Well, at least I'm going to be here tonight," but
24 knowing that at in six months they are out of there?
25 That's an unreasonable condition, and that's still an

1 eviction.

2 MR. KIFF: A couple more brief comments,
3 Mr. Allen.

4 Mr. Polin mentioned one statement about that
5 the City's Ordinance is designed to, quote, keep them out
6 of sight, meaning people in recovery. And I wanted to
7 remind, at least, the public this process and this
8 Ordinance is approved to date 233 beds with more in the
9 pipeline. And they're beds all throughout our community,
10 especially on the Balboa Peninsula, where the
11 overconcentration exists.

12 And then there was a gentleman, Mr. Browning,
13 who had stood up and said that these are pretend disabled
14 people. And I wanted to reject that comment officially.
15 The City recognizes that folks in recovery are disabled
16 and entitled to the housing protections under the Fair
17 Housing Act.

18 With that, I think staff has concluded its
19 comments.

20 MR. ALLEN: All right. Thank you all for
21 participating and presenting your thoughts and ideas and
22 all the legal analysis. And now, it's my turn to decide
23 what to do here.

24 And I believe this facility, as it's been
25 analyzed by the staff, is basically not entitled to the

1 reasonable accommodations that are being sought.

2 As we've learned repeatedly here, the law
3 requires government agencies to grant reasonable
4 accommodations to disabled persons, and it's clear that,
5 in all of these situations, the staff has not questioned
6 whether the occupants of these units are now not
7 disabled. So there's no question before this Hearing
8 Officer about whether we're dealing with disabled
9 individuals or not. We're accepting that they are.

10 So in each of the findings that need to be
11 made, the finding will be made that disabilities are
12 present.

13 The real questions have to do with the
14 necessity for the reasonable accommodations and whether
15 the requests are reasonable in each instance. The staff
16 took the first two together, request one and two, because
17 the definitions so intertwine as between the single
18 housekeeping unit and the request to be classified or
19 treated -- or not to be treated, I should say, as a
20 residential care facility.

21 And I think that it's very clear that the
22 definition of the single housekeeping unit is simply not
23 met by these uses. Mr. Polin objected to the notion that
24 one of the requirements of the City is that the occupants
25 all be subject to one lease. But that is the definition

1 that the City has adopted. And so far as I know, it's
2 not illegal. Whether it's being litigated is not my area
3 to be concerned with. I haven't been told that it's
4 illegal, and, therefore, I accept that it is.

5 I think the most compelling part of the request
6 number one and two is that there is -- it is a fact, in
7 my estimation, that there would be a fundamental
8 alteration to the City's zoning scheme if the single
9 housekeeping unit definition and the reasonable
10 accommodation or, excuse me, the classification as a
11 residential care facility was disregarded.

12 Because it appears to me that the residential
13 zones are pretty much based upon, in substantial part,
14 those definitions and requirements. And the staff report
15 does a good job of setting that out. So that's really a
16 fundamental part of my determination.

17 All the usual issues, as Mr. Polin pointed out,
18 are present in this one, like they are probably in most
19 cities everywhere. But they are still issues, and they
20 are significant. The public discussed the parking
21 issues, which are present, as well as some conduct that
22 was unacceptable. But in any event, that denial of the
23 request one and two is made.

24 Going on to reasonable accommodation request
25 number three, which is the determination about legal

1 non-conforming use, I think I understand.

2 And the Resolution that is ultimately adopted
3 needs to articulate the City's position in that respect,
4 and not somehow constitute a basis for the Applicant to
5 argue that by granting this accommodation, which is
6 recommended by the City, is granted with that proviso
7 that it not go back to become a use that was prior to the
8 recent zoning Ordinance amendment, and, therefore, it
9 becomes a legal conforming use now and could, thereby,
10 continue to operate as such.

11 If they wanted to be a non-conforming use, then
12 they should have applied for the permit required by the
13 Ordinance, in my estimation.

14 The reasonable accommodation request number
15 four with regard to the application of Codes of the
16 Zoning Code, clearly, once again, the analysis that's
17 done on the definitions in one and two equally applies
18 there.

19 The Building Codes, the same issue applies with
20 respect to the City can't grant a waiver of the
21 California Building Code. And so to the extent that
22 those requirements are applicable, they have to be
23 applied to all uses and clearly to the care facility uses
24 as well. So that would be denied.

25 Number -- let's see. We're at number five.

1 And this is a little bit more difficult from my
2 perspective because it came in at the last minute and
3 recognized by all, for a variety of reasons, nobody's at
4 fault. It just came in very late, and so staff has not
5 done a complete or as complete an analysis of this
6 request as might have been done.

7 But I believe that Resolution findings can be
8 crafted, based upon the findings in -- certainly in one
9 and two and the request by the Applicant to be exempt
10 from the Zoning Code residential requirements entirely,
11 that a support can be made for not grant requesting
12 number five as made.

13 So with that, I have not certainly articulated
14 everything that needs to be in this Resolution to make
15 the proper findings. But the staff report speaks well to
16 all of those issues, and I would expect that a Resolution
17 be prepared that contains the findings set forth in the
18 staff report, which I believe are adequate to support a
19 denial of all five of these.

20 Any comments or concerns from staff?

21 MR. KIFF: Clarification, Mr. Allen. On number
22 five, your direction is to not grant or to deny
23 reasonable accommodation. Does that include the City's
24 alternate recommendation as 12, or does it
25 include -- it's of the entirety of it?

1 MR. ALLEN: I believe it has to, Mr. Kiff, and
2 I'd love to see if the parties can get together and work
3 this out, but that's not my job.

4 MR. KIFF: I see.

5 MR. ALLEN: And the City has made an effort to
6 make a proposal, but the Applicant has, out of hand,
7 rejected that proposal. And so I don't have the ability
8 to unilaterally impose the City's suggestions on him. I
9 think it would be an excellent compromise if that could
10 be done. And if it can be done, I'd be happy to revisit
11 as the Hearing Officer.

12 But I gained the very distinct impression that,
13 at this level, decisions need to be made on these
14 applications, and that's what I'm doing.

15 MR. KIFF: Understood.

16 MR. ALLEN: All right. Any other comments or
17 concerns?

18 UNIDENTIFIED SPEAKER: Can the public make a
19 statement?

20 MR. ALLEN: No, I don't think that's
21 appropriate now, because we'd just end up get back into a
22 legal discussion and debate. So thank you very much, all
23 of you, for your respectful time and attention.

24 The hearing is now closed.

25 (Ending time: 6:05 p.m.)

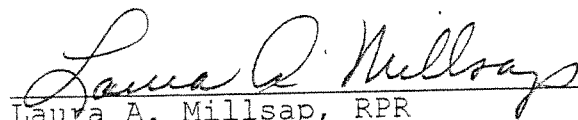
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2
3 I, the undersigned, a Certified Shorthand
4 Reporter for the State of California, do hereby certify:

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

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

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

18
19 Dated: APR 06 2009

20
21 
22 Laura A. Millsap, RPR
23 CSR No. 9266
24
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