

CERTIFIED COPY

PUBLIC HEARING ON
BALBOA RECOVERY, INC.
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
WEDNESDAY, MAY 20, 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 5:47 p.m., on Wednesday, May 20, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

1 APPEARANCES:

2
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1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, MAY 20, 2009

2 4:00 P.M. - 5:47 P.M.

3
4 MR. ALLEN: Then let's commence the proceedings
5 for today, Wednesday, May 20, 2009, 4 p.m. Are we fairly
6 bound by the 6 p.m. time limit to --

7 MR. KIFF: That's a hope-for goal. I don't
8 know that I have any conflict afterwards, but we hope to
9 meet that.

10 MR. ALLEN: We should be able to move through
11 rapidly. First item is signing of Resolutions of
12 Approval for 1115 West Balboa and then 204 21st Street.

13 Do you want to do -- do we want to do these now
14 or --

15 MR. KIFF: I think it's fair to do them now.
16 I'll present the Resolutions to you, at least
17 electronically, with the -- and then if you had any type
18 of suggestion as to changes, and I'll summarize some of
19 the changes that you had directed after you saw the draft
20 version that you saw on the Web site. So let's see if it
21 will start up here. So I'm going to jump right down to
22 the conditions.

23 MR. ALLEN: That's fine.

24 MR. KIFF: One thing we did at your urging was
25 to move one of the more operative sections of the

1 conditions up to the top, where it speaks to the number
2 one condition would be to grant the Use Permit for a
3 limited occupancy of 18 resident client beds, and that no
4 more than 18 folks can live there at any one time.

5 Continuing down through -- I'm just going to
6 focus on things that may have been changed.

7 The quiet hours are unchanged, 9 p.m. to 8 a.m.

8 At the last hearing, we talked about changing
9 the nuisance language to say that the violations had to
10 be corrected within seven days, or that the City would be
11 contacted to implement a plan in accordance with the
12 Code, instead of a mutually agreed-upon time line.

13 We added a Section 26, "Confirmation of
14 Resident Disability," that all clients of the facility
15 shall be classified as disabled.

16 We did modify upon your recommendation,
17 Mr. Allen, a little bit of 27, and say that "an increase
18 or decrease in on-site staffing and an increase in
19 physical capacity of the facility could charge -- could
20 cause a review of the amendment or issuance of a new Use
21 Permit."

22 And then we have proposed language in Section
23 H, which speaks to how ownership may change, and
24 basically that "the Planning Director could determine
25 that a change in facility management or facility

1 ownership or a change in the population served would
2 require a new Use Permit or an amendment."

3 Again, reflecting the concept that this Use
4 Permit does run with the land, and that they can change
5 ownership as long as the new owner is an entity
6 competent -- with a demonstrated competence in operating
7 such a facility. And again, this is a licensed facility,
8 so that requires a review by the State.

9 In the side property wall, a pony wall,
10 we -- staff agreed -- I agreed with Ocean Recovery's
11 concern that they'd make a good faith effort to complete
12 that within 60 days. They are concerned that they may
13 not get a Building Permit out of our Building Department
14 within that time line.

15 And then that summarizes the proposed changes
16 to that Resolution.

17 MR. ALLEN: I think you also added a "Whereas"
18 that addressed the City Council's determination on appeal
19 that misrepresentations or misleading testimony be
20 considered.

21 MR. KIFF: Yes. I have that close to being up
22 on the board now. It discusses -- involves a little bit
23 of the section "Whereas," and then the operative section
24 that we're referring to, Mr. Allen, is the third
25 "Whereas," where they state that,

1 "the Hearing Officer has evaluated and
2 weighed the testimony from the February/May
3 hearings. While differences of opinion were
4 expressed, and on occasion the Applicant
5 responded to specific allegations by saying the
6 Applicant was not aware of the circumstances,
7 those differences did not constitute grounds to
8 change the decision to grant the permit,
9 particularly in view of the fact that the
10 conditions of approval addressed the issues."

11 MR. ALLEN: It's my determination it's very
12 difficult to make determinations on the veracity of
13 statements made by people that come up to the microphone,
14 when they are not under oath, and when there's no ability
15 to cross-examine.

16 And so, I felt that the best position the
17 Hearing Officer can take is to weigh the credibility of
18 the individual as he or she sees them there, and if
19 there's direct controverted testimony, then somehow that
20 has to be weighed, and that's essentially what I did
21 here.

22 And I think there was as much miscommunication
23 as there was actual misleading or falsehoods stated in
24 the testimony at that -- particularly at that February
25 hearing. So that's why I drafted that "Whereas" the way

1 I did. And I appreciate you inserting it, so that way,
2 that Resolution is fine with me, and I'll sign it at the
3 conclusion of the hearing.

4 MR. KIFF: Okay. Let's move to the next one,
5 then.

6 MS. CURRAN: Is there any public comments?

7 MR. ALLEN: Is there --

8 MR. KIFF: This is not a public hearing item.

9 MS. CURRAN: When will public comment be, then?

10 MR. KIFF: At the end.

11 Let's move to the 204 21st Street Ordinance.
12 This is now on the screen before you. So just as a
13 reminder to the folks in the room, the Hearing Officer
14 directed that an application for reasonable accommodation
15 be approved, and a Resolution in accordance with that
16 application with conditions be prepared and presented
17 back.

18 So I'm going to jump down to the conditions.
19 Again, in this case, remember, reasonable accommodation
20 tests are different from the Use Permit tests. The one
21 that we just looked at was a Use Permit hearing. This is
22 a reasonable accommodation.

23 Highlighted in yellow, Mr. Allen, are the
24 variations from the one posted on the Web site. So you
25 corrected a typo there in Section 1.

1 We're getting in the conditions of approval.
2 The first item is a "Grant of Reasonable Accommodation to
3 occupy the building inclusive of both units for six
4 disabled persons and one on-site resident manager. The
5 Operator shall execute an affidavit declaring that the
6 clients are disabled persons."

7 Continuing down, you and the Applicant at the
8 last hearing discussed vehicles and parking. There are
9 no changes to this draft, but just for the audience's
10 benefit, "the facility can have a maximum of three
11 vehicles associated with the use, keeping two of the
12 spaces clear and available for parking for staff and
13 resident clients. And then one space shall be designated
14 for use by the manager. At most, one other client in the
15 facility may have a vehicle and park on the street."

16 We did add a section that is in the draft.
17 "The client move-in and move-out should be accomplished
18 in such a manner that traffic on 21st Street is not
19 blocked, nor can area driveways or alleys be blocked."

20 Continuing down, in 16, I corrected the problem
21 we had with our nuisance language. This is similar to
22 the language now in the Ocean Recovery one that says that
23 if they can't correct it within seven days, they can
24 contact the City to discuss an alternative time line
25 consistent with our Codes.

1 We reflected in condition 21 that the physical
2 capacity of the building, if it went up or down, would
3 require an amendment or a new Use Permit. That was a
4 suggestion of the Hearing Officer.

5 And then again, if it changed in the client
6 base such that persons living there are no longer
7 classified as disabled or verified to be disabled,
8 because that's the essence of reasonable accommodation.

9 So with that, Mr. Allen, these the proposed
10 Resolutions presented to you by staff.

11 MR. ALLEN: All right. And that one, as
12 modified, is now ready for my signature as well, so we'll
13 do that at the end --

14 MR. KIFF: Okay.

15 MR. ALLEN: -- of the hearing.

16 All right. So that takes care of agenda item
17 number one.

18 Item number two, Reasonable Accommodation for
19 Balboa Recovery at 124 30th Street. Staff report on that
20 one, please.

21 MR. KIFF: Mr. Allen, agenda item two is a
22 Reasonable Accommodation Hearing for Balboa Recovery's
23 facility at 124 30th Street. As we have in the past
24 hearings, I'll provide a brief background on the
25 Ordinance, and then we'll discuss briefly the

1 applications. Actually, we'll focus on the 124 30th
2 Street application.

3 The Applicant is invited to make remarks.
4 Public hearing is opened. Comments there are limited to
5 three minutes. Hearing Officer closes the hearing. The
6 Applicant can return. Question-and-answer time. The
7 Hearing Officer can approve reasonable accommodation, can
8 deny it, or can continue the reasonable accommodation to
9 a date certain.

10 And then immediately after that, we'll move to
11 the -- with time available, we'll move to the Balboa
12 Recovery facility at 3206 West Balboa.

13 So again, this is a Reasonable Accommodation
14 Hearing under our Municipal Code, which is Chapter 20.91.
15 And I should say this is more specific to Chapter 20.98,
16 but it's related to Use Permits in residential districts,
17 so -- because the Applicant had asked for a reasonable
18 accommodation from the Use Permit requirement.

19 And again, most residential care facilities in
20 the community had to apply by May 22nd of 2008 for a Use
21 Permit. A reasonable accommodation may be requested to
22 that, and that's what Mr. Cullen has done. And those
23 requests go before a Hearing Officer at a public hearing
24 and can be appealed to the City Council. This is the
25 public hearing.

1 Let us speak briefly and maybe Gilbert and I
2 will tag team a little bit about the application.
3 Gilbert, if you'd like to briefly summarize what is
4 proposed for 124 30th Street?

5 MR. GILBERT: Absolutely, Mr. Kiff.

6 Your Honor, the item before you now is a
7 Reasonable Accommodation Application specifically for
8 relief from the requirements of the Newport Beach
9 Municipal Code section 20.10.020, which is to allow the
10 continued operation of existing sober living homes for up
11 to 10 female resident adults and two resident managers,
12 both units of the duplex.

13 The facility is located in the R2 zone where
14 such uses are not permitted, and the Applicant is
15 requesting an accommodation from the requirements that
16 sober living facilities are only permitted in the MFR
17 districts with the approval of the Use Permit.

18 A little description of the facility is that
19 the subject site is situated on the south side of 30th
20 Street, approximately 50 feet from the intersection of
21 30th Street and West Balboa Boulevard. As I mentioned,
22 the property is zoned R2, which is two-family
23 residential, and is developed with a two-story duplex
24 with an attached two-car garage. Surrounding properties
25 including single -- single-family and two-residential

1 uses and that are primarily rental and owner-occupied
2 properties.

3 There is a group residential use that began
4 operations without complying with Ordinance 2008-05, and
5 that's located at 127 29th Street, which is in close
6 proximity to this particular operation, and that
7 particular operation is subject to abatement.

8 The property at 124 30th Street is owned by
9 Ocean Number One, LLC, Balboa Recovery, Incorporated.
10 And its ownership operates a sober living facility for
11 adults in recovery from alcohol and/or drug abuse and,
12 again, in both of the units.

13 The facility houses up to 10 resident clients
14 and two resident managers. And again, it's restricted to
15 females only. There are five residents and one resident
16 manager in each of the units. In addition, there's no
17 one under the age of 18 permitted to reside in the
18 facility.

19 The Applicant has stated that the residents are
20 referred to the facility through Ocean Recovery, although
21 there is no official affiliation between Balboa Recovery
22 and Ocean Recovery. Balboa Recovery also operates two
23 similar facilities. One will be of the subject matter
24 today -- actually both of them were done today. One is
25 at 3206 West Balboa and then 204 21st Street.

1 The Applicant has stated that both units have
2 been utilized as a sober living facility since October of
3 2006. To date, City Code Enforcement has received no
4 complaints about the facility; however, included in the
5 staff report are exhibits -- are exhibits that include
6 complaints from nearby property owners. The complaints
7 are general. Others are very specific to smoking,
8 profanity and parking problems.

9 At the previous hearing for 204 21st Street, an
10 adjacent resident or nearby resident alleged -- brought
11 to the staff's attention that a fight occurred involving
12 residents at 124 30th Street. Staff had asked for the
13 police report, and discovered that the fight that
14 occurred had actually involved occupants of 125 30th
15 Street, and that no clients of this facility were
16 involved in the fight, and that was indicated in the
17 report.

18 One more to the description of the operation
19 itself. I think these matters are, at times, redundant
20 but very important to framework the project itself or to
21 the facility itself.

22 There's two units. Unit A is an upstairs unit
23 and contains three bedrooms and accommodates two beds in
24 each room. Unit B is a ground level unit, which has
25 three bedrooms and accommodates six beds, two beds in

1 each room. And that's illustrated in Exhibit 4 of the
2 staff report. There's a resident manager, and each one
3 shares a bedroom with a resident client.

4 Individual clients themselves reside at the
5 facility under the written agreement with the Operator,
6 and are subject to a set of house rules, which include
7 abstinence from alcohol and drugs, drug testing as
8 requested by the resident manager, and attendance at
9 12-Step meetings.

10 Under the house rules, residents are also
11 required to abide by curfews and quiet hours established
12 by the facility, to refrain from smoking in the house,
13 refrain from racist, sexist or foul language, maintain
14 and clean the dwelling unit, and complete assigned
15 chores.

16 Residents are required to be employed, actively
17 seeking employment, or attending school full time. All
18 residents are required to be out of the dwelling between
19 the hours of 8:30 in the morning until 5 p.m. in the
20 afternoon. Exceptions can be made for residents who are
21 sick, work nights, or have permission from the house
22 manager of any circumstances.

23 Parking itself is provided in the building in a
24 two-car enclosed garage. That's two spaces.

25 Staffing. There's one resident manager in each

1 of the units.

2 Clients' stays range from 90 days to 545 days,
3 with an average typical stay of about 300 days, or 10
4 months. And again, clients' stays are truly dependent on
5 the individual's progress.

6 Curfew and quiet hours for residents are 10
7 p.m., Sunday through Thursday, and 12 a.m. to 8 a.m. on
8 Friday and Saturday. These are hours that are typical to
9 these uses that have been heard before you.

10 TV's and stereos can only be played at
11 reasonable levels. And after 9 p.m., headphones must be
12 used. So it's built in to the operations of the facility
13 of these quiet hours for adjacent uses.

14 Treatment services. There are no treatment
15 services provided on-site. However, in the application,
16 the Applicant has stated that for the first 90 days after
17 admission, residents are required to -- at least to
18 attend at least one 12-Step meeting every day.

19 And after 90 days, residents are required to
20 attend at least four 12-Step meetings a week. In
21 addition to the 12-Step program, residents are also
22 required to attend daily house meetings, as well as
23 attend required meetings that organization sets up with
24 Balboa Recovery.

25 Transportation. Residents are permitted to

1 have personal vehicles while residing at the facilities
2 or use public transportation; however, the facility
3 having only two spaces, those spaces would need to be
4 shared by resident clients.

5 There's no overall transportation provided by
6 the facility Operator. The use and parking arrangement
7 of vehicles must receive approval by the corporation as
8 well as the resident manager. And again, that will be
9 one of the items for discussion during this public
10 hearing as well.

11 Deliveries, the only delivery that comes to the
12 facility is bottled water. Residents are required to be
13 responsible for their own groceries and supplies.

14 Medical waste is disposed and complies with
15 Newport Beach Municipal Code requirements.

16 Now, I'd like to turn over this part of the
17 presentation to Catherine Wolcott, who will go more into
18 the technical analysis of the application.

19 MS. WOLCOTT: Thank you. Catherine Wolcott,
20 Deputy City Attorney.

21 If it's all right with Mr. Kiff and with the
22 Hearing Officer, I've combined the PowerPoint
23 presentation of the reasonable accommodation portion of
24 it to address both 124 30th Street and 3206 West Balboa
25 Street.

1 So don't want to confuse any of the issues, but
2 for the members of the public who have already -- and
3 staff who have already heard this, it is going to be long
4 as it is. The only thing more painful than having to sit
5 through a 30-page PowerPoint presentation is having to
6 give it twice. Thank you.

7 For those of you who have attended these
8 hearings before, you already know the definition of
9 reasonable accommodation and the requirement under the
10 Federal Fair Housing Act.

11 The requirement under the Federal Fair Housing
12 Act that cities and housing providers make reasonable
13 accommodations from their standard rules, policies and
14 practices when the accommodations are necessary to afford
15 a handicapped person equal opportunity to use and enjoy a
16 dwelling.

17 And in the case of McGary V. Portland, the
18 Court emphasized that "the Court had repeatedly
19 interpreted this language as imposing an affirmative duty
20 on landlords and public agencies." Therefore, this is
21 not something that the City has the option of
22 considering. If a request is reasonable and necessary,
23 the City has an affirmative duty to grant it.

24 The FHA requires cities to make exceptions from
25 the usual rules, policies and practices when a request

1 meets three requirements:

2 One, the request is made on behalf of the
3 disabled individual;

4 Two, the request is reasonable;

5 And three, the request -- the exception that is
6 requested or the accommodation is necessary to afford a
7 disabled individual an equal opportunity to use and enjoy
8 the dwelling. And that's codified in 42 U.S. Code
9 Section 3604(f)(3)(B).

10 So we look at whether or not a request is made
11 by disabled individual, whether the request is
12 reasonable, and whether the request is necessary.

13 The cases that have interpreted the
14 reasonableness prong of the analysis have stated that
15 requests are to be considered unreasonable if granting
16 the request would either impose an undue administrative
17 or financial burden on the City or if it would result in
18 a fundamental alteration in the nature of a City's
19 program.

20 A fundamental alteration has been described in
21 court cases as undermining the basic purpose which the
22 requirement seeks to achieve.

23 Therefore, when we are looking at whether or
24 not an accommodation request is reasonable, we look at
25 what specifically are they asking for an exception from.

1 And if that exception is granted, does it undermine the
2 purpose that that program was put in place to achieve in
3 the first place? And as established in case law, all
4 reasonable accommodation requests are analyzed on a
5 case-by-case basis.

6 When the request is not reasonable, our
7 analysis is not permitted to stop there. The Department
8 of Justice/Department of Housing and Urban Development
9 has issued a joint statement and has reiterated with the
10 City directly that when a government entity refuses to
11 grant a requested accommodation because it is, under
12 their determination, that request is not reasonable, that
13 request would undermine some fundamental purpose of the
14 Code, then they have to get engaged in an interactive
15 process with the Applicant and discuss whether there are
16 alternate accommodations that could meet the requester's
17 disability-related needs.

18 We focus on the needs of the disabled
19 individuals residing in the house. If the alternative
20 accommodation should meet the needs and it is reasonable,
21 then the government entity is required to grant it.

22 On the necessity prong of the analysis, we look
23 at whether the accommodation is necessary. And the very
24 simplest part of the analysis begins with, would the
25 accommodation allow a disabled individual to live in the

1 dwelling? Does it have anything to do with the disabled
2 individual's ability to live in the dwelling? Would a
3 disabled individual be unable to live in the dwelling if
4 the accommodation is not granted?

5 And then you get into a more complex analysis.
6 Is there a direct link between the accommodation and the
7 requirement equal opportunity, which the Federal law
8 specified is required?

9 The cases that have interpreted the direct link
10 between the accommodation and equal opportunity have
11 focused on two specific areas where, if an Applicant
12 proves them, he can demonstrate necessity.

13 First is whether or not the required
14 accommodation is necessary to make the facility
15 financially viable, or the financial viability prong of
16 the analysis;

17 And two, does the required accommodation
18 provide a therapeutic benefit for the disabled residents?

19 In this case, the Applicant has requested
20 exemption from the restrictions of the Municipal Code
21 which requires that residential care general unlicensed
22 and residential care small unlicensed facilities be
23 located in MFR zones with the Use Permit only.

24 At 124 30th Street, the Applicant requested to
25 continue operating their facility in its current R2

1 location where the Applicant reports they have been
2 established since 2006 with current 10 residents and two
3 staff members.

4 At 3206 West Balboa, they request to continue
5 operating the facility at their current R2 location with
6 eight residents and two staff. Currently, the Applicant
7 is operating -- is occupying both units of both of the
8 duplex.

9 For both of these facilities, the Use Permit
10 application deadlines have passed. They would have been
11 qualified to apply for a Use Permit had they done so
12 within the period of time specified by the Ordinance, but
13 they did not do so.

14 Staff recommendations were -- for 124 30th
15 Street, our initial recommendation, which we discussed
16 with the Applicant, is in the second half of that first
17 paragraph in the PowerPoint, which is to grant the
18 accommodation with conditions.

19 And those conditions included no more than six
20 female clients, plus one manager, either operating both
21 units of the duplex or occupying one unit of the duplex
22 with a single housekeeping unit in the other duplex -- in
23 the other unit, excuse me.

24 The Applicant indicated that this was not going
25 to be financially feasible; however, the Applicant was

1 willing to consider an alternate accommodation, which was
2 to enter an abatement agreement with the City, close that
3 particular location within a certain period of time, and
4 then the Applicant would be likely to apply for a
5 reasonable accommodation for six residents in an
6 alternate location.

7 The City staff report -- because of the
8 Applicant's position, the City report was drafted for
9 denial of the accommodation, with the one-year abatement
10 period, which the staff discussed with the Applicant.
11 However, for purposes of the analysis, just to make it
12 clear on the record, that the staff's initial
13 recommendation was not denial.

14 We will also do the analysis -- since the
15 analysis for 124 30th Street and the analysis for 3206
16 West Balboa would be the same if we -- with the
17 recommendation of six in -- a limitation of six clients
18 at those locations. I went ahead and did the analysis
19 for that in this presentation as well.

20 For 3206 West Balboa, the staff recommendation
21 is to grant the accommodation with conditions. And those
22 conditions include no more than six male clients, with
23 one resident on-site manager, either occupying two units
24 of the building, or occupying one unit of the building
25 with a single housekeeping unit in the other.

1 The first portion of the analysis is, is the
2 Applicant's request necessary? Is it necessary to afford
3 a disabled individual an equal opportunity to use and
4 enjoy a dwelling?

5 One of the Ninth Circuit cases that reviewed
6 this issue framed the question as, does the facility
7 require the requested accommodation at the requested
8 population level to achieve financial viability and a
9 supportive recovery environment?

10 The Applicant has not -- because of the staff's
11 recommendation was a limitation of six, we would consider
12 the Applicant's request for anything more than six to be
13 requesting a larger population. And in that instance, we
14 would require evidence of, you know, financial need or
15 therapeutic benefit in order to consider granting at the
16 higher population level.

17 The Newport Beach Municipal Code in the
18 reasonable accommodation section sets forth four factors
19 which the City must consider to determine necessity.

20 One is whether an accommodation will
21 affirmatively enhance the quality of life of individuals
22 with a disability. This goes directly to whether or not
23 granting the accommodation would confer a therapeutic
24 benefit on the individuals.

25 Two, whether the disabled individual would be

1 denied an equal opportunity to enjoy the housing type of
2 their choice without the accommodation;

3 Whether the accommodation is necessary for
4 financial viability;

5 And whether the existing supply of facilities
6 of a similar nature and operation is sufficient to
7 provide individuals with an equal opportunity to live in
8 a residential setting in the community.

9 The staff analyzed the reasonableness and the
10 necessity of this request with regard to the following
11 categories:

12 Current residents of the City -- excuse me,
13 facility;

14 Prospective residents of the facility. And the
15 prospective residents we analyzed at the requested
16 population, which is 10 residents, two staff at 124 30th
17 Street, and six residents -- oh, and eight residents and
18 two staff at 3206 West Balboa, and at the staff's
19 recommended population level, which is six residents in
20 one dwelling unit or three residents in each dwelling
21 unit.

22 The determination of staff as to the current
23 residents, the request was necessary and it was
24 reasonable. There are people, individuals, in recovery
25 currently living in both units of both of these

1 facilities. And they -- because the facility is
2 currently subject to abatement, they would -- if the
3 facility were abated, they would lose their current
4 housing, and that answered the necessity prong.

5 As far as reasonableness was concerned, the
6 City does not want to unreasonable -- does not want to
7 undermine some fundamental purpose of the Ordinance to
8 allow the individuals who are there in recovery currently
9 to finish their current stay, their planned stay, and to
10 allow the facility to become smaller with attrition of
11 residents as they graduated.

12 The Applicant has not submitted evidence that
13 it required more than six residents to be financially
14 viable at 3206.

15 The Applicant did not submitted evidence as to
16 124 30th Street, but he had stated that they need more
17 than six for financial viability and has stated his
18 willingness to close that facility as a result, rather
19 than try for a larger size.

20 The Applicant has not submitted evidence that
21 it requires more than six residents for therapeutic
22 benefit.

23 On the portion of the Municipal Code that
24 allows us to consider alternate housing opportunities,
25 I've provided an update on the availability of alternate

1 facilities of a similar nature.

2 As of yesterday, that list on the PowerPoint
3 slide before you is the currently approved sober living
4 beds that are currently available within the City. And
5 this does not mean that they are subject to abatement,
6 and this does not mean that they are licensed facilities.
7 These are beds in sober living that have either been
8 grouped under a development agreement or approved through
9 reasonable accommodation.

10 When we are considering facility size, we also
11 look at the case of Bryant Woods Inn, which we've
12 discussed in hearings before. Bryant Woods Inn was a
13 facility operator, I believe, in an Alzheimer's home. It
14 was established in the county that permitted eight by
15 right -- eight residents by right and wished to expand
16 its facility to 15 residents.

17 The County denied the request. And the primary
18 reason they denied that was that there no evidence
19 presented that increasing from eight to 15 was necessary
20 to allow disabled individuals an opportunity to reside in
21 the community in similar facilities, and they did carry
22 their burden of showing that the accommodation was
23 necessary to provide a therapeutic benefit either.

24 Some of the significant factors the court
25 considered were that there were 30 similar facilities

1 operating in the jurisdiction with vacancies, and the
2 plaintiff failed to present evidence that expansion was
3 necessary for its financial viability or for the
4 therapeutic benefit discussed.

5 And the final quote from Bryant Woods Inn
6 before you is that "If the position were taken to its
7 limit, it would be entitled to construct a 10-story
8 building housing 75 residents, on the rationale that the
9 residents had handicaps."

10 Obviously, that's not what the Applicant is
11 requesting today, but that is the reasoning that we
12 consider when we look at the size of the facility
13 requested versus the size recommended.

14 Other considerations. As we've said as to
15 current residents, current residents would lose housing
16 upon abatement.

17 As to prospective residents -- these are
18 considerations with relation to size as well -- future
19 residents would lose their ability to live in this duplex
20 but not in other existing duplex facilities that offer
21 sober living.

22 As to prospective residents as the level
23 proposed by staff of six, that is -- there are limited
24 but possibly available alternate opportunities to live in
25 a small sober living environment.

1 We discussed the California Building Code
2 considerations when an Applicant exceeds the size of six
3 in a building. As we've discussed before, when we're
4 looking at the Building Code, there are designations that
5 sound similar to the Zoning Code designations, but they
6 mean very different things.

7 An RF3 in the Zoning Code might mean
8 multi-family.

9 An R3 in the California Building Code means
10 single- and two-family occupancies. So single family
11 only or a duplex.

12 An R4 is a recovery facility occupancy that has
13 seven or more in a building.

14 And R3.1 is a licensed recovery facility
15 occupancy that has six or less in a building.

16 But I would emphasize that State law
17 establishes the construction standards on life safety
18 requirements for these different occupancy types based on
19 their operating characteristics and the needs of their
20 residents.

21 And the State has looked at the particular use
22 patterns of the particular occupancies and the needs of
23 the residents who would be likely -- being one of those
24 occupancies, and they have adopted life
25 safety -- construction life safety requirements for the

1 protection of those particular types of occupancies which
2 the State believes is appropriate.

3 Moving to the analysis of the reasonableness
4 prong. When we look at whether a request is reasonable,
5 there are a number of factors which Newport Beach
6 Municipal Code allows us to consider.

7 Whether the accommodation would fundamental
8 alter the character of the neighborhood;

9 Whether the accommodation would result in a
10 substantial increase in traffic or insufficient parking;

11 Whether granting the accommodation would
12 substantially undermine any expressed purpose for the
13 General Plan or Specific Plan,

14 And whether the accommodation would create an
15 institutionalized environment.

16 The required findings in the Municipal Code.
17 If you look at whether or not the granting the request
18 would impose an undue financial or administrative burden
19 on the City.

20 And in this case, in the case of both
21 facilities, the answer was no, it would not, because we
22 have not received -- prior to noticing this facility, we
23 had not received any complaints regarding the facility
24 from members of the public. So we had no indication that
25 there has ever been any administrative burden in the

1 past.

2 In our dealings with the Applicant in the Use
3 Permit or, excuse me, the reasonable accommodation
4 application process, the Applicant has been forthcoming
5 and cooperative, and has not -- we have no reason to
6 believe that that pattern will change; therefore, we do
7 not believe that continuing to deal with the Applicant
8 will create an undue administrative burden or financial
9 burden.

10 Would granting the request result in a
11 fundamental alteration in the nature of the City's
12 program? This is a little more complex analysis.

13 First, we look at two aspects of what the
14 Applicant was asking for. They have requested to be
15 allowed to continue a use in an R2 zone, and they have
16 requested the ability to continue to use in that zone
17 without the Use Permit which would be required.

18 So would allowing the use to continue in the R2
19 zone undermine the basic purpose the R2 zoning seeks to
20 achieve?

21 And two, would allowing the use to continue
22 without a Use Permit undermine the basic purpose which
23 the Use Permit requirement seeks to achieve?

24 To look at the purpose of the R2 zoning first
25 and see whether or not that is undermined, we look at

1 purposes stated in the Municipal Code.

2 Municipal Code said that for R2 uses, the
3 purpose is to provide areas for single- and two-family
4 residential use. And the Planning Department reports
5 that these are medium to high density uses, depending on
6 the location. I believe that in the Newport Peninsula
7 area, it's medium.

8 MFR, to provide for single-, two- and
9 multi-family residential uses, medium to high density.

10 At the staff's proposed level of density, which
11 would be six residents in one or two duplex units, a
12 medium level of density would be achieved; therefore, it
13 was staff's determination that conditioned -- under the
14 condition of having six residents in recovery at the
15 facility, there would not be an undermining of the R2
16 Zoning Code.

17 Purpose of the Use Permit. We look at Use
18 Permit factors, not because the Applicant is applying for
19 the Use Permit, but because we have to look for the
20 purposes of the Use Permit and whether or not allowing an
21 Applicant to continue, even with conditions, would
22 undermine the purposes of that Use Permit requirement.

23 Use Permits are required for uses with
24 operating characteristics that require certain special
25 consideration because of operational characteristics

1 which would enable them to operate compatibly with other
2 uses in the area and control secondary impacts on
3 surrounding uses.

4 Ordinance 2008-05 requires a Use Permit for
5 non-conforming uses in residential areas. The purpose of
6 that is to ensure that the purposes of the Zoning Code
7 are achieved, and that adverse secondary impacts from the
8 non-conforming uses are mitigated.

9 Section 20.91A.010 states that the purpose of
10 the Use Permit is to promote public health, safety and
11 welfare, and implement goals of the General Plan by
12 ensuring that the conditional uses do not change the
13 character of the residential neighborhoods.

14 And then it gives the second purpose, which is
15 equally important, which is to protect and implement the
16 recovery and reintegration of disabled individuals, in
17 part by avoiding the overconcentration that could lead to
18 an institutionalization of the area.

19 Both the joint statement of the HUD Department
20 of Justice and the American Planning Association has also
21 stated that they feel it is not in the best interest of
22 the recovery of individuals to be placed in an area where
23 it's institutionalized.

24 So we look at whether or not the Use Permit
25 purposes would be undermined and consider several

1 factors.

2 One is that any reasonable control a Hearing
3 Officer can impose on a Use Permit can also be imposed
4 through a reasonable accommodation. Therefore, under
5 staff's opinion, conditions appropriate for a Use Permit
6 which could control secondary impacts can also control
7 secondary impacts from a facilities seeking a reasonable
8 accommodation.

9 Chapter 20.98 of our Municipal Code states that
10 all required findings must be made for a reasonable
11 accommodation to be granted.

12 What -- although, looking at the facilities and
13 the population levels requested by the Applicant, staff
14 was not able to make the finding -- all the required
15 findings. At the population levels suggested by staff,
16 the alternate conditions would meet the needs of the
17 disability, and we could still make the findings.

18 We discussed the current residents, and the
19 staff's belief that no basic purpose of the Zoning Code
20 is undermined by allowing current residents to complete
21 their stay, and that the facility grows smaller through
22 attrition.

23 For the prospective residents, at the
24 Applicant's requested population level, the required
25 findings could not be made. But they could be made at

1 the staff's requested population level.

2 We proposed bed caps at 124 30th Street and
3 3206 West Balboa.

4 Our alternate accommodation, which we discussed
5 with the Applicant, was to enter an abatement agreement
6 with the City at 124 30th Street. It is staff's opinion
7 that granting a reasonable accommodation to remain in the
8 current location for an additional year did not undermine
9 the fundamental purpose which the Use Permit requirement
10 was put in place to achieve.

11 There will still be conditions during the
12 abatement period. The Applicant will still be required
13 to abide by those conditions and control the secondary
14 impacts, and, therefore, the neighbors surrounding the
15 facilities should have the same protection that a Use
16 Permit would grant during that period, and then the
17 facility would be abated.

18 We discussed the other post-conditions.

19 Quiet hours.

20 Quiet hours for television.

21 Control secondhand smoke so it's not detectable
22 off the property.

23 24-hour contact for addressing neighbor
24 concerns.

25 Garages clear for parking.

1 And a parking plan for residents with personal
2 vehicles. Although, the Applicant originally stated that
3 personal residents were allowed to have cars, he also
4 stated that it is a limited number who have personal
5 vehicles.

6 And proposed conditions -- conditions proposed
7 by staff would be that those vehicles be further limited
8 probably to something similar to what was proposed at 204
9 21st Street, because these are areas where parking is at a
10 premium. And with only -- if there were only two on-site
11 parking permit -- only two on-site places available, if
12 they had more than six, the facility would not comply
13 with the parking standards.

14 We also put conditions that the Applicant
15 obtain the six-or-under license from ADP; that that
16 licensed facility would substitute for the sober living
17 use, and the reasonable accommodation for the sober
18 living use would end. The Applicant has stated that he
19 does not intend to apply for ADP licenses at these
20 locations, but we'd include that condition anyway.

21 So with those conditions, we look at whether or
22 not the facility would be able to conform with the
23 operational requirements, the operational standards which
24 are set forth for a Use Permit. And again, we emphasize
25 that we're not -- the Applicant is not applying for a Use

1 Permit. We are just ensuring that none of the
2 protections the Use Permit requirement sets forth are
3 undermined by granting a reasonable accommodation.

4 The conditions address secondhand smoke.

5 We have no evidence that the Applicant has not
6 operated the facility in compliance with state and local
7 laws. I'm aware that there's some factual disagreement
8 on when one of the Applicant's facilities at 124 30th
9 Street opened, but Mr. Gilbert, you correct me if I'm
10 wrong, I believe the Applicant gave you leases indicating
11 that both units were leased by the facility in December
12 of 2006.

13 MR. GILBERT: Yes.

14 MS. WOLCOTT: And that is prior to the
15 moratorium. So that would indicate that those facilities
16 were lawfully established under the laws in place at the
17 time of the establishment.

18 It complies with the occupancy standards for
19 bedrooms.

20 Names of managers and owners provided. And
21 we've not seen any pattern or practice of operating
22 similar facilities in violation of the state and local
23 law.

24 And we had discussed on-site parking needs of
25 the facility and the reasoning for limiting the numbers

1 there.

2 A bed count of six, with one on-site parking
3 space. So that considers the option that we discussed of
4 a facility with six residents in one unit and a single
5 housekeeping unit in the other. That would not be in
6 compliance with the parking requirements stated in
7 Municipal Code. It does comply if six residents occupy
8 both units.

9 As with other facilities, we look at the
10 average daily trips generated for a duplex unit with two
11 single housekeeping units, it would be 13.44 average
12 daily trips estimated.

13 For a residential care facility, average daily
14 trips with six clients, plus one on-site manager, would
15 be 19.19, if there were six residents, plus one manager
16 in the entire building.

17 And if you have six clients and one manager in
18 one unit and a single housekeeping unit in the other, it
19 rises to nearly 30, which is significant higher.

20 The reasonable accommodation standard for
21 parking. Because reasonable accommodation has its own
22 parking and traffic standards, which is different from
23 that in the Use Permit requirement. Use Permit says
24 mitigated to an insignificant level.

25 The reasonable accommodation standard is

1 whether they create a substantial increase in traffic or
2 parking impacts. We believe with conditions, we could
3 prevent substantial parking impacts, and we have received
4 no complaints about traffic impacts from the facility.

5 And other required findings in a permit which
6 we believe can be made is the property is physically
7 suited to accommodate the use;

8 That it will not change the character of
9 surrounding residential neighborhood;

10 And it does not create an overconcentration
11 under the APA standard of one or two such uses per block.
12 And I should add that the facility mentioned earlier
13 at -- I believe it was 127 29th Street, we are informed
14 has been abated. There is no longer a group residential
15 use or sober living use.

16 We have not had traffic impacts reported.

17 No deliveries. As far as I can tell, the
18 Sparkletts deliveries for the residents have been
19 received.

20 And we have had no complaints on regular trash
21 collection since the facility has been in operation. I
22 did check with Code Enforcement as to whether there has
23 been complaints to this facility prior to this hearing,
24 and the only trash complaint was prior to this Applicant
25 taking control of the building.

1 That concludes my presentation, unless you have
2 questions.

3 MR. ALLEN: I just wanted to ask you one
4 questions, and you probably answered this before or
5 pointed it.

6 It's certainly very important to the City that
7 in these reasonable accommodation approvals that the
8 conditions that are imposed on them be abided by and,
9 more importantly, be enforceable.

10 Where is the authority, the underlying
11 authority, for the City to impose conditions on a
12 reasonable accommodation application? We know clearly
13 that in the Use Permit context, State law authorizes
14 conditions to be imposed as a condition of a grant of a
15 discretionary permit. We have a different situation
16 here.

17 I take it you feel confident that there's
18 authority to enforce those conditions, and you'd win if
19 somebody challenged?

20 MS. WOLCOTT: Are you asking whether we have
21 authority to enforce conditions that we place on the
22 Operator, or are you asking whether the Hearing Officer
23 has the authority to impose the conditions?

24 MR. ALLEN: No, whether we can enforce -- the
25 City can enforce the conditions that are imposed on the

1 Operator? They're not consenting to them, you know.
2 They are being imposed.

3 MS. WOLCOTT: Well, one, it is a discretionary
4 permit, and discretionary permits -- cities are
5 permitted -- government agencies are permitted to impose
6 conditions. We're trying to impose conditions that we
7 believe are reasonable.

8 And when the Applicant -- if the Applicant has
9 objections, we do listen to those objections and discuss
10 them, you know. As you've seen in past hearings, if an
11 Applicant feels that a particular condition is not going
12 to work with their facility, they bring it to our
13 attention. We discuss that with them. And frequently,
14 propose on alternate condition that can meet the same
15 need but allow the Operator to continue their operation.

16 As far as your authority to impose, the
17 Municipal Code expressly allows you authority to grant or
18 conditionally grant reasonable accommodations, and I can
19 cite chapter and verse if you want me to grab my Code.

20 THE COURT: Does it actually authority the
21 authority with the grant -- with the imposition of
22 conditions as well?

23 MS. WOLCOTT: I'll grab that, yes.

24 MR. ALLEN: As long as you tell me that, that's
25 sufficient. I was just interested, because I couldn't

1 remember having read it before. And it came to my mind
2 that it's very important to be able to do it. And as
3 long as we can do it, that's fine.

4 MS. WOLCOTT: It says -- Chapter 28 states that
5 "The Hearing Officer may grant, conditional grant, or
6 deny a request for reasonable accommodation."

7 MR. ALLEN: That's right. "Conditionally
8 grant" is the key. Okay. Thanks.

9 MS. WOLCOTT: Thank you.

10 MR. ALLEN: I don't have any other questions.
11 Let's see. Where do we go next? Applicant is going to
12 make a presentation at this point?

13 Do you have anything else, Mr. Kiff.

14 MR. KIFF: I might jump in since Cathy combined
15 the two, and I'll briefly summarize.

16 And respecting Gilbert's comments earlier about
17 124 30th Street, as Cathy noted, we're making a
18 recommendation of approval on the other one, 3206 West
19 Balboa, and those conditions in part, as Cathy
20 summarized, of the six bed cap, no assembly uses,
21 complies with the secondhand smoke requirements,
22 qualified supervision, cars and limited on cars, and et
23 cetera.

24 But just to put up on the board behind us, the
25 proximity issue that we've been showing on each one, and

1 maybe you're amenable to it, Mr. Allen, open the public
2 hearing for -- and allow people, including the Applicant,
3 to speak about both facilities.

4 MR. ALLEN: In other words, conducting the two
5 hearings simultaneously?

6 MR. KIFF: I think that makes more sense in
7 light of what Ms. Wolcott has presented, and they're
8 fairly similar uses.

9 MS. WOLCOTT: Sorry.

10 Mr. KIFF: It's fine.

11 MR. ALLEN: Then if we conduct it in that
12 fashion, the audience may want six units instead of
13 three, and so forth. I don't know whether it's more
14 expedient. Are we likely to get confusion if we do it
15 that way? I would be concerned about that, frankly.

16 MR. KIFF: You could also ask that the audience
17 members speak, and the Applicant speak first on 124 30th
18 and then on 3206 West Balboa. Again, I'm cognizant of
19 not wanting the Applicant nor the audience to have to go
20 through the same --

21 MR. ALLEN: That's a legitimate point.
22 Ms. Wolcott's presentation is lengthy and equally
23 applicable to both of them, and it's important,
24 whereas -- okay. We'll give it a try.

25 MS. WOLCOTT: You could also, if you'd like to,

1 take notice of the presentation for the reasonable
2 accommodation. You could do 124 30th Street hearing
3 first, close that, and take notice of the reasonable
4 accommodation presentation which was given for 124 30th
5 Street, so we don't have to repeat it.

6 MR. ALLEN: That's certainly -- look, I think
7 that was what was essentially articulated. I certainly
8 agree to that. We will just take note of it as the
9 second. Why don't we do the two together and see if it
10 works smoothly.

11 As you say, there's similar uses. There are
12 similar issues. And the only difference is the different
13 locations with different unique circumstances to each
14 one. But we only have an hour, and so let's get moving
15 with that. Let's see. The next would be the
16 presentation by the Applicant.

17 MR. CULLEN: Kevin Cullen, C-u-l-l-e-n, and I'm
18 the Applicant for 124 30th Street and for 3206 West
19 Balboa.

20 I guess start with 30th Street location,
21 actually for both of them, I'd read both of the staff
22 reports. They are accurate. I have no complaints with
23 either one of -- you know, there's nothing I disagree
24 with, quite honestly.

25 The one on 30th Street is an all women's

1 facility. We went over the bed count already. They
2 point out that there have been no complaints with the
3 Code Enforcement.

4 There are no complaints with the -- you know, I
5 read there was a fight of residents that were drug
6 dealing with people getting arrested. These are untrue
7 statements, by the way. And I'm happy to address that
8 later if we need to, but I don't have much to say.

9 The girls we have there, they are fantastic.
10 I'd like to point out that I did put letters of support
11 from the neighbors that live on either side of the
12 building stating that these girls have been wonderful and
13 fine and no complaints.

14 I don't know either of the owners of the
15 properties. It's actually pretty good, quite honestly,
16 because I'm not getting any complaints from them. And
17 it's my understanding that I'm doing a good job for them.
18 I haven't had any complaints. So that's pretty much all
19 I have to say about that. I don't really want to take up
20 too much of your time.

21 MR. ALLEN: Well, feel free to take time to
22 make sure that --

23 MR. CULLEN: No, that's fine.

24 MR. ALLEN: -- you understand what's being
25 asked of you here, and that you're receptive to it or you

1 aren't, and then we can handle it accordingly.

2 MR. CULLEN: I've agree with everything I've
3 heard so far on the 3206 and 30th Street location. I
4 will let the -- thanks for coming out everybody, by the
5 way. Any complaints or -- that the residents have, I'm
6 happy to address at the end of the time.

7 For the -- moving on --

8 MR. ALLEN: With respect to 30th Street?

9 MR. CULLEN: Yeah.

10 MR. ALLEN: The staff recommendation in the
11 staff report is to deny that, and then -- but allow it to
12 operate for a period of 12 months --

13 MR. CULLEN: Correct.

14 THE COURT: -- and then to terminate at that
15 time?

16 MR. CULLEN: Correct. Actually, I believe the
17 staff report was to approve it at a lesser bed count. I
18 think that was actually what the staff report said
19 originally, because -- but at any rate, I'm more than
20 happy to close the place down.

21 That's six people. We can't get continue to
22 operate in the same way. I could probably move everyone
23 to one unit, you know, upstairs or down. We kind of look
24 at different ways of making it work, and it's not really
25 financially viable to do.

1 Quite honestly, that was the only place we did
2 get some complaints. I'm not -- from some residents.
3 And quite honestly, I don't agree with a lot of the
4 complaints, but I'm not really interested in fighting
5 anybody.

6 I think there's other opportunities to be
7 somewhere else. And I'm willing to work with the City.
8 I am willing to work with the residents. I have not been
9 contacted personally by any of the residents. I'll make
10 myself available. I'm really not that difficult to find,
11 but I'm willing to work with them to move the location
12 just, quite honestly, for ease, you know. It's just
13 easier to do that than to --

14 And, quite honestly, a year is very generous
15 and I appreciate that. I don't foresee it taking that
16 long, but I kind of appreciate the ability to take
17 something that wouldn't be appropriate and make sure I do
18 my due diligence and check with the City and check with
19 the residents to make sure it's an appropriate place to
20 reopen at a smaller location somewhere.

21 I don't want to -- I don't want to be in the
22 same -- I don't want to make anyone more uncomfortable or
23 make life any more difficult for anybody. I just want to
24 make sure I have the proper amount of time to make it
25 work out. That's pretty much all I have really got

1 there.

2 Any other questions?

3 MR. ALLEN: Mr. Kiff, it seems like there was
4 some misunderstanding here between what the Applicant
5 felt the staff recommendation is and what the staff
6 report says.

7 MR. KIFF: Actually, I think, Mr. Allen,
8 Mr. Cullen characterized it correctly; that we would have
9 approved -- we would have recommended approval of a
10 having at most six people in recovery in this facility,
11 and in the building, both the A and the B unit.

12 We don't feel that we can make the same
13 recommendation in the bed count is 10 in the whole
14 building, and that relates in part to the Fire Code
15 issues that we discussed.

16 So Mr. Cullen has said that, because of
17 financial considerations, he can't have six there. And
18 again, in the interest of making this a pure reasonable
19 accommodation process where it is a discussion, and we,
20 the City, errs on the side of caution when accommodating
21 people who are disabled, we'd recommended allowing him up
22 to 12 months to find a facility where he could house six
23 people in an economic environment that is more favorable
24 to his operation.

25 I would make one note, too. Mr. Wetherholt has

1 submitted evidence to the record saying that my
2 characterization of his statement about a fight at 30th
3 Street was incorrect, and that he didn't bring that to my
4 attention, and I apologize to Mr. Wetherholt, for the
5 record, that that confusion exists. It seems like maybe
6 I had forgotten the context of that fight. But clearly
7 from the police reports, it didn't effect Mr. Cullen's
8 clients, and Mr. Wetherholt says it's not something he
9 brought to us either.

10 MR. ALLEN: All right. So then the staff
11 recommendation in the conditions is that the use abates
12 no later than 12 months from the date of the execution of
13 the Resolution, and that the occupants would remain at 10
14 occupants through that one-year period of time; correct?

15 MR. CULLEN: Yeah -- yes. I mean, I'd like
16 that option.

17 MR. KIFF: That's correct on the staff's
18 understanding, too, yes.

19 MR. ALLEN: With respect to number two, how
20 many -- you have two resident managers there; is that
21 correct?

22 MR. CULLEN: One for the upstairs and one for
23 the downstairs, yes.

24 MR. ALLEN: And I just saw a minor ambiguity
25 here. Are they both qualified recovery specialists?

1 MR. CULLEN: Absolutely, the finest recovery
2 specialists.

3 MR. ALLEN: Okay. I just thought only one had
4 to be, and so I was wanting to see clarity there. Thank
5 you.

6 MR. CULLEN: Something I would like to add just
7 about the 30th Street location. I love the property. I
8 love the building. I love the location. I got a couple
9 of letters saying it's not a great area, that there's
10 excessive partying and whatnot.

11 And -- but there's also -- there are a lot of
12 rental units. There are a lot of families that come down
13 for the summer, and it's a pretty high traffic area. But
14 my experience down there, and the same for the girls, and
15 the residents that live there have been pretty awesome to
16 us, quite honestly. And there hasn't been a lot of
17 excessive anything.

18 You know, I like it a lot. I'm sorry to see it
19 go, but if we can't work it out, I understand. I'm not
20 getting exactly what I want here, by any means. But I
21 think it's fair and just. And I'm willing to work with
22 it. So that's all I really have to say on 30th Street.

23 MR. ALLEN: Okay.

24 MR. CULLEN: Moving on?

25 THE COURT: 3206?

1 MR. CULLEN; 3206, same type of use, except
2 this is an all male facility. It's a duplex as well.
3 You know, the only thing -- there was actually two
4 resident managers in that one, too. I think it was
5 stated as one, but we have one in each unit, just because
6 it's for -- it's just easier that way, quite honestly.

7 It's a little bit smaller location. It's right
8 on Balboa Boulevard. It's an awesome location as well.
9 It's a block -- well, it's a block from here. It's a
10 block from the Newport Harbor Club, a block from the
11 beach. It's right across the street from Albertsons.
12 There's a laundry -- it has a laundry facility on-site,
13 but there's also a laundromat a block away. Guys can
14 walk anywhere. Right downstairs, right below us, is the
15 bus stop. Takes guys right up to Orange Coast College.

16 And only smoking area on that thing is the
17 patio -- there's no patio -- the upstairs balcony for
18 both units that they smoke on that's facing Newport
19 Boulevard or, excuse me, Balboa Boulevard, which is a
20 really high traffic area. The only thing below is a bus
21 stop. And, you know, secondhand smoke I don't believe is
22 an issue, you know, unless you're going to have traffic
23 as an issue, cars as an issue, the bus out front as an
24 issue.

25 MR. ALLEN: We'll find out if it's an issue

1 during the public hearing, I'm sure.

2 MR. CULLEN: Fantastic. I believe you're
3 right, actually.

4 But anyway, it's -- we haven't had any
5 complaints about it, let me put it that way. We haven't
6 had any complaints from the City that I'm aware of. The
7 police hasn't been there because anybody's upset or
8 there's any turmoil in the community that I'm aware of.

9 It's been a great location for us. I've been
10 there since 2005, I think, and without any complaints.
11 Quite honestly, I don't think anyone even realized we
12 were there in any of these locations until they got
13 something in the mail. We're -- because we're a quiet
14 type little ship, you know.

15 And anyway, that's what I've got there. I'm
16 happy to answer any questions.

17 MR. ALLEN: Okay, thanks.

18 MR. CULLEN: That's it.

19 THE COURT: Does staff have any questions of
20 the Applicant while he's here?

21 MR. KIFF: No, sir.

22 MR. ALLEN: All right. Thanks.

23 MR. CULLEN: All right. Thank you.

24 MR. ALLEN: All right. Let's open the public
25 hearing and get that started. You heard the comments

1 earlier. I would want everybody to have the opportunity
2 to say what they need to say. And so, let's not stick
3 tight with the three-minute rule, but, on the other hand,
4 let's have some degree of control over conversation.

5 Please state your name and spell it.

6 MR. REISS: My name is Joe Reiss, R-e-i-s-s. I
7 live on 30th Street.

8 And I agree with staff report. I'm speaking
9 specifically on 124 30th Street. That's the one I have
10 the main certain with. I agree with the staff report. I
11 support the staff report. I hope you do also. I'm glad
12 to hear that this gentleman is also in agreement and is
13 willing to abate the property and to close the facility.

14 One thing I did note when I read the staff
15 report, I sent an e-mail to Mr. Kiff, and it wasn't
16 included within the staff report. I'd like to provide a
17 copy of that so it can be included in there. It's my
18 observations that I have had on the property.

19 There have been some good clients that have
20 been in the property. I've talked to some of those
21 clients. But there's also been some bad clients in the
22 property that we haven't really been happy with.

23 And I do want to address one issue, and that
24 issue is this with regard to the complaints. Not maybe
25 specifically at this location, but for three years, this

1 community has been complaining about the
2 overconcentration of these sober facilities and has been
3 complaining about a variety of different issues that go
4 with them.

5 And I don't think it's really proper for
6 anyone, really, to come in and say that the community
7 hasn't been complaining. Maybe not specifically where we
8 called Code Enforcement on this location, but it's quite
9 evident from the showing that you've had at all of these
10 that the community is upset. And this is just an
11 example, and some of the e-mails and responses and
12 letters that you got indicate some of those concerns and
13 those are shared by many throughout the community.

14 Thank you.

15 MR. ALLEN: Thank you.

16 MR. GARRETT: Good afternoon. My name is Bill
17 Garrett, G-a-r-r-e-t-t. I've been a resident of Balboa
18 Peninsula for 35 years.

19 I also support staff's recommendation on this.
20 I think six months would have been a better timeframe to
21 abate the use there. But again, I appreciate staff's
22 recommendations, and I do support it.

23 Also, I'd like to say this is -- I think we all
24 know this is a perfect example of government completely
25 run amuck in allowing these uses in residential

1 neighbors. So anything you can do in the future to help
2 us in that regard, we'd appreciate it.

3 Thank you.

4 MS. MARTIN: My name is Brenda Martin,
5 M-a-r-t-i-n. I've been a resident of Newport Beach or
6 the Peninsula for about 15 years.

7 I do support the staff recommendation. I
8 appreciate the fact that we are going to do something about
9 this finally, but I would like to reiterate that there
10 have been a lot of complaints. A lot of us have made,
11 complaints and had problems from the overconcentration of
12 the facilities.

13 MR. ALLEN: Where do you live in proximity to
14 this, I'm sorry?

15 MS. MARTIN: I am about -- I'm in the 200 block
16 across the street, basically, from Mr. Wetherholt. In
17 that area, that block in there.

18 MR. KIFF: I'm sorry. 200 block of --

19 MS. MARTIN: 30th. Oh, I'm sorry, yes.

20 And we have seen quite a bit. The girls have
21 been pretty reasonable with their behavior, I will say.
22 But we do see a lot of wondering around with cigarettes
23 and all that from the others.

24 I have a question as to the authority to
25 enforce the conditions. What does that mean to us? Are

1 we going to just call the police when we see violations
2 that have been outlined, or how is that going to be
3 effected? Do we have any idea?

4 MR. KIFF: Your discretion, Mr. Allen. I can
5 answer questions at the end or individually.

6 MS. MARTIN: Sorry.

7 MR. ALLEN: That's a good question, though, and
8 Mr. Kiff has an answer for it that we all need to hear
9 from time to time, because it's going to be important as
10 time go on. He'll do that after everyone gets done.

11 MS. MARTIN: All right. Thank you.

12 MR. MATHENA: Larry Mathena. Good to see you.

13 Couple of different points. Good to see you.

14 On 124 30th Street, I guess my only observation
15 is I observe that, for instance, the PowerPoint
16 demonstration refers to this as an abatement agreement,
17 which I think is fine and a good thing. I would believe
18 that in the absence of such an agreement, that, unlike
19 the base law which provides for one year, that basically
20 this should have been abated the end of February.

21 I think in many respects, you're being overly
22 generous with the year, but -- excepting that you do have
23 a responsible Operator, I can accept potentially that
24 entire year.

25 I would observe, though, because this is an

1 abatement agreement as opposed to merely an abatement
2 enforcement action, that from my perspective, in this
3 hazy interim land use agreement context, that it would be
4 very appropriate to have your Applicant, who appears to
5 be accepting all this in a forthright and direct manner,
6 to agree to the terms proposed, to agree that if they are
7 not complied with, that there will be an acceleration of
8 abatement, and basically to agree, in terms of providing
9 certainty and comfort to the folks that have struggled
10 with this overconcentration, that he will not be pursuing
11 a change in what's otherwise been agreed to at this
12 moment, despite the fact that -- and I do understand why
13 it's there and what it means -- that basically the City's
14 position is tomorrow afternoon, the Applicant could say,
15 "Oh, I came up with a better reasonable accommodation
16 argument."

17 I would argue if you're going to give him the
18 year, that it's an appropriate right for him to waive.
19 Otherwise, I would suggest that the City simply take the
20 position that it has an abatement that should have
21 started in February and just start it now. So that's my
22 observations on 124 30th. I think you are being
23 generous. I can accept the context. But if you're
24 getting that generosity, I think for certainty --

25 And also the other point I want to make, if I

1 were the City, administratively, God knows, you don't
2 want somebody coming up tomorrow and saying, "I changed
3 my mind." I don't think it's inappropriate for you
4 folks, just for your own sanity and to save costs, which
5 is one of the conditions to be considered in all this,
6 that if you are being so accommodating, that you do
7 condition that accommodation during this abatement
8 period. Those are my thoughts on 124.

9 On the other facility -- I appreciate this
10 drawing of lines. Just want to remind you, and the thing
11 that everybody seems to be ignoring, just because for a
12 Use Permit you came up with this very rigid, mechanical,
13 in many respects unrealistic APA standard, that for 3206,
14 and reasonable accommodation generally, it's a supply
15 test.

16 It's not directly an overconcentration test
17 that you can turn to, and that you have a huge supply,
18 and that based on that huge supply -- and, for instance,
19 we had 900 West Balboa that, "Oh, it was a
20 four-and-under, and we don't have any four-and-unders, so
21 that's a unique supply we're providing." There are
22 six-and-unders. There are a whole bunch of different
23 ones.

24 And just to quote the standards you could apply
25 to 3206, "In the case of a residential care facility,

1 whether the existing supply of facilities of a similar
2 nature and operation in the community is sufficient to
3 provide individuals with a disability and equal
4 opportunity to live in a residential setting," and the
5 answer is there is a ton of other choices. So no, you
6 don't have to give them reasonable accommodation at 3206
7 either.

8 And to go back, to the extent you have the law
9 to enforce, it would be nice to see it enforced.

10 Thank you.

11 MR. ALLEN: Thank you.

12 MS. HYATT: Hello. My name is Mary Hyatt,
13 H-y-a-t-t. I have lived on 30th Street since 1977.

14 And I don't have a specific complaint to 124
15 30th Street. I would say that if you want to put the
16 lion in the lion's den, that's it. Because there's a lot
17 of alcohol and drug abuse going on on that street on a
18 daily basis. So if you want to test them and see if they
19 are strong against that, that's a good place to put them.

20 But my concern would be also the amount of
21 people in there, because that's kind of a summer
22 concentration to have -- have that many people in one
23 duplex at a time. It happens during the summer for a
24 week here and there, but not on a, you know, yearly
25 basis.

1 And also, I might have missed it, but the
2 questions I would have would be, why wasn't a -- for all
3 these locations, a Use Permit applied for? Because it
4 was, I mean, everybody knew that that was the standard
5 put in place. And is there a reason that that wasn't
6 applied for?

7 And when we make an accommodation, it's
8 not -- is it one exception, or is it going to be 10
9 exceptions? I mean, I guess I don't understand the
10 rationale in making exceptions when you've already been
11 really clear on the rules, and -- that you have to apply,
12 and that's my question.

13 Thank you.

14 MR. ALLEN: Next?

15 MS. MARTIN: I think I'll take another minute,
16 if you don't mind? Brenda Martin, M-a-r-t-i-n.

17 On reflection a little bit, I think some of the
18 concerns that I noted was that there were no complaints
19 from the nearby neighbors, and I know that that's not
20 really true. Because some of the female neighbors around
21 there have been in fear of retaliation if they made their
22 complaints obvious or had some of the people know who
23 they were. And I know several of the neighbors directly
24 around that 30th Street property, as a matter of fact.

25 The other concerns has neighbors we have had is

1 the property value situation, and that's pretty
2 substantial, I think, with the rate of concentration that
3 we have around there.

4 The other thing I'm wondering, because this
5 building -- the 30th Street building is owned by a
6 recovery company?

7 No, it isn't? Did I misunderstand? It's not
8 owned by the one that's occupying it, but it's owned by
9 another Ocean or something?

10 MR. ALLEN: They will explain that.

11 MS. MARTIN: Oh, all right. I just was
12 wondering if we were going to be put back in the same
13 position.

14 All right. Thank you.

15 MR. ALLEN: All right. Anyone else want to
16 talk about either one of these applications?

17 All right. Let's close the public hearing
18 then. And first of all, we can give Mr. Kiff an
19 opportunity to respond to those questions that were
20 raised.

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

22 I didn't note a lot of questions, but
23 Ms. Martin raised a few. We've talked about it in the
24 past, but I'll say it again. The authority to enforce
25 the conditions is with our Code Enforcement Unit.

1 And if folks have a concern, the number is
2 644-3215. You can also call or log on to Web site and
3 file a complaint electronically using our -- it's called
4 the Quest System. And that allows you to put in the
5 address and your specific concern. We do follow up. We
6 have three to five Code Enforcement Officers at any one
7 time who work on this issue and others.

8 I'm going to ask Mr. Cullen in a bit to address
9 the ownership of the building.

10 I'm going to jump, then, to -- Mr. Mathena
11 stated some thoughts and hopes for this rather than
12 asking questions, so I won't address those. I will
13 address one issue that I think is worthy of at least
14 going in the record when you talk about maybe the City
15 has a huge supply of uses such as this.

16 And over time, the more I've worked on this
17 issue, we need to realize, I think as I have and
18 hopefully correctly, that the majority of our recovery
19 facilities in Newport Beach are affiliated with a
20 treatment program directly. And in order to be in a
21 so-called sober living house, for instance with Sober
22 Living By The Sea or Morningside, you have to be in their
23 program.

24 So arguably, a facility like Balboa Recovery,
25 which doesn't require affiliation with Ocean Recovery and

1 is intended to be after that type of service, that we
2 don't have a lot of these in the community, rightly or
3 wrongly.

4 But I think it's difficult for the City to make
5 a finding beyond what we made in the staff report, that
6 there is -- there are a number of opportunities for
7 people in recovery to reside in a longer-term or
8 medium-term sober environment where they are not
9 affiliated with a treatment program, and those
10 opportunities are listed.

11 Now, Mr. Mathena's point is well taken when he
12 says, "Well, anybody could," as we note in the staff
13 report, "get together and form a single family" -- I'm
14 sorry -- "a single housekeeping unit and choose to live
15 in recovery unaffiliated with anyone. They just enter
16 onto one lease, they operate as a single housekeeping
17 unit," et cetera.

18 And then finally, to try to address some of
19 Ms. Hyatt's concerns. There are a variety of reasons why
20 folks didn't apply for a Use Permit. I'll allow
21 Mr. Cullen to answer that directly. A number of folks
22 either didn't apply because they believed our Ordinance
23 is illegal, and, indeed, they have sued on that basis,
24 and we have extensive litigation going on involving the
25 legality of the Ordinance.

1 And some applied even while stating that they
2 believe that their application -- that the City's
3 Ordinance was illegal, but they chose to apply at the
4 same time. So we had a variety of reactions from our
5 known facilities in the adoption of this Ordinance back
6 in February of 2008.

7 And then Ms. Hyatt also asked about
8 accommodations. Do you issue one? Do you issue 10? The
9 bottom line is, is the City's interpreting this is any
10 person who is disabled or who is representing a disabled
11 person can apply for a reasonable accommodation at any
12 time from any aspect of the City's codes, not just our
13 group residential codes but any codes.

14 And that is what this hearing is about, to see
15 whether or not that reasonable accommodation application
16 is appropriate, whether they represent people who are
17 disabled, and whether or not it does not make a
18 fundamental alteration in our Zoning Code, and that's the
19 analysis that Ms. Wolcott went through.

20 So the answer to that question is yes, you
21 could have literally thousands of requests for reasonable
22 application -- or reasonable accommodation, and each one
23 we'd have to analyze separately based on those prongs
24 that Ms. Wolcott mentioned.

25 And with that, I think that's my list of

1 questions. And maybe Mr. Cullen could answer two
2 questions, ownership, and why didn't Balboa Recovery
3 apply for a Use Permit? And, of course, Mr. Cullen is
4 welcomed, as you know, Mr. Allen, to comment on any other
5 aspects of testimony you heard.

6 MR. CULLEN: Again, Kevin Cullen, C-u-l-l-e-n.

7 I'll start with the ownership of the building.
8 Balboa Recovery leases the property at 30th Street. The
9 company that owns the building is called Ocean -- I don't
10 know what they call it. I happen to work for a company
11 called Ocean Recovery. But it's a total coincidence.
12 There is no affiliation between them. It's just that
13 that particular company's name is Ocean.

14 It's not owned by the same owners. No
15 affiliation whatsoever. Whoever owns the building, they
16 are a corporation. It just happens to be called Ocean.
17 We lease the building. We've leased it since two and a
18 half, three years, whatever it is. So that's who owns
19 the building. We have got letter from them, too, by the
20 way, that I submitted into the record.

21 As far as why we didn't originally apply for
22 the permits, quite honestly, I'm not sure it even applied
23 to us. First, we were pretty sure it was, like Mr. Kiff
24 said, that it was kind of the standard -- industry
25 standard of what was kind of going on. However, it is

1 what it is, and it's in place, so we decide to play along
2 and to do what we need to do make our facilities legal
3 and do the right thing.

4 Quite honestly, we were pretty sure it didn't
5 apply us, because we're not a treatment center. There's
6 no treatment center offered there. And it was kind
7 of -- we talked with the owner of the building, too, and
8 they were pretty adamant about -- they were surprised
9 that someone could tell them who they could and couldn't
10 lease to.

11 You could lease to college guys who are, you
12 know, summer rentals, or whatever, but I can't lease to
13 people that are in recovery, that don't use drugs and
14 alcohol? And it kind of seemed a little ridiculous,
15 quite honestly.

16 And basically, since we're not a treatment
17 center, we're not state licensed, I didn't think it
18 really applied to us originally. And when it came down
19 to it, we would make other arrangements.

20 Upon further investigation, you know, the
21 people that live in these places, it's really important
22 that they live there. It's real important to them. They
23 love where they live. They love this community. They
24 love being in -- they love the convenience of being at
25 Newport Harbor Club, being at the grocery store, being at

1 the beach. This is where they got sober. This is where
2 their lives begun. They are passionate about this place,
3 you know. And to make them leave doesn't seem right.

4 So I'm kind of willing to do -- and it's been a
5 lot of work, man, trying to go through this whole process
6 so these people have the opportunity stay here and enjoy
7 it. I have the same opportunity, and I wouldn't want
8 anyone else to miss out on that.

9 I see people's lives change daily, and it's
10 pretty awesome. And I hope you guys get to check out
11 some of these same experiences, maybe. But anyway,
12 that's why we didn't originally apply. And we ended up
13 doing -- my understanding is we've been up front and
14 legal about it, and do everything we're supposed to do,
15 and we plan on continuing to do it.

16 Hoping that answers those questions. Anything
17 else?

18 MR. KIFF: To me, yes.

19 MR. CULLEN: Okay. I'll go down the list.

20 I heard a lot about overconcentration and,
21 yeah, man, you're right. I don't argue that. I think
22 there's been a ton of places. But the citizens don't
23 give themselves enough credit or the City doesn't take
24 enough credit either. It's not as bad or as much as it
25 was a couple years ago or even last year or in the

1 future.

2 I mean, there's a lot less where there were.
3 And quite honestly, there were a lot of places that were
4 called sober living homes that are not sober living
5 homes. They have no rules. They have no regulations.
6 They have nothing, you know. They were fraternity
7 houses. At worse, crack houses, you know. It was a bad
8 scene and gave the industry a real bad name.

9 Quite honestly, there are still a few, and I
10 think, you know, sober living is going to get closed down
11 in the future. And as far as an overabundance now, if
12 you like a took at, you know, unlicensed sober living
13 homes that have even applied for this, you know, I don't
14 know of any, quite honestly.

15 And you mentioned about the bed availability.
16 With all due respect, there's 21st Street, and there's
17 900 Street, and that's it. Sober Living By The Sea, I
18 think they had 65 beds, actually -- and I talked to their
19 head of business development, and I talked to the
20 admissions director. They do no sober living. There is
21 no sober living. They are a treatment facility
22 exclusively.

23 So it's kind of like as I mentioned, sober
24 living beds, there are not a whole lot of them. I defy
25 you to name one all female facility on the Peninsula.

1 I've owned or administered, you know, for nine years, and
2 I don't know of any. I get calls all the time for
3 referrals, and I can't make them, because I don't know
4 where else to send people. There's a couple off the
5 Peninsula, and in Costa Mesa, but that's it. But I do
6 hear the residents. I think there has about a
7 lot -- there's been a lot of bad providers. I agree.
8 However, I'm not one of them.

9 A lot of the other complaints I got from Joe
10 Reiss and Bill Garrett and Brenda Martin. They weren't
11 specific to my places. There was something about
12 property value, you know. Property values are down, I
13 believe, because of a lot of reasons. Yet, I haven't
14 heard any specific evidence because of being located near
15 sober living homes, but -- that's for sure.

16 And as far as Larry Mathena, I read his thing.
17 I didn't completely understand it, but my understanding
18 was if I enter into this agreement with the City, I am
19 entering an agreement with the City. I can't change my
20 mind. That was my understanding.

21 If I missed something, I apologize. But I'm
22 happy to, you know -- unless there's something that I
23 didn't understand in there. But the way that the City
24 was been presented to me, I'm in agreement with it, and I
25 have no intention to change my mind, and I'm happy to

1 sign whatever it is I'm supposed to sign to make that
2 happen.

3 Quite honestly, I think that's it. I have
4 addressed everything.

5 MR. ALLEN: Okay. Thank you.

6 Just the record, I happen to look at the
7 application. The property owner is Ocean One, LLC, on
8 Covina De Gloria in Walnut?

9 MR. CULLEN: Yes.

10 MR. ALLEN: You don't have any relationship
11 with them other than --

12 MR. CULLEN: No.

13 MR. ALLEN: -- other than landlord/tenant; is
14 that correct.

15 MR. CULLEN: Correct.

16 MR. ALLEN: All right. Anything else that we
17 should cover here?

18 MR. KIFF: Not that I know of, sir.

19 MR. ALLEN: All right. Let's proceed here
20 then. Just a question of the City attorney, if she
21 would.

22 On the 30th Street condition, it says "This use
23 shall abate in 12 months." Mr. Cullen has indicated a
24 willingness to sign something, if that's asked of him.
25 And it seems appropriate for him to acknowledge in

1 writing his understanding, that he's to terminate the use
2 in 12 months, with the hope that something doesn't occur
3 that necessitates him trying to engage in a battle with
4 the City to remain there.

5 And I don't think there's any -- it's probably
6 not appropriate to ask anyone to waive rights to
7 reasonable accommodation, and I wouldn't be suggesting
8 that at all. But an acknowledgement that, as a condition
9 of operating this place for 12 months, that he -- so
10 unless you have a concern, I'd like to put that in just
11 in general terms as a condition.

12 MS. WOLCOTT: I want to make sure that I
13 understand the wording that you're requesting for. You
14 would like conditions in the abatement agreement
15 stating --

16 MR. ALLEN: There's not an abatement agreement
17 now as I understand it.

18 MS. WOLCOTT: No. The reasonable accommodation
19 would involve entering into an abatement agreement with
20 the City. It's a separate contractual arrangement.

21 MR. ALLEN: Oh, I didn't see that as a
22 condition. Oh, I didn't know that that was the
23 intention, to actually create an abatement agreement.

24 MS. WOLCOTT: That is generally how we handle
25 the abatement situations. Mr. Kiff --

1 MR. ALLEN: Oh, all right. Then that's fine.

2 MS. WOLCOTT: -- can correct me, if he'd like
3 it handled differently, though.

4 MR. ALLEN: I did not realize that you did
5 abatement agreements as such. So if you have a formal
6 abatement agreement that there's an expectation he'll
7 sign, then I think we should -- should we add this in
8 this condition? That would be my thinking.

9 MS. WOLCOTT: Yes.

10 MR. ALLEN: Otherwise, I don't see there's an
11 obligation for him to do that.

12 MS. WOLCOTT: If you'd like to add it into the
13 conditions of approval, which would be --

14 MR. ALLEN: Number one in the abatement
15 period.

16 MS. WOLCOTT: Okay.

17 MR. ALLEN: Thanks.

18 MS. WOLCOTT: And the remedy for breaching one
19 of the conditions in the abatement agreement would be
20 breach of contract.

21 MR. ALLEN: Uh-huh.

22 MS. WOLCOTT: I don't think there's any intent
23 to ask anyone to waive Federal rights to reasonable --

24 MR. ALLEN: Certainly not.

25 MS. WOLCOTT: -- accommodation.

1 MR. ALLEN: Certainly not. That's not a part
2 of it here. But it is -- in other words, there is
3 reasonable accommodation being granted here by allowing
4 the use to continue for a year. And so this is simply a
5 condition of that grant. Whatever happens in the future
6 happens.

7 MS. WOLCOTT: Thank you.

8 MR. ALLEN: All right. So then with respect to
9 30th Street, I agree with the staff report with respect
10 to recommendation for the action that's being proposed.

11 The alternative of allowing the operation to
12 continue for one year with the condition that it
13 terminate at that time, grants the accommodation that's
14 being sought. The conditions that are set forth in
15 Exhibit A will be incorporated into an appropriate
16 Resolution to limit the operation, and the Applicant has
17 already indicated his willingness to abide by those.

18 And so with that, I would approve this use with
19 those conditions, and observe that the findings that are
20 required by the Zoning Code have been met by the
21 limitations that are imposed. So that's the decision
22 with respect to 30th Street.

23 With respect to 3206 and 3206 1/2, staff
24 recommendation is to approve this one as well and to
25 bring back a Resolution of Approval. I agree with that,

1 and do grant the approval.

2 Excuse me just a moment.

3 MS. WOLCOTT: I don't know that we've addressed
4 the issue at 3206 the Applicant or the Hearing Officer is
5 looking at six in the entire building, plus a resident
6 manager, or six in one unit with the single housekeeping
7 unit.

8 MR. ALLEN: You're right, we didn't. And
9 that's a very significant issue, it seems to me. Let's
10 reopen for purposes of Mr. Cullen's position on that and
11 staff's position.

12 MR. CULLEN: Kevin Cullen.

13 I'm looking at the whole place, so four and
14 two, you know, would be better. One side is bigger than
15 the other. I'd like to have control of the whole
16 building for obvious reasons. It's just safer for the
17 residents if I can impose whatever rules I want on the
18 whole facility.

19 So also, we won't get blamed for someone else's
20 noise or anything like that, someone staying up all night
21 next door. It kind of defeats the purpose of having them
22 in by 10 o'clock or 11 o'clock or whatever. I want to
23 keep the whole place four and two. It would be great.
24 That's fine. We have two parking spots -- and well, one
25 car garage really, so whatever we've got to do to make

1 that work out.

2 MR. ALLEN: Can we articulate -- Mr. Kiff,
3 you're probably better at that. Can we articulate a
4 provision whereby the entire facility, both units, will
5 be occupied by Mr. Cullen's operation, but that it sounds
6 as if it will be appropriate to grant him flexibility
7 with respect to how many recoverees are in each unit?

8 MR. KIFF: Yes.

9 THE COURT: Okay. Then let's draft language
10 for the Resolution that accomplishes that result, so that
11 there will be a maximum of six people in the entire 3206
12 and 3206 1/2, or units A and B as is sometimes referred
13 to, and that there will be flexibility with respect to
14 how many you wish to put in each side, and managers, and
15 so forth, okay?

16 MR. CULLEN: Is that all?

17 MR. ALLEN: Yeah. And so the findings that are
18 required by 20.98.025 of the Code are made in this
19 instance with the set of conditions that are imposed and
20 particularly in light of the reduction to six occupants
21 for the entire building.

22 I think that's especially significant, because
23 it constitutes a significant reduction in an otherwise
24 dense situation in that location, which, in itself, is in
25 a very dense and heavily populated area, just like all

1 the rest of the ones that we've talked about on the
2 Peninsula with 3 feet side yard set backs, and so forth.

3 The conditions are set forth in Exhibit A, and
4 they will be incorporated into a Resolution that I'll
5 sign. I don't believe I have any changes to those. So
6 they are acceptable as is, and that concludes that. The
7 findings have been made. The Resolution also will be
8 prepared with the conditions set forth in Exhibit A, so
9 that concludes that matter.

10 Is there -- let's see. Is there something else
11 we need to do with the prior resolutions?

12 MR. KIFF: Mr. Allen, I know Ms. Curran is here
13 and wanted to speak about, I believe, the Resolution on
14 1115 West Balboa. This is really up to you. We
15 don't -- we're not required to have a public comment time
16 on non-agenda items on administrative hearings, because
17 you don't have any direct authority over non-agenda
18 items.

19 You shouldn't reopen the public hearing on 1115
20 West Balboa, but, arguably, you could hear what
21 Ms. Curran wants to say, but the public hearing was
22 opened and closed. And I guess maybe looked to legal
23 Counsel as to what the proper procedure is, because we
24 did not set up agenda item one specifically, the signing
25 of that document, as a public hearing item, because it

1 was opened and closed, and it wasn't noticed as such.

2 In the past times wherein you've executed the
3 Resolutions, you've done so in front of the public so the
4 public can see it rather than at your home or in my
5 office. So that's why we do this the way we've done it.

6 So I don't really have a good answer for you,
7 unless Mr. Bobko or Ms. Wolcott has an answer.

8 MR. BOBKO: We're conferring.

9 Mr. Allen, we will -- normally in City Council
10 meetings and sessions, of course, you have a period at
11 the beginning for things not on the agenda. This is on
12 the agenda. We have not, in our short confer, come up
13 with a solid answer. So we will defer to the Hearing
14 Officer's discretion on this. Of course, we think
15 there's probably no harm in letting a member of the
16 public speak.

17 MR. ALLEN: Good, because that's what I think,
18 too. And so with that, please come forward if you wish
19 to discuss or make comments with respect to the
20 Resolution, and let's give it three minutes, if you wish.

21 MS. CURRAN: My name is Laura Curran. I live
22 at 437 Dalia, Corona del Mar. I appreciate the
23 opportunity to speak.

24 I would like to comment on the
25 hearing -- comments during the hearing separate from the

1 parking, the smoking item, or 1115 --

2 MR. ALLEN: You are addressing 1115; correct?

3 MS. CURRAN: Yes, I am.

4 And during that, you also commented at the
5 beginning about the testimony that had been given, and
6 the need to weigh the credibility of individuals who had
7 spoken. And not having their credentials, it was hard to
8 weigh their credibility to make an assessment based on
9 what you saw. And I think we need to be very careful
10 about using visual representations as an assessment of
11 credibility.

12 First of all, many of the people who speak feel
13 that they are speaking under great personal threat, as
14 another person alluded to. And secondly, people appear
15 in many shapes and colors, and they all have something to
16 say. So I'm kind of -- it made me pause, just as a note.
17 Perhaps it wasn't intended that way, but it's the way it
18 could come across.

19 Okay. I would like to address the parking
20 garage concession for 1115 West Balboa, which was
21 presented at the May 7th hearing. I want to express my
22 concerns, which I've also copied to Counsel and will
23 forward to the Planning Commission and to Council.

24 First of all, the concession was not in the
25 staff report, so only a person who came to the hearing

1 would have been aware of this proposed change.

2 When the homeowner's request to use the garage
3 for another use and not provided the required number of
4 spaces, generally, as a homeowner, you have to get a
5 variance. So providing for this change without prior
6 notice and without review by the Planning Commission is
7 contrary to the Code requirements and the spirit of the
8 Parking Code which apply to other residents.

9 I'm very concerned that the approval
10 recommendations for the facility to have 18 people is
11 based -- and is based, in part, on the fact that they
12 will have six spaces for employees, but one of these
13 spaces would be part of the garage unit being used for
14 smoking.

15 Use of the garage as a smoking area reduces the
16 primary parking spaces to five. This isn't noted in the
17 staff report, nor is the potential impact of the amount
18 of staff parking. Of course, the residents often use
19 their garages for other uses on an intermittent basis.

20 However, residents are not allowed to use the
21 garage in such a way that it's not accessible on a
22 regular basis for parking. And it's unrealistic that the
23 garage will not become a quasi-permanent smoking and
24 assembly room, as has happened at other facilities.

25 And I'll provide you a photo. This is the

1 garage at Miramar Recovery at 435 Dalia. And their
2 garage is permanently blocked by 10 trash cans and used
3 for smoking. I don't think this use is any different.

4 Secondly, in this case, it's -- one of the
5 conditions for approval of the garage is used for smoking
6 sets a precedents for its ongoing use and becomes a right
7 vested with the property owner.

8 If I'm a resident after this happens -- I mean,
9 not only will group home operators be calling each other
10 and Facebooking each other the day after this is passed
11 and say, "Hey, your garage is now part of your smoking
12 facility," residents will take note and say, "You know
13 what? That grandfathered" -- or, you know,
14 whatever -- "back unit, or that apartment in my garage
15 that I want to rent out to my neighbors, or in the
16 summer, you know what? They are letting people use their
17 garage for smoking. Now I have a grandfathered unit in
18 my garage that I can rent out." I think you're opening
19 the can of worms across the board.

20 We need to enforce the regulations that we
21 have, and let the garages be used for garages and require
22 the smoking to be inside the facility. That's what it
23 says. It doesn't say inside the garage, it says inside
24 the facility.

25 Okay. Staff report does not provide for any

1 conditions to be met if the garage is used for parking,
2 such as smoke alarms, fire extinguishers, avoidance of
3 secondhand smoke, removal of hazardous or combustible
4 materials.

5 MR. KIFF: I'm going to say that that's three
6 minutes.

7 MS. CURRAN: Okay. I would ask for an
8 additional minute.

9 The secondhand smoke, the entering and exit is
10 called out. How do you prevent that when the doors open
11 and close?

12 Finally, this is very contrary to Council's
13 indication that they want garages to be used for parking.
14 I think we need to honor Council's direction on that in
15 the past, and that they put restriction on homeowners
16 about the use of their garages.

17 The last item is the staff report does not
18 clearly lay out that this is a concession that's being
19 required. In 2-E, 5-BE, 6-C, we allude to conditions for
20 smoking, but we do not note -- it is not noted that the
21 garage being used for smoking is a condition of a permit.
22 So I don't think it's clear, and it really needs to be
23 addressed.

24 Thank you.

25 MR. ALLEN: Just one point, and I can't debate

1 this, and I don't intend to.

2 The off-street parking and loading and
3 unloading provisions of the Resolution require that six
4 off-street parking spaces for the use of the facility be
5 available at all times. So I don't know how this is
6 going to work out.

7 And with respect to the smoking provisions of
8 five, there is not a designation that the smoking occur
9 at any certain point in the facility. So it would appear
10 to me that there's quite a bit to be worked out on this
11 issue before a garage space becomes no longer available
12 for parking and a large smoking facility. My
13 observations.

14 MS. CULLAN: But that's what was said in the
15 hearing.

16 MR. ALLEN: All right. Is there anything else
17 to add?

18 MR. KIFF: No, sir.

19 MR. ALLEN: That's it for today, then. Thank
20 you all.

21 (Ending time: 5:47 p.m.)
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25

1
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: JUN 01 2009

20
21 
22 Laura A. Millsap, RPR
23 CSR No. 9266
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A	accessible	accompli...	addressing	76:24
abate 53:13	79:21	9:17	35:23 78:2	77:11,12
54:21	accommodate	accompli...	adjacent	ago 67:25
70:23	39:7	75:10	14:10	agree 44:8
abated 26:3	accommod...	accurate	16:13	46:2 47:3
35:17	14:23,25	44:22	administ...	53:8,10
39:14	accommod...	83:12	69:1	57:6,6,8
56:20	48:20 58:6	achieve	administ...	69:7 73:9
abatement	accommod...	19:22 20:2	19:16	73:25
13:7 23:2	8:14,19,22	24:8 31:20	30:18,25	agreed 6:10
23:9 26:2	9:2 10:8	31:23	31:8 76:16	6:10 57:11
27:5 28:16	10:18,22	35:10	administ...	agreed-upon
35:5,12	11:7,8,13	achieved	58:1	5:12
56:16 57:1	11:18,21	32:12 33:7	admission	agreement
57:1,8,20	12:7,15	acknowledge	16:17	15:5 23:2
58:7 71:14	17:23 18:9	70:25	admissions	27:8 35:5
71:16,19	19:6,24	acknowledge...	68:20	53:12
71:23,25	20:4,11,20	71:8	adopted	56:16,18
72:5,6,14	20:23,25	Act 18:10,12	29:24	57:1,3
72:19	21:4,6,10	action 57:2	adoption	69:18,19
abates 49:11	21:14,17	73:10	64:5	69:24
abide 15:11	22:18 23:1	83:15	ADP 36:15,19	71:14,16
35:13	23:5,9,21	actively	adults 12:11	71:19,23
73:17	24:7,18,20	15:16	13:11	72:6,19
abided 40:8	24:23 25:2	actual 7:23	adverse 33:7	agreements
ability 7:14	25:3 27:9	adamant 66:8	affidavit	72:5
21:2 28:19	27:22 30:7	add 9:16	9:5	ahead 23:18
31:16	30:9,11,14	39:12 50:6	affiliated	alarms 81:2
47:16	31:3 34:4	72:7,12	62:19 63:9	Albertsons
able 4:10	34:8,11	82:17	affiliation	51:11
34:14	35:4,7	added 5:13	13:21	alcohol
36:22 42:2	36:17 37:3	6:17	62:25	13:11 15:7
absence	38:20,21	addition	65:12,15	59:17
56:18	38:25 40:7	13:16	affirmative	66:14
Absolutely	40:12 42:6	16:21	18:19,23	allegations
12:5 50:1	44:2,4	additional	affirmat...	7:5
abstinence	48:19	35:8 81:8	24:21	alleged
15:7	57:15 58:7	address	afford 18:14	14:10
abuse 13:11	58:14 59:6	17:24 37:4	19:6 24:2	Allen 1:9
59:17	60:7 64:11	45:7 46:6	afternoon	4:4,10,23
accelera...	64:15,22	53:23 62:5	15:20	5:17 6:17
57:7	71:7,18	62:8,12,13	54:16	6:24 7:11
accept 56:23	72:25 73:3	63:18	57:14	8:7,23
57:23	73:13	78:19	age 13:17	10:9,11,15
acceptable	accommod...	addressed	agencies	10:21 40:3
76:6	18:13,14	6:18 7:10	18:20 41:5	40:24
accepting	20:16	70:4 74:3	agenda 10:16	41:24 42:7
57:5	41:18 64:8	81:23	10:21	42:10 43:1

43:4,11,21	30:6 41:17	20:4 25:9	22:25 23:4	64:3,11
44:6 45:21	62:4	25:15	23:10	65:3,21
45:24 46:8	allude 81:19	and/or 13:11	24:10	66:5 67:12
46:10 48:3	alluded	Angeles 3:5	26:12,15	79:8
48:7 49:10	78:14	answer 30:21	26:20	applying
49:19,24	alter 30:8	52:16 56:5	28:10 29:2	32:18
50:3,23	alteration	56:8 59:5	31:2,4,7	36:25
51:25	19:18,20	63:21	31:14	appreciate
52:17,22	31:11	64:20 65:1	32:18,21	8:1 47:15
52:24	64:18	77:6,7,13	34:13 35:5	47:16
54:15	alternate	answered	35:12 36:2	54:21 55:2
55:13 56:4	20:16 23:1	26:4 40:4	36:14,18	55:8 58:9
56:7 59:11	23:6 26:24	answers	36:25 37:5	77:22
60:14	26:25	67:16	37:10	appropriate
61:10,15	28:24	anybody 47:5	39:24 41:8	30:2 34:5
61:21 65:4	34:16 35:4	47:23	41:8,11	47:17,19
70:5,10,13	41:14	63:12	42:11 43:2	57:4,18
70:16,19	alternative	anybody's	43:17,19	64:16
71:16,21	9:24 20:19	52:7	44:16,18	70:25 71:6
72:1,4,10	73:11	anyway 36:20	48:4 52:20	73:15 75:6
72:14,17	Alzheimer's	52:4,15	57:4,14	approval
72:21,24	27:13	67:11	73:16 74:4	4:12 7:10
73:1,8	ambiguity	APA 39:11	Applicant's	9:1 12:17
74:8 75:2	49:24	58:13	23:8 24:2	17:7 42:18
75:17	amenable	apartment	24:12	48:9 72:13
76:12 77:9	43:1	80:14	34:24 37:8	73:25 74:1
77:17 78:2	amendment	apologize	application	79:9 80:5
81:25	5:20 6:2	49:4 69:21	8:14,16	approvals
82:16,19	10:3	appeal 6:18	11:2 12:2	40:7
alleys 9:19	American	appealed	12:7 16:15	approve 11:7
allow 12:9	33:20	11:24	17:18	46:17
20:25 26:8	amount 47:24	appear 78:14	22:10 31:4	73:18,24
26:10	59:20	82:9	40:12 64:2	approved
27:20	79:17	APPEARANCES	64:15,22	8:15 27:3
41:15 43:2	amuck 54:25	3:1	70:7	27:8 48:9
46:11	analysis	appears 57:4	applicat...	approxim...
63:20	17:18	applicable	11:1 61:16	12:20
allowed	19:14 20:7	43:23	applied 60:3	area 9:19
31:15 36:3	20:22,24	Applicant	60:6 64:1	32:7 33:2
79:20	21:5,16	7:4,6 9:7	65:22	33:18,22
allowing	23:11,14	11:3,6,17	66:18	50:9,13
31:18,21	23:15,15	12:14	68:13	51:16,20
32:20	23:18 24:1	13:19 14:1	apply 11:20	55:17
34:20	30:3 31:12	16:16	22:11 23:4	75:25
48:21	64:19	20:15	36:19	79:15
54:25 73:3	analyze	21:11,19	58:24	areas 21:11
73:11	64:23	21:24 22:1	60:11	32:3 33:5
allows 26:24	analyzed	22:6,16,24	63:20,22	36:9

arguably 62:24 76:20	attendance 15:8	33:17	based 29:18 58:18	belief 34:19
argue 57:17 67:21	attended 18:7	aware 7:6 37:7 52:6 52:8 79:1	64:23 78:8 79:11,11	believe 27:13 31:6 31:7 32:6
argument 57:16	attending 15:17	awesome 50:15 51:8 67:10	basic 19:21 31:19,22 34:19	37:10 39:2 39:6,13 41:7 46:16
arrangement 17:6 71:20	attention 14:11 41:13 49:4	a.m 5:7 16:7 16:7	basically 5:24 55:16 56:19 57:8 57:13 66:16	51:21 52:2 56:17 64:2 69:13 76:5 76:13
arrangem... 66:19	attorney 3:8 17:20	B B 14:24 48:11 75:12	basis 20:5 59:18,25 63:23 79:19,22	believed 63:22
arrested 45:6	70:20 83:16	back 8:17 59:8 61:12 64:5 73:25 80:14	battle 71:3 beach 1:10 2:8,9 3:3 3:7,10 4:1 12:8 17:15 24:17 30:5 51:11 55:5 62:19 67:1	believes 30:2
articulate 75:2,3	attrition 26:10	background 10:24	bed 35:2 38:2 42:20 45:1 46:17 48:13 68:15	benefit 9:10 21:18 24:15,24 26:22 27:23 28:4
articulated 44:7	audience 43:12,16 43:19	backs 76:2	bedroom 15:3 bedrooms 14:23,25 37:19	best 7:16 33:21
asked 11:17 14:12 45:25 64:7 70:24	audience's 9:9	bad 53:21 67:24 68:7 68:8 69:7	beds 5:3 14:23,25 14:25 27:4 27:7 68:18 68:24	better 54:20 57:15 74:14 75:3
asking 19:25 31:14 40:20,22 62:12	authority 40:10,11 40:18,21 40:23 41:16,17 41:20,21 55:24 61:24 76:17	Balboa 1:8 4:12 10:19 10:22 11:11,12 12:21 13:9 13:21,22 13:25 16:24 17:24 22:4 23:16,20 25:18 35:3 42:19 43:18 44:19 51:8 51:19 54:17 58:19 62:24 65:2 65:8 76:14 76:20 78:20	beginning 2:9 77:11 78:5	bit 5:17 6:22 12:2 51:7 55:20 60:17 62:8 82:10
aspect 64:12	authorizes 40:13	balcony 51:17	begins 20:24	blamed 74:19
aspects 31:13 65:5	availabi... 26:25 68:15	base 10:6 56:19	begun 67:2	block 39:11 51:9,9,10 51:10,13 55:15,17 55:18
assembly 42:20 79:24	available 9:12 11:11 27:4 28:24 36:11 47:10 82:5 82:11		behalf 2:7 19:2	blocked 9:19 9:19 80:2
assessment 78:8,10	authorizes 40:13		behavior 55:21	board 6:22 42:24 80:19
assigned 15:14	average 16:3 38:10,11 38:13			Bobko 3:4 77:7,8
Assistant 3:8,9	avoidance 81:2			bottled
Associate 3:9	avoiding			
associated 9:11				
Association 33:20				
attached 12:24				
attend 16:18 16:20,22 16:23				

17:12	bus 51:15, 20	Catherine	29:19	71:20 77:9
bottom 64:9	51:23	3:8 17:17	32:24, 25	City's 19:18
Boulevard	business	17:19	characte...	31:11
2:8 3:10	68:19	Cathy 42:14	49:2	57:13 64:2
12:21 51:8		42:17, 19	characte...	64:9, 12
51:19, 19	C	cause 5:20	48:8	clarity 50:4
bound 4:6	CA 3:5, 10	caution	charge 5:19	classified
breach 72:20	California	48:20	check 39:22	5:15 10:7
breaching	1:10 2:9	center 66:5	47:18, 18	clean 15:14
72:18	4:1 29:1, 9	66:6, 17	67:10	clear 9:12
Brenda 55:4	83:5	certain 11:9	choice 25:2	23:12
60:16	call 56:1	23:3 32:24	choices 59:5	35:25
69:10	62:2 65:10	53:10 82:9	choose 63:14	60:11
brief 10:24	called 54:8	certainly	chores 15:15	81:22
briefly	62:3 65:9	40:6 44:6	chose 64:3	clearly
10:25 12:1	65:11, 16	44:7 72:24	cigarettes	40:12 49:6
12:3 42:15	68:4 81:10	73:1	55:22	81:18
bring 41:12	calling 80:9	certainty	Circuit 24:5	Clerk 3:9
49:3 73:25	calls 69:2	57:9, 24	circumst...	client 5:3
brought	cans 80:2	Certified	7:6 15:22	9:14, 17
14:10 49:9	cap 42:20	2:11 83:4	44:13	10:5 15:3
Bryant 27:11	capacity	certify 83:5	cite 41:19	clients 5:14
27:12 28:5	5:19 10:2	83:14	cities 18:12	9:6, 13
building	caps 35:2	cetera 42:23	18:24 41:4	13:13
6:13, 13	car 74:25	63:17	citizens	14:15 15:4
9:3 10:2	care 10:16	challenged	67:22	16:2, 4
15:23	11:19	40:19	City 2:8 3:3	17:4 22:20
23:24, 24	21:21, 22	change 5:23	3:7, 8, 8, 9	23:17, 22
28:8 29:1	38:13	5:25 6:1, 4	5:10 6:18	38:14, 17
29:3, 4, 9	58:25	7:8 31:6	9:24 11:24	49:8 53:19
29:13, 15	careful 78:9	33:12 39:8	14:3 17:20	53:21, 21
38:16	carry 27:21	57:11 67:9	18:21, 23	close 6:21
39:25	cars 36:3	69:19, 25	19:17	13:5 23:2
45:12	42:22, 22	79:1, 5	20:10 23:2	26:18 44:3
48:11, 14	51:23	changed 5:6	23:7, 8	46:20
50:8 61:5	case 8:19	10:5 58:2	24:19	53:13
61:5 62:9	18:17 20:3	changes 4:18	25:12 26:6	61:17
65:7, 9, 15	21:19	4:19 6:15	27:4 30:19	81:11
65:17, 19	27:11	9:9 76:5	35:6 40:6	closed 68:10
66:7 74:5	30:20, 20	changing 5:8	40:11, 25	76:22 77:1
74:16	58:25 80:4	chapter	47:7, 18	closes 11:5
75:21	cases 19:13	11:14, 15	48:20 52:6	Club 51:10
built 16:12	19:21 21:9	34:9 41:19	57:19 58:1	66:25
bunch 58:22	24:5	42:4	62:14 63:4	Coast 51:15
burden 19:17	case-by-...	character	67:23	Code 5:12
27:22	20:5	30:8 33:13	69:18, 19	11:14 12:9
30:18, 25	categories	39:8	69:23	14:3 17:15
31:8, 9	25:11	characte...	70:20 71:4	19:8 20:14

21:20	commented	complex 21:5	conditional	confusion
24:17	78:4	31:12	33:12 42:5	43:14 49:5
26:23 29:1	comments 8:6	compliance	conditio...	consenting
29:4,5,7,9	11:4 42:16	37:6 38:6	41:18 42:7	41:1
30:6,16	52:25	complied	conditioned	consider
32:1,2,16	77:19,25	57:7	32:13	23:1 24:11
33:6 34:9	Commission	complies	conditions	24:15,19
34:19 38:7	78:23 79:6	17:14	4:22 5:1	26:24
39:22	community	37:18	7:10 8:16	28:12 30:6
41:17,19	11:20 25:8	42:21	8:18 9:1	33:25
45:3 48:14	27:21 52:8	comply 36:12	22:18,19	consider...
54:8 61:25	54:1,6,10	38:7	23:21,22	32:25
62:6 64:18	54:13 59:2	complying	32:21 34:5	consider...
73:20	63:2 66:23	13:4	34:16	28:14,18
75:18 79:7	company 61:6	concentr...	35:11,13	29:2 48:17
79:8	65:9,10	59:22 61:2	36:6,6,14	considered
codes 9:25	company's	concept 6:3	36:21 37:4	6:20 19:15
64:12,13	65:13	concern 6:11	39:2 40:8	27:25 58:5
64:13	compatibly	59:20 62:1	40:11,14	considering
codified	33:1	62:5 71:10	40:18,21	18:22
19:8	competence	concerned	40:23,25	27:10
cognizant	6:6	6:12 26:5	41:6,6,22	considers
43:18	competent	43:15 79:9	42:19	38:3
coincidence	6:6	concerns	49:11	consistent
65:11	complaining	35:24	55:25 58:5	9:25
collection	54:1,3,7	54:12	61:25	constitute
39:21	complaint	60:18,25	71:14	7:7
college	39:24	63:19	72:13,19	constitutes
51:15	59:14 62:3	78:22	73:14,19	75:23
66:11	complaints	concession	75:19 76:3	construct
colors 78:15	14:4,6,6	78:20,24	76:8 80:5	28:7
combined	30:23 39:4	81:18	81:1,19	construc...
17:22	39:20,23	concludes	conduct	29:17,25
42:14	44:22 45:2	40:1 76:6	43:11	contact 9:24
combustible	45:4,13,16	76:9	conducting	35:23
81:3	45:18 46:5	conclusion	43:4	contacted
come 7:13	47:2,4	8:3	confer 24:23	5:11 47:9
50:12 54:6	52:5,6,10	condition	77:12	contains
77:12,18	53:24	5:2 10:1	conferring	14:23
78:18	55:10,11	32:14	77:8	context
comes 17:11	60:18,22	36:20	confident	40:13 49:6
comfort 57:9	69:9	40:14	40:17	57:3,23
coming 46:4	complete	41:11,14	Confirma...	continue
58:2	6:11 15:14	58:7 70:22	5:13	11:8 21:25
commence 4:4	34:20	71:8,11,22	conflict 4:8	22:4 31:15
comment 8:9	completely	72:8 73:5	conform	31:16,18
65:4 76:15	54:24	73:12	36:22	31:21
77:24	69:17	81:21	confuse 18:1	32:21

41:15	78:23	48:8,16	DAVE 3:8	dense 75:24
46:21 73:4	Council's	49:15,22	day 16:18	75:25
73:12	6:18 81:12	50:1,6,24	80:10	density 32:5
continued	81:14	51:1 52:2	days 5:10	32:9,10,12
12:10	Counsel	52:18,23	6:12 9:23	deny 11:8
continuing	76:23	62:8 63:21	16:2,2,3	42:6 46:11
5:5 9:7,20	78:22	65:1,3,6,6	16:16,19	Department
31:7 67:15	count 38:2	67:19 70:9	De 70:8	6:13 20:7
contract	45:1 46:17	70:12,15	deadlines	32:4 33:19
72:20	48:13	70:23	22:10	dependent
contractual	county 27:14	74:12,12	deal 31:7	16:4
71:20	27:17	75:16	dealing 45:6	depending
contrary	couple 50:8	Cullen's	dealings	32:5
79:7 81:12	56:13	49:7 74:10	31:2	Deputy 3:8
control 33:2	67:25 69:4	75:5	debate 81:25	17:20
34:2,6,6	course 65:3	Curfew 16:6	December	described
35:13,21	77:10,14	curfews	37:11	19:20
39:25 53:4	79:18	15:11	decide 66:1	description
74:15	court 18:18	Curran 8:6,9	decision 7:8	12:18
controve...	18:18	76:12,21	73:21	14:18
7:19	19:21	77:21,21	declaring	designated
convenience	27:24	78:3 81:7	9:5	9:13
66:24	41:20	current	decrease	designation
conversa...	46:14	21:25 22:2	5:18	82:8
53:4	50:25	22:5 25:12	defeats	designat...
cooperative	52:19 75:9	25:22 26:3	74:21	29:4,5
31:5	cover 70:17	26:9 28:15	defer 77:13	despite
copied 78:22	Covina 70:8	28:15	definition	57:12
copy 53:17	crack 68:7	34:18,20	18:8	detectable
Corona 77:22	create 30:14	35:8	defy 68:24	35:21
corporation	31:8 39:1	currently	degree 53:4	determin...
17:7 65:16	39:10	22:6 25:25	del 77:22	6:18 7:11
correct 9:23	71:23	26:2,8	deliveries	20:12
37:9 46:13	credentials	27:3,4	17:11	25:22
46:16	78:7	C-u-l-l-e-n	39:17,18	32:13
49:14,17	credibility	44:17 65:6	delivery	determin...
49:21	7:17 78:6		17:11	7:12
70:14,15	78:8,11	D	demonstrate	determine
72:2 78:2	credit 67:23	daily 16:22	21:12	5:24 24:19
corrected	67:24	38:10,12	demonstr...	developed
5:10 8:25	cross-ex...	38:13	6:6	12:23
9:20	7:15	59:18 67:9	demonstr...	development
correctly	CSR 83:23	Dalia 77:22	56:16	20:8 27:8
48:8 62:18	CULLAN 82:14	80:1	den 59:16	68:19
Costa 69:5	Cullen 11:22	date 11:9	denial 23:9	difference
costs 58:4	44:17,17	14:3 49:12	23:13	44:12
Council	45:23 46:2	83:17	denied 25:1	differences
11:24 77:9	46:9,13,16	Dated 83:20	27:17,18	7:3,7

different	64:10,10	drafted 7:25	either 19:16	enhance
8:20 29:6	64:17	23:8	22:20	24:21
29:18	disagree	drawing	23:23 27:7	enjoy 18:15
38:22	44:23	58:10	27:23	19:7 24:4
40:15	disagree...	driveways	44:23	25:1 67:6
44:12,13	37:7	9:19	45:11,14	ensure 33:6
46:24 54:3	discovered	drug 13:11	49:9 59:7	ensuring
56:13	14:13	15:7 45:5	61:16	33:12 37:1
58:22 80:3	discretion	59:17	63:22	enter 23:2
differently	56:4 77:14	drugs 15:7	67:24	35:5 63:15
72:3	discreti...	66:13	electron...	69:18
difficult	40:15 41:3	due 47:18	4:17 62:3	entering
7:12 47:10	41:4	68:16	else's 74:19	69:19
47:23 63:4	discuss 9:24	duplex 12:12	emphasize	71:19 81:9
diligence	10:25	12:23 22:8	29:16	entire 38:16
47:18	20:15 41:9	22:21,21	36:24	56:24 74:5
direct 7:19	41:13	22:22	emphasized	75:4,11,21
21:6,9	77:19	28:19,20	18:18	entitled
57:5 76:17	discussed	29:11	employed	28:7
directed	9:8 22:15	32:11	15:16	entity 6:5
4:19 8:14	23:10	38:10 51:2	employee	20:10,21
direction	27:12 28:4	59:23	83:15	environment
81:14	29:1,3	duty 18:19	employees	24:9 28:25
83:12	34:18 35:4	18:23	79:12	30:15
directly	35:18	dwelling	employment	48:23 63:8
20:10	37:24 38:3	15:14,18	15:17	equal 18:15
24:22	48:15	18:16 19:8	enable 33:1	19:7 21:7
58:16	discusses	21:1,2,3	enclosed	21:10 24:3
60:23	6:22	24:4 25:20	15:24	25:1,7
62:20	discussion	25:20	ended 67:12	59:3
63:21	17:9 48:19		enforce	equally
director	disposed	E	40:18,21	33:15
5:24 68:20	17:14	earlier	40:24,25	43:22
disability	districts	39:12	55:25 59:9	errs 48:20
5:14 24:22	11:16	42:16 53:1	61:24	especially
34:17 59:3	12:17	ease 47:12	80:20	75:22
disabili...	document	easier 47:13	enforceable	ESQ 1:9 3:4
20:17	76:25	51:6	40:9	essence 10:8
disabled	doing 45:17	economic	enforced	essentially
5:15 9:4,6	67:13	48:23	59:9	7:20 44:7
10:7,7	door 74:21	effect 49:7	enforcement	established
19:3,7,11	doors 81:10	effected	14:3 39:22	15:11 20:3
20:18,25	downstairs	56:3	45:3 54:8	22:2 27:14
21:1,3,18	49:23	effort 6:11	57:2 61:25	37:16
24:3,25	51:14	eight 22:6	62:6	establishes
27:20	draft 4:19	25:17	engage 71:3	29:17
33:16	9:9,16	27:14,15	engaged	establis...
48:21	75:9	27:19	20:14	37:17

PRECISE REPORTING SERVICE
(800) 647-9099

findings	form 63:13	68:11 73:5	37:9,13	56:12,13
30:16	formal 72:5	G	Gilbert's	56:17
34:10,15	forth 24:18	garage 12:24	42:16	59:19 77:6
34:17,25	36:24 37:2	15:24	girls 45:9	77:17
39:5 73:19	43:13	74:25	45:12	government
75:17 76:7	73:14	78:20 79:2	50:14	20:10,21
fine 4:23	75:15 76:2	79:13,15	55:20	41:5 54:24
8:2 42:3	76:3,8	79:21,23	give 18:6	grab 41:19
43:10	83:7	80:1,2,5	43:24	41:23
45:13,23	forthcoming	80:11,14	57:17 59:6	graduated
56:17 72:1	31:4	80:17,18	61:18	26:11
74:24	forthright	80:23 81:1	67:23	Grand 3:5
finest 50:1	57:5	81:21	77:20	grandfat...
finish 26:9	forward	82:11	given 44:4	80:13,17
fire 48:14	77:18	garages	78:5	grant 5:2
81:2	78:23	35:25	gives 33:14	7:8 9:2
first 4:11	foul 15:13	79:19	glad 53:11	18:23
9:2 16:16	four 16:20	80:21,21	Gloria 70:8	20:11,21
20:3 21:13	24:18	81:13,16	go 11:23	22:17
22:16 24:1	74:13,23	Garrett	17:17	23:21
31:13,24	four-and...	54:16,17	42:11	35:16
43:17 44:3	58:20	69:10	43:19	40:14
61:18	four-and...	general 14:7	50:19 54:3	41:17,18
65:23	58:20	21:21	56:10 59:8	41:21 42:5
78:12,24	framed 24:6	30:13	67:5,19	42:5,8
five 13:15	framework	33:11	goal 4:7	73:5 74:1
62:6 79:16	14:20	71:11	goals 33:11	75:6
82:8	frankly	generally	God 58:1	granted 20:1
flexibility	43:15	58:14	goes 24:22	21:4 34:11
75:6,13	fraternity	71:24 79:4	going 4:21	73:3
Floor 3:5	68:6	generated	5:5 8:18	granting
focus 5:6	free 45:21	38:10	18:3 22:24	19:15
11:1 20:18	frequently	generosity	41:11	24:15,23
focused	41:13	57:24	42:11	30:11,17
21:11	Friday 16:8	generous	51:22 55:8	31:10 35:7
folks 5:4	front 51:23	47:14	56:1,2,9	37:3
8:13 57:9	67:13 77:3	56:22	57:17	grants 73:13
58:4 62:1	full 15:17	57:23	59:17 60:8	great 50:9
63:20,21	fundamental	gentleman	61:12 62:8	52:9 74:23
follow 62:5	19:18,20	53:12	62:10,14	78:13
following	20:13 26:7	GERALD 3:9	63:24	groceries
25:10	30:7 31:11	GERSHON 3:4	65:25	17:13
foregoing	35:9 64:18	getting 9:1	68:10 81:5	grocery
83:6,8,12	further 36:7	45:6,16	82:6	66:25
foresee	66:20	50:20	good 6:11	ground 14:24
47:15	83:12,14	57:24	45:15,17	grounds 7:7
forgotten	future 28:18	Gilbert 3:9	53:19	group 13:3
49:6	55:1 68:1	12:1,3,5	54:16 56:7	39:14

64:13 80:9 grouped 27:8 grows 34:21 guess 44:20 56:14 60:9 76:22 guys 51:13 51:15 66:11 67:10 G-a-r-r-... 54:17	health 33:10 hear 53:12 56:8 69:6 76:20 heard 16:9 18:3 46:3 52:25 65:5 67:20 69:14 hearing 1:7 1:9 2:7 5:8 7:1,17 7:25 8:3,8 8:13,21 9:8 10:4 10:15,22 11:4,5,5,7 11:14,23 11:23,25 14:9 17:10 17:22 34:2 39:23 40:22 42:5 43:2 44:2 52:1,25 61:17 64:14 74:4 76:19,21 76:25 77:13,25 77:25 78:21,25 82:15 hearings 7:3 10:24 18:8 27:12 41:10 43:5 76:16 heavily 75:25 Hello 59:12 help 55:1 Hey 80:11 he'll 56:10 72:6 high 32:5,9 50:13 51:20	higher 24:16 38:19 Highlighted 8:23 home 27:13 77:4 80:9 homeowner 79:4 homeowners 81:15 homeowner's 79:2 homes 12:10 68:4,5,13 69:15 honestly 44:24 45:15 47:1 47:3,12,14 50:16 51:6 52:11 65:22 66:4 66:15 68:3 68:9,14 70:3 honor 12:6 81:14 hope 4:8 53:11 67:10 71:2 hopefully 62:18 hopes 62:11 hope-for 4:7 Hoping 67:16 hour 44:14 hours 5:7 15:11,19 16:6,8,13 35:19,20 house 15:6 15:10,12 15:21 16:22 20:19 48:22 62:21 housekee...	22:22 23:25 38:5 38:11,18 63:14,16 74:6 houses 13:13 68:7,7 housing 18:10,11 18:12 20:8 25:1 26:4 26:24 28:8 28:15 HUD 33:19 huge 58:17 58:18 62:15 Hyatt 59:12 59:12 64:7 Hyatt's 63:19 H-y-a-t-t 59:13	importantly 40:9 impose 19:16 30:18 34:3 40:11,23 41:5,6,16 74:17 imposed 34:3 40:8,14,25 41:2 73:21 75:19 imposing 18:19 imposition 41:21 inapprop... 58:3 include 14:5 15:6 23:22 36:20 included 14:4 22:19 53:16,17 including 12:25 43:2 inclusive 9:3 incorpor... 13:9 73:15 76:4 incorrect 49:3 increase 5:17,18 30:10 39:1 increasing 27:19 indicate 37:15 54:12 indicated 14:16 22:24 70:23 73:17 indicating 37:10 indication
H H 5:23 half 22:16 65:18 hand 53:3 handicapped 18:15 handicaps 28:9 handle 46:1 71:24 handled 72:3 happen 65:10 70:2,6 happened 79:24 happens 59:23 65:16 73:5 73:6 80:8 happy 45:7 46:6,20 52:16 53:22 69:22,25 Harbor 51:10 66:25 hard 78:7 harm 77:15 hazardous 81:3 hazy 57:3 head 68:19 headphones 16:11			I idea 56:3 ignoring 58:11 illegal 63:23 64:3 illustrated 15:1 immediately 11:10 impact 79:17 impacts 33:2 33:7 34:6 34:7 35:14 39:2,3,4 39:16 implement 5:11 33:11 33:15 important 14:20 33:15 40:6 42:2 43:23 56:9 66:21 66:22	

30:24	intended	issued 20:9	56:8 61:18	L
81:13	63:1 78:17	issues 7:10	61:21	land 6:4
individual	intent 72:22	18:1 44:12	65:23	57:3
7:18 15:4	intention	48:15 54:3	67:18	landlords
19:3,7,11	69:25	item 4:11	70:18	18:20
20:25 21:3	71:23	8:8 9:2	71:25 75:2	landlord...
24:3,25	interactive	10:16,18	75:8 76:12	70:13
individu...	20:14	10:21 12:6	81:5 82:18	language 5:9
56:5	interest	76:24,25	kind 46:23	5:22 9:21
individuals	33:21	78:1 81:17	47:16	9:22 15:13
20:19	48:18	items 17:9	59:21	18:19 75:9
24:21,24	interested	76:16,18	65:24,25	large 82:12
25:7,24	41:25 47:4		66:6,14	larger 24:13
26:8 27:20	83:15	J	67:4 68:23	26:19
33:16,22	interim 57:3	job 45:17	74:21	Larry 56:12
59:3 78:6	intermit...	Joe 53:6	78:16	69:16
individu...	79:19	69:9	knew 60:4	laundromat
16:5 21:2	interpreted	joint 20:9	know 4:8	51:13
industry	18:19	33:19	18:8 24:14	laundry
65:24 68:8	19:13 21:9	jump 4:21	40:12 41:1	51:12,12
informed	interpre...	8:18 42:14	41:10	Laura 2:11
39:13	64:9	62:10	43:13	77:21
initial	intersec...	jurisdic...	44:23 45:4	83:22
22:15	12:20	28:1	45:14	law 20:3
23:12	investig...	Justice	46:23	21:7 29:16
Inn 27:11,12	66:20	33:20	47:12	37:23
28:5	invited 11:3	Justice/...	50:18 51:3	40:13
inserting	involve	20:8	51:21,22	56:19 59:8
8:1	71:19	K	52:14	lawfully
inside 80:22	involved	K 3:4	54:24	37:16
80:23,23	14:14,16	keep 74:23	59:24	laws 37:7,16
insignif...	involves	keeping 9:11	60:19,22	lay 81:18
38:24	6:22	Kevin 44:17	60:23 65:4	lead 33:17
instance	involving	65:6 74:12	65:10	lease 63:16
24:13	14:11	key 42:8	66:12,20	65:17
56:15	63:24	Kiff 3:8 4:7	67:3 68:6	66:10,11
58:18	issuance	4:15,24	68:7,10,12	66:12
62:21	5:20	6:21 8:4,8	68:13,14	leased 37:11
75:19	issue 24:6	8:10 10:14	69:1,2,3	65:17
institut...	42:25	10:21 12:5	69:12,22	leases 37:10
33:18	51:22,23	17:21	70:18	65:8
institut...	51:23,24	42:13,14	71:22 74:3	leave 67:3
30:15	51:25	43:6,10,16	74:14	legal 66:2
33:23	53:23,24	48:3,7	76:12	67:14
insuffic...	62:7,13,17	49:17	80:12,13	76:22
30:10	64:8,8	52:21	80:16 82:5	legality
intend 36:19	74:4,9	53:15	known 64:5	63:25
82:1	82:11	55:18 56:4	knows 58:1	legitimate

lengthy 43:22	limitations 73:21	27:7 28:21	30:17	man 67:5,21
lesser 46:17	limited 5:3	28:25	31:13,24	management 5:25
letter 65:19	11:4 28:23	36:16,18	31:25	manager 3:8
letters 45:10 50:9	36:4,7	39:15	32:17,19	9:4,14
54:12	42:22	62:21,22	33:24	13:16 15:2
letting 77:15	limiting 37:25	68:4,4,10	36:21 38:9	15:8,22,25
80:16	line 5:12	68:12,17	44:6 46:23	17:8 22:20
let's 4:4,20	6:14 9:24	68:20,21	70:6	23:23
8:4,11	64:9	68:24	looked 8:21	38:14,15
42:11	lines 58:10	69:15	76:22	38:17 74:6
44:14,15	link 21:6,9	LLC 13:9	looking 19:23 29:4	managers 12:11
52:24 53:2	lion 59:16	loading 82:2	34:12 74:5	13:14
53:4 61:17	lion's 59:16	local 37:6	74:13	37:20
70:19 74:9	list 27:2	37:22	Los 3:5	49:20 51:4
75:9 76:10	listed 63:10	located 12:13 13:5	lose 26:3	75:14
77:20	listen 41:9	21:23	28:15,19	manner 9:18
level 14:24	literally 64:21	69:14	lot 47:3	57:5
24:8,16	litigation 63:24	location 22:1,5	50:11,12	Mar 77:22
25:19	little 5:17	23:3,6	50:16,18	Martin 55:4
28:22	6:22 12:2	32:6 35:8	55:10,10	55:4,15,19
32:10,12	12:18	44:20 46:3	55:22	56:6,11
34:24 35:1	31:12 51:7	47:11,20	59:16	60:15,16
38:24	52:14	50:7,8	61:22 63:2	61:11,23
levels 16:11	60:17	51:7,8	67:5,20	69:10
34:13,15	66:14	52:9 53:25	68:2,3,24	Mary 59:12
license 36:15	live 5:4	54:8 75:24	69:7,7,9	materials 81:4
licensed 6:7	20:25 21:2	locations 23:18	69:13	Mathena 56:12,12
27:6 29:14	21:3 25:7	36:20	love 50:7,8	62:10
36:16	28:19,24	44:13	50:8 66:23	69:16
66:17	45:11	52:12 60:3	66:23,24	Mathena's 63:11
licenses 36:19	50:15 53:7	log 62:2	66:24	matter 13:23
life 24:21	55:13 59:4	long 6:5	M	60:24 76:9
29:17,24	63:14	18:3 41:24	machine 83:10	matters 14:19
29:25	66:21,22	42:3 47:16	mail 52:13	maximum 9:10
47:23	66:23	longer 10:6	main 53:10	75:11
light 43:7	77:21	39:14	maintain 15:13	McGary 18:17
75:20	lived 59:13	82:11	majority 62:18	mean 27:5,6
liked 29:21	lives 67:2,9	longer-term 63:7	making 42:17	29:6,7
limit 4:6	living 10:6	look 19:10	46:24	49:15
28:7 73:16	12:10,16	19:24	48:18	55:25 60:4
limitation 23:17	13:10 14:2	20:22	60:10	60:9 68:2
24:11	25:25 27:3	27:11	male 23:22	80:8
		28:12 30:4	51:2	

means 29:9	77:20 81:6	11:14 12:9	41:15 45:8	normally
50:20	Miramar 80:1	17:15	53:2 56:8	77:9
57:13	miscommu...	21:20	62:17 66:2	note 44:8
mechanical	7:22	24:17	76:11 78:6	48:25
58:12	misleading	26:23 30:6	78:9 80:20	53:14
Medical	6:19 7:23	30:16 32:1	81:14	61:22
17:14	misrepre...	32:2 34:9	needs 20:17	63:12
medium 32:5	6:19	38:7 41:17	20:18, 20	78:16
32:7, 9, 12	missed 60:1	mutually	29:19, 22	80:12
medium-term	69:21	5:12	34:16	81:20
63:8	misunder...	M-a-r-t-i-n	37:24	noted 42:17
meet 4:9	61:7	55:5 60:16	81:22	60:18
20:16, 20	misunder...		neighbor	79:16
34:16	48:4	N	35:23	81:20
41:14	mitigated	name 53:5, 6	neighbor...	notice 44:1
meeting	33:8 38:24	54:16 55:4	30:8 39:9	44:3 79:6
16:18	modified	59:12	neighbor...	noticed 77:1
meetings	10:12	65:13 68:8	33:13	noticing
15:9 16:20	modify 5:16	68:25	neighbors	30:22
16:22, 23	moment 57:12	77:21	35:14	nuisance 5:9
77:10	74:2	83:18	45:11 55:1	9:21
meets 19:1	months 16:4	Names 37:20	60:19, 20	number 5:1
member 77:15	46:12	nature 19:18	60:23, 25	10:17, 18
members 18:2	48:22	25:6 27:1	80:15	13:9 30:5
22:3 30:24	49:12	31:11 59:2	neither	36:4 49:19
43:17	54:20	near 69:14	83:14	62:1 63:6
mentioned	70:23 71:2	nearby 14:6	new 5:20 6:2	63:21
12:21	71:9	14:10	6:5 10:3	72:14 79:3
39:12	moratorium	60:19	Newport 1:10	numbers
64:24	37:15	nearly 38:19	2:8, 8, 9	37:25
68:15, 23	morning	necessary	3:3, 7, 10	
merely 57:1	15:19	18:14, 22	3:10 4:1	O
Mesa 69:5	Morningside	19:6, 12	12:8 17:15	oath 7:14
met 73:20	62:22	20:23	24:17 30:5	83:9
81:1	move 4:10, 25	21:14 24:2	32:6 51:10	objections
MFR 12:16	8:4, 11	24:2 25:3	51:18 55:5	41:9, 9
21:23 32:8	11:10, 11	25:23	62:19	obligation
microphone	46:22	27:19, 23	66:25	72:11
7:13	47:11	28:3	nice 59:9	OBORNY 3:9
Millsap 2:11	move-in 9:17	necessit...	night 74:20	observation
83:22	move-out	71:3	nights 15:21	56:14
mind 42:1	9:17	necessity	nine 69:1	observat...
58:3 60:16	moving 30:3	20:22	Ninth 24:5	53:18
69:20, 25	44:14 46:7	21:12	noise 74:20	57:22
minor 49:24	50:24	24:19	non-agenda	82:13
minute 60:15	multi-fa...	25:10 26:4	76:16, 17	observe
81:8	29:8 32:9	need 17:3	non-conf...	56:15, 25
minutes 11:5	Municipal	24:14	33:5, 8	73:19
		26:16		

obtain 36:15	62:6	37:6	38:3 49:16	o'clock
obvious	Officer's	operates	Orange 51:15	74:22, 22
60:22	77:14	13:10, 22	order 24:15	
74:16	official	operating	62:20	P
Obviously	13:21	6:6 21:25	Ordinance	painful 18:4
28:10	off-street	22:5, 7, 20	8:11 10:25	paragraph
occasion 7:4	82:2, 4	28:1 29:19	13:4 22:12	22:17
occupancies	oh 25:17	32:24	26:7 33:4	park 9:15
29:10, 22	55:19	37:21 71:9	63:22, 25	parking 9:8
29:24 30:1	57:15	operation	64:3, 5	9:12 14:8
occupancy	58:19	12:10 13:6	organiza...	15:23 17:6
5:3 29:12	61:11	13:7 14:18	16:23	30:10
29:15, 18	71:21, 22	25:6 39:21	originally	35:25 36:1
37:18	72:1	41:15	36:2 46:19	36:9, 11, 13
occupants	okay 8:4	48:24 59:2	65:21	37:24 38:2
14:14	10:14 42:8	73:11, 16	66:18	38:6, 21, 22
49:13, 14	43:24 50:3	75:5	67:12	39:2, 3
75:20	50:23	operational	outlined	74:24 78:1
occupied	52:17	32:25	56:2	78:19 79:8
75:5	67:19 70:5	36:23, 23	overabun...	79:16, 18
occupy 9:3	72:16 75:9	operations	68:11	79:22 81:1
38:7	75:15	13:4 16:12	overall 17:5	81:13 82:2
occupying	78:19	operative	overconc...	82:4, 12
22:7, 21	80:25 81:7	4:25 6:23	33:17	part 17:16
23:23, 24	ones 58:23	operator 9:5	39:10 54:2	20:24
61:8	76:1	15:5 17:6	55:11	33:17
occur 71:2	one-year	27:13	57:10	42:19
82:8	23:9 49:14	40:22 41:1	58:16	48:14 73:1
occurred	ongoing 80:6	41:15	67:20	79:11, 13
14:11, 14	on-site 5:18	56:23	overly 56:21	80:11
Ocean 6:10	9:4 16:15	operators	owned 13:8	particular
9:22 13:9	23:23	80:9	61:5, 8, 8	13:6, 7
13:20, 22	36:10, 11	opinion 7:3	65:14 69:1	23:3 29:21
61:9 62:25	37:24 38:2	34:5 35:6	owner 6:5	29:22 30:1
65:9, 11, 13	38:14	opportun...	66:7 70:7	41:11
65:16 70:7	51:12	26:24	80:7	65:13
October 14:2	open 43:1	28:24 47:6	owners 14:6	particul...
offer 28:20	52:24	63:6, 10	37:20	7:9, 24
offered 66:6	81:10	opportunity	45:14	75:20
office 77:5	opened 11:4	18:15 19:7	65:14	parties
Officer 1:9	37:9 76:22	21:7, 10	ownership	83:16
7:1, 17	77:1	24:3 25:1	5:23 6:1, 5	partying
8:13 10:4	opening	25:7 27:20	13:10 62:9	50:10
11:5, 7, 23	80:18	53:1 59:4	65:2, 7	passed 22:10
17:22 34:3	operate 33:1	61:19 67:6	owner-oc...	80:10
40:22 42:5	46:12, 22	67:7 77:23	13:1	passionate
74:4	63:16	opposed 57:1	owns 65:9, 15	67:2
Officers	operated	option 18:21	65:18	patio 51:17
				51:17

PATRICK 3:4	31:17,22	46:20 47:1	6:1 24:8	8:16 10:10
pattern 31:6	31:23	47:19	24:13,16	27:19 43:7
37:21	32:17,18	59:19 60:5	25:16,19	69:24
patterns	32:19,20	66:1 67:2	34:13,15	78:21
29:22	32:22 33:4	71:9 74:13	34:24 35:1	pretty 45:15
pause 78:16	33:10,24	74:23 83:7	portion	45:18
Peninsula	34:3,5	placed 33:22	17:23 24:1	47:25
32:6 54:18	35:9,16	83:9	26:23	50:13,15
55:6 68:25	36:11,24	places 36:11	Portland	55:21 61:1
69:5 76:2	37:1,2	66:21	18:17	65:23 66:4
people 7:13	38:23,23	67:22 68:3	position	66:8 67:10
25:24 43:2	39:5 40:13	69:11	7:16 23:8	prevent 39:3
45:6 46:21	40:15 41:4	plaintiff	28:6 57:14	81:10
48:10,21	58:12 60:3	28:2	57:20	previous
48:23	63:20 65:3	plan 5:11	61:13	14:9
59:21,22	81:21	30:13,13	74:10,11	primarily
60:22 63:7	permits	33:11 36:1	possibly	13:1
64:16	11:16	67:15	28:24	primary
66:13,21	32:23 41:4	planned 26:9	posted 8:24	27:17
67:6 69:4	65:22	Planner 3:9	post-con...	79:16
75:11	permitted	Planning	35:18	prior 30:22
78:12,14	12:14,16	5:24 32:4	potential	37:14
79:10	13:17	33:20	79:17	39:23,24
80:16	16:25 20:7	78:23 79:6	potentially	76:11 79:5
people's	27:14 41:5	play 66:1	56:23	83:6,8
67:9	41:5	played 16:10	PowerPoint	probably
perfect	person 18:15	please 10:20	17:22 18:5	36:8 40:4
54:24	64:10,11	53:5 77:18	22:17 27:2	46:22 71:5
period 22:12	78:14,25	plus 22:20	56:15	75:3 77:15
23:3,10	personal	38:14,15	practice	problem 9:20
35:12,16	17:1 36:1	74:5	37:21	problems
46:12	36:3,4	point 42:12	practices	14:8 55:11
49:14 58:8	78:13	43:21 45:2	18:14,25	procedure
72:15	personally	45:10	precedents	76:23
77:10	47:9	57:25	80:6	proceed
permanently	persons 9:4	63:11	premium	70:19
80:2	9:6 10:6	81:25 82:9	36:10	proceedings
permission	perspective	pointed 40:5	prepared	4:4 83:6,8
15:21	57:2	points 56:13	8:16 76:8	83:10
permit 5:2	photo 79:25	police 14:13	present 4:16	process
5:21 6:2,4	physical	49:7 52:7	28:2	20:15 31:4
6:13 7:8	5:19 10:1	56:1	presenta...	48:19 67:5
8:20,21	physically	policies	17:17,23	profanity
10:3 11:18	39:6	18:13,25	18:5 23:19	14:8
11:21	place 20:2,3	pony 6:9	40:1 42:12	program
12:17	35:10	populated	43:22 44:1	16:21
21:23 22:9	37:16	75:25	44:4,16	19:19 20:2
22:11 31:3	40:21	population	presented	31:12

62:20,23	proves 21:12	33:9,14	Question...	54:6 60:11
63:9	provide	34:19 35:9	11:6	60:20
progress	10:24	74:21	quiet 5:7	66:18,21
16:5	21:18 25:7	purposes	15:11 16:6	74:25
project	27:23 32:3	23:11 32:1	16:13	76:14 77:6
14:20	32:8 53:16	32:20,22	35:19,20	81:22
promote	59:3 79:25	33:6,25	52:13	reason 27:18
33:10	80:25	74:10	quite 44:24	31:5 60:5
prong 19:14	provided	pursuing	45:15 47:1	reasonable
20:22	15:23	57:10	47:3,12,14	8:14,19,22
21:15 26:4	16:15 17:5	put 20:2	50:16 51:6	9:2 10:8
30:4	26:25	35:10	52:11 54:8	10:18,22
prongs 64:23	37:20 79:3	36:14	55:20	11:7,8,13
proper 47:24	providers	42:24	65:22 66:4	11:17,21
54:5 76:23	18:12 69:7	45:10 52:5	66:15 68:3	12:7 16:11
properties	provides	59:15,19	68:9,14	17:23 18:9
12:24 13:2	56:19	60:5 61:12	70:3 82:10	18:12,22
45:15	providing	62:4 71:10	quote 28:5	19:4,12,24
property 6:9	57:8 58:21	75:14	58:24	20:4,6,12
12:22 13:8	79:5	81:15		20:20 23:5
14:6 35:22	provision	p.m 2:9,10	R	24:18
39:6 50:7	75:4	4:2,2,5,6	racist 15:13	25:24 27:9
53:13,18	provisions	5:7 15:19	raised 61:20	30:4 31:3
53:20,22	82:3,7	16:7,11	61:23	34:2,4,7
60:24 61:1	proximity	82:21	range 16:2	34:10 35:7
65:8 69:12	13:6 42:25		rapidly 4:11	36:17 37:3
69:12 70:7	55:13	Q	rate 46:19	38:20,21
80:7	public 1:7	qualified	61:2	38:25 40:7
propose	2:7 8:6,8	22:11	rational	40:12 41:7
41:14	8:9 11:4	42:22	28:8 60:10	41:18 42:6
proposed	11:23,25	49:25	reactions	44:1,3
5:22 6:15	17:2,9	quality	64:4	48:18
10:9 12:4	18:2,20	24:21	read 42:1	55:21
28:23	30:24	quasi-pe...	44:21 45:5	57:15
32:10 35:2	33:10 43:1	79:23	53:14	58:14 59:6
36:6,6,8	52:1,24	Quest 62:4	69:16	64:11,15
57:6 73:10	61:17	question	ready 10:12	64:21,22
79:1	76:15,19	24:6 55:24	real 66:22	71:7,18
prospective	76:21,25	56:7 60:12	68:8	72:23 73:3
25:14,15	77:3,4,16	64:20	realize	reasonab...
28:17,22	pure 48:18	70:20	62:17 72:4	19:14 25:9
34:23	purpose	questions	realized	26:5 30:3
protect	19:21 20:2	40:2,4	52:11	reasoning
33:15	20:13 26:7	42:10 48:2	really 45:19	28:11
protection	30:12	52:16,19	46:24 47:4	37:25
30:1 35:15	31:19,22	56:5 60:2	47:10,25	reasons
protections	31:24 32:3	61:19,22	50:22	63:19
37:2	32:17 33:5	62:12 65:1	51:20	69:13
		65:2 67:16	53:22 54:5	

74:16	62:24, 25	11:16	2:11 83:5	32:24
receive 17:7	63:7, 15	relates	reports 22:1	62:25
received	65:2, 8, 11	48:14	32:4 44:22	80:21 82:3
14:3 30:22	66:13 80:1	relation	49:7	required
30:23 39:3	Recovery's	28:18	represent	15:11, 16
39:19	6:10 10:22	relation...	64:16	15:18
receptive	reduces	70:10	represen...	16:17, 19
45:25	79:15	relative	78:10	16:22, 23
recommen...	reduction	83:15	represen...	17:12
5:16 22:15	75:20, 23	relief 12:8	64:10	20:21 21:8
23:13, 17	redundant	remain 35:7	request	21:13, 17
23:20	14:19	49:13 71:4	18:22, 25	26:13
24:11	referrals	remarks 11:3	19:2, 4, 5	30:16
42:18	69:3	remedy 72:18	19:10, 11	31:17
46:10 48:5	referred	remember	19:12, 16	32:23
48:13	13:20	8:19 42:1	19:24 20:6	34:10, 14
49:11	75:12	remind 58:10	20:12, 13	34:24
54:19 55:7	referring	reminder	22:4 24:2	35:12 39:5
73:10, 24	6:24	8:13	24:12	73:20
recommen...	refers 56:16	removal 81:3	25:10, 23	75:18
22:14	reflected	rent 80:15	27:17 30:4	76:15 79:3
54:22	10:1	80:18	30:17	81:19
79:10	reflecting	rental 13:1	31:10 42:6	requirement
recommended	6:3	50:12	79:2	11:18 18:9
25:19	reflection	rentals	requested	18:11
28:13 48:9	60:17	66:12	11:21 15:8	19:22 21:7
48:21	refrain	reopen 47:20	19:6 20:11	31:23
record 23:12	15:12, 13	74:10	21:19, 24	32:22 35:9
49:1, 5	refuses	76:19	24:7, 7	37:2 38:23
62:14	20:10	repeat 44:5	25:15	requirem...
65:20 70:6	regard 25:10	repeatedly	28:13	12:8, 15
83:10	53:24 55:2	18:18	31:14, 16	17:15 19:1
recoverees	regarding	report 10:19	34:13, 24	29:18, 25
75:7	30:23	14:5, 13, 17	35:1	36:23 38:6
recovery 1:8	regular	15:2 23:7	requester's	42:21 79:7
9:22 10:19	39:20	23:8 46:11	20:16	requires 6:8
11:12 13:9	79:22	46:17, 18	requesting	18:24
13:11, 20	regulations	48:6 53:8	12:15	21:21
13:21, 22	68:5 80:20	53:10, 11	24:13	26:21 33:4
13:22	reintegr...	53:15, 16	28:11	reside 13:17
16:24 24:9	33:16	63:5, 13	71:13	15:4 27:20
25:24 26:8	Reiss 53:6, 6	73:9 78:25	requests	63:7
29:12, 14	69:10	79:17	11:23	resident 5:3
32:14	reiterate	80:25	19:15 20:4	5:14 9:4
33:16, 22	55:9	81:17	64:21	9:13 12:11
48:10	reiterated	reported	require 6:2	12:11
49:25 50:1	20:9	39:16	10:3 24:7	13:13, 14
61:6 62:18	related	Reporter	24:14	13:15

14:10,10	47:8,9,19	75:10	54:25	secondly
15:2,3,8	50:15 69:6	retaliation	R-e-i-s-s	78:14 80:4
15:25 17:4	74:17 79:8	60:21	53:6	section 5:13
17:8 23:23	79:18,20	return 11:6	R2 12:13,22	5:22 6:23
49:20 51:4	80:12	review 5:20	21:25 22:5	6:23 8:25
54:17 55:5	residing	6:8 79:6	31:15,18	9:16 12:9
74:5 80:8	17:1 20:19	reviewed	31:19,24	19:9 24:18
residential	Resolution	24:5	32:2,15	33:9
11:16,19	6:16 8:2	RF3 29:7	R3 29:9	sections
12:23 13:3	8:15 49:13	RICHARDS 3:4	R3.1 29:14	4:25
21:21,22	73:16,25	ridiculous	R4 29:12	see 4:20
25:8 32:4	75:10 76:4	66:14		31:25
32:9 33:5	76:7,13	right 4:21	S	42:11 44:9
33:13	77:20 82:3	10:11,16	S 3:5	44:15 50:4
38:13 39:9	resolutions	17:21	safer 74:16	50:18
39:14	4:11,16	27:15,15	safety 29:17	55:22 56:1
54:25	10:10	42:7 49:10	29:25,25	56:12,13
58:25 59:4	76:11 77:3	51:7,11,14	33:10	59:9,18
64:13	respect 46:8	51:14,15	sanity 58:4	64:14 67:9
residents	49:19	52:3,22,23	Saturday	71:21
13:15,19	68:16 73:8	52:24	16:8	72:10
14:12	73:9,22,23	56:11	save 58:4	76:10 77:4
15:10,16	75:7,13	57:18	saw 4:19,20	seeking
15:18,20	77:19 82:7	61:11,14	49:24 78:9	15:17 34:7
16:6,17,19	respecting	61:15,17	saying 7:5	seeks 19:22
16:21,25	42:16	66:3 67:3	49:1 50:9	31:19,23
17:12	respects	67:21	58:2	seen 37:21
21:18 22:2	56:21	70:16,19	says 9:22	41:10
22:6 23:5	58:13	72:1 73:8	38:23 42:4	55:20
25:12,14	respond	74:8 80:6	48:6 49:8	sees 7:18
25:15,16	61:19	82:16	63:12	send 69:4
25:17,17	responded	rightly 63:2	70:22	sense 43:6
25:19,20	7:5	rights 71:6	80:23,23	sent 53:15
25:23	responses	72:23	scene 68:8	separate
26:11,13	54:11	rigid 58:12	school 15:17	71:20
26:21	responsible	rises 38:19	screen 8:12	77:25
27:15,16	17:13	room 8:13	Sea 62:22	separately
28:8,9,15	56:23	14:24 15:1	68:17	64:23
28:15,17	rest 76:1	79:24	second 22:16	served 6:1
28:19,22	restricted	RPR 2:11	33:14 44:9	service 63:1
29:20,23	13:14	83:22	secondary	services
32:11,14	restriction	rule 53:3	33:2,7	16:14,15
34:18,20	81:15	rules 15:6	34:6,7	sessions
34:23 36:1	restrict...	15:10	35:13	77:10
36:3 38:4	21:20	18:13,25	secondhand	set 15:6
38:7,15	result 19:17	60:11 68:5	35:21 37:4	36:24
39:18 45:5	26:18 30:9	74:17	42:21	73:14
46:5 47:2	31:10	run 6:4	51:21 81:3	75:19 76:2
			81:9	

76:3,8,24	simplest	48:10,17	68:23	specified
83:7	20:24	48:22	69:15	21:8 22:12
sets 16:23	simply 57:19	54:20 74:5	solid 77:13	spell 53:5
24:18 37:2	73:4	74:6 75:11	somebody	spirit 79:7
80:6	simultan...	75:20	40:19 58:2	spoken 78:7
setting 25:8	43:5	79:12 82:3	sorry 43:9	spots 74:24
59:4	single 12:25	six-and-...	50:18	staff 6:10
seven 5:10	22:22	58:22	55:14,18	9:12 10:10
9:23 29:13	23:25	six-or-u...	55:19 56:6	10:19 14:5
sexist 15:13	29:10,10	36:15	63:14	14:12 15:2
shapes 78:15	32:3,8	size 26:19	sought 73:14	18:3 22:3
shared 17:4	38:4,11,18	27:10	sound 29:5	22:6,14
54:13	63:13,14	28:12,13	sounds 75:5	23:7,10,20
shares 15:3	63:16 74:6	28:18 29:2	south 12:19	25:9,16,18
ship 52:14	single-f...	slide 27:3	so-called	25:22
SHIRLEY 3:9	12:25	small 21:22	62:21	28:23
short 77:12	sir 52:21	28:25	space 9:13	34:13,15
shorthand	70:18	smaller	38:3 82:11	36:7 44:21
2:11 83:4	82:18	26:10	spaces 9:12	46:10,11
83:11	sit 18:4	34:21	15:24 17:3	46:17,18
showing	site 4:20	47:20 51:7	17:3 79:4	48:5,5
27:22	8:24 12:19	smoke 35:21	79:12,13	49:10
42:25 54:9	62:2	37:4 42:21	79:16 82:4	52:19 53:8
sick 15:21	situated	51:18,21	Sparkletts	53:10,11
side 6:9	12:19	81:2,3,9	39:18	53:14,16
12:19	situation	smoking 14:7	speak 12:1	55:7 63:5
45:11	40:15 61:1	15:12	43:3,17,17	63:12 73:9
48:20	75:24	51:16 78:1	76:13	73:23
74:14	situations	79:14,15	77:16,23	78:25
75:14 76:2	71:25	79:23 80:3	78:12	79:17,18
sign 8:2	six 9:3	80:5,11,17	speaking	80:25
70:1,1,24	14:25	80:22	53:8 78:13	81:17
72:7 76:5	22:19 23:5	81:20,21	speaks 5:1	staffing
signature	23:17,17	82:7,8,12	5:23	5:18 15:25
10:12	23:22	smoothly	special	staff's
significant	24:11,12	44:10	32:24	14:11
27:24	25:17,19	sober 12:10	specialists	23:12
38:19 74:9	26:13,17	12:16	49:25 50:2	24:10
75:22,23	26:21	13:10 14:2	specific 7:5	25:18
signing 4:11	28:23 29:2	27:3,7	11:15 14:7	32:10,13
76:24	29:15	28:21,25	21:11	34:5,19
similar 9:21	32:11,14	36:16,17	30:13	35:1,6
13:23 25:6	36:12 38:2	39:15 54:2	59:14 62:5	49:17
27:1,21,25	38:4,7,14	62:21,21	69:11,14	54:19,21
29:5 36:8	38:15,17	63:8 67:1	specific...	74:11
37:22 43:8	42:20	68:4,4,10	12:7 19:25	standard
44:11,12	43:12	68:12,17	53:9,25	18:13
59:1	46:21	68:20,21	54:7 76:24	38:20,25

39:11	stick 53:2	30:10 39:1	sure 45:22	test 58:15
58:13 60:4	stop 20:7	39:3 61:2	47:17,19	58:16
65:24,25	51:15,21	substant...	47:24 52:1	59:18
standards	store 66:25	30:12	65:22,23	testifying
29:17	street 4:12	substitute	66:4 69:15	83:9
36:13,23	8:11 9:15	36:16	71:12	testimony
37:18	9:18 10:19	sued 63:23	surprised	6:19 7:2
38:22	10:23 11:2	sufficient	66:8	7:19,24
58:24	12:4,20,21	25:6 41:25	surrounding	65:5 78:5
start 4:21	13:5,8,25	59:2	12:24 33:3	testing 15:7
44:20	14:9,12,15	suggest	35:14 39:9	tests 8:20
57:21 65:7	17:24,25	57:19	System 62:4	8:20
started	21:24	suggested		Thank 17:19
52:25	22:15	34:15	T	18:6 42:9
57:21	23:15	suggesting	tag 12:2	50:4 52:23
state 6:8,25	25:17	71:7	take 7:17	54:14,15
29:16,21	26:16 35:2	suggestion	40:17 44:1	55:3 56:11
30:2 37:6	35:6 36:9	4:18 10:4	44:3,8	59:10,11
37:22	37:9 39:13	suited 39:7	45:19,21	60:13
40:13 53:5	42:17 44:2	summarize	47:16	61:14,21
66:17 83:5	44:5,18,20	4:18 12:3	57:19	70:5 73:7
stated 7:23	44:25 46:3	42:15	60:15	81:24
13:19 14:1	46:8 49:3	summarized	67:23	82:19
16:16	50:7,22	42:20	80:12	thanks 42:8
19:14	51:11 53:7	summarizes	taken 2:7	46:4 52:17
26:16,17	53:9 55:16	6:15	28:6 63:11	52:22
32:1 33:21	56:14	summer 50:13	83:6	72:17
36:2,4,18	59:13,15	59:21,23	takes 10:16	therapeutic
38:6 51:5	59:17	66:12	51:15	21:18
62:11	60:24 61:5	80:16	talk 61:16	24:15,23
statement	65:8 68:16	Sunday 16:7	62:14	26:21
20:9 33:19	68:17	supervision	talked 5:8	27:23 28:4
49:2	70:22 73:9	42:22	53:20	thereof
statements	73:22	supplies	61:23 66:7	83:13
7:13 45:7	strong 59:19	17:13	68:18,19	they'd 6:11
states 33:9	struggled	supply 25:5	76:1	thing 4:24
34:9 42:4	57:9	58:14,17	team 12:2	18:4 51:3
stating	subject	58:18,21	technical	51:16,20
45:12 64:1	12:19 13:7	59:1 62:15	17:18	53:14
71:15	13:23 15:6	support	television	56:17
stay 16:3	26:2 27:5	45:10	35:20	58:10 61:4
26:9,9	submitted	53:11	tell 39:17	66:3 69:16
34:21 67:6	26:12,15	54:19,22	41:24 66:9	things 5:6
staying	26:20 49:1	55:7	terminate	29:6 77:11
74:20	65:20	supportive	46:14 71:1	think 4:15
stays 16:2,4	subscribed	24:9	73:13	6:17 7:22
stereos	83:17	supposed	terms 57:6,8	14:19 43:6
16:10	substantial	67:14 70:1	71:11	44:6 46:18

47:6 48:7	15:17	trips 38:10	25:1 51:1	unit 14:22
50:21 51:4	22:12 23:3	38:12,14	52:14 63:1	14:22,24
52:10,11	37:17	true 60:20	types 29:18	14:24
54:5,20,23	45:20,21	truly 16:4	30:1	15:14
56:17,21	46:6,15	try 26:19	typical 16:3	22:21,22
57:22,24	47:24	43:24	16:8	22:23
58:3 60:15	49:14 56:9	63:18	typo 8:25	23:24,25
60:17 61:2	56:9,10	trying 41:6		25:20,21
62:13,17	59:23 62:7	67:5 71:3	U	38:4,5,10
63:4 64:25	62:16 64:4	turmoil 52:8	Uh-huh 72:21	38:18,18
66:17	64:12 69:2	turn 17:16	unable 21:3	46:23
67:21	73:13	58:17	unaffili...	48:11 51:5
68:10,18	76:15	TV's 16:10	63:15	61:25
69:6 70:3	82:21 83:7	twice 18:6	unchanged	63:14,17
71:5 72:7	timeframe	two 9:11	5:7	74:6,7
72:22	54:20	10:18,21	uncomfor...	75:7 79:13
75:22	times 14:19	12:11	47:22	80:14,17
77:14,17	77:2 82:5	13:14,22	underlying	units 9:3
78:9 80:3	today 4:5	14:22,23	40:10	12:12
80:18	13:24,24	14:25	undermine	13:12,16
81:14,22	28:11	15:24 17:3	20:1,13	14:1,22
thinking	82:19	19:4 21:11	26:7 30:12	16:1 22:7
72:8	tomorrow	21:17 22:2	31:19,22	22:21
third 6:24	57:14 58:2	22:6 23:23	32:22 35:8	23:23
THOMAS 1:9	ton 59:5	24:25	undermined	25:25
thought 50:3	67:22	25:16,18	31:25	32:11
thoughts	top 5:1	31:13,21	33:25	37:11 38:8
58:8 62:11	total 65:11	32:8,11	34:20 37:3	38:11
thousands	traffic 9:18	36:10,11	undermining	43:12
64:21	30:10	38:10	19:21	50:12
threat 78:13	38:22 39:1	39:11	32:15	51:18 75:4
three 9:10	39:4,16	42:15 43:4	undersigned	75:12
11:5 14:23	50:13	44:9 49:19	83:4	unlicensed
14:25 19:1	51:20,22	49:20 51:3	understand	21:21,22
19:5 25:20	transcribed	65:1,17	45:24	68:12
43:13	83:11	74:14,23	50:19	unloading
53:25 62:6	transcri...	74:24	57:12 60:9	82:3
65:18	83:13	two-car	69:17,23	unrealistic
77:20 81:5	transpor...	12:24	71:13,17	58:13
three-mi...	16:25 17:2	15:24	understa...	79:22
53:3	17:5	two-family	45:17	unreason...
Thursday	trash 39:20	12:22	49:18	19:15 26:6
16:7	39:24 80:2	29:10 32:3	67:13	untrue 45:6
tight 53:3	treatment	two-resi...	69:17,20	update 26:25
time 4:6 5:4	16:14,14	12:25	71:1	upset 52:7
5:12 6:14	62:20 63:9	two-story	undue 19:16	54:10
9:24 11:6	66:5,6,16	12:23	30:18 31:8	upstairs
11:11	68:21	type 4:17	unique 44:13	14:22
			58:21	

46:23	33:2,3,5,8	view 7:9	78:17,17	52:13,13
49:22	33:12	violation	79:21	58:21 66:5
51:17	39:11	37:22	ways 46:24	66:16,17
Urban 20:8	42:20 43:8	violations	Web 4:20	67:14
urging 4:24	44:11	5:9 56:1	8:24 62:2	76:15 77:8
use 5:2,20	54:25	visual 78:10	Wednesday	We 'v 65:17
6:2,3 8:20	62:15		1:11 2:10	we 've 27:11
8:21 9:11	79:19	W	4:1,5	28:14 29:3
9:14 10:3	usual 18:25	W 1:9	week 16:20	37:21
11:16,18	utilized	waive 57:18	59:24	42:25
11:20	14:2	71:6 72:23	weigh 7:17	61:23
12:17 13:3	U.S 19:8	walk 51:14	78:6,8	67:13 74:3
17:2,6		wall 6:9,9	weighed 7:2	74:25 76:1
18:15 19:7	V	Walnut 70:8	7:20	77:5
21:23 22:9	V 18:17	want 4:13,13	welcomed	whatnot
22:11 24:3	vacancies	18:1 26:6	65:4	50:10
29:21 31:2	28:1	26:6 41:19	welfare	whatsoever
31:15,16	value 61:1	43:12	33:11	65:15
31:17,18	69:12	45:19	went 10:2	WHEREOF
31:21,22	values 69:12	47:21,21	23:18 45:1	83:17
31:23 32:4	variance	47:22,23	64:19	willing 23:1
32:17,17	79:5	50:20 53:1	weren't	47:7,8,11
32:19,20	variations	53:23	69:10	50:21
32:22,23	8:24	57:25 58:2	West 4:12	53:13 67:4
33:4,10,24	variety 54:3	58:10	11:12	willingness
34:3,5	63:19 64:4	59:15,18	12:21	26:18
35:9,15	vehicle 9:15	61:15 67:7	13:25	70:24
36:17,18	vehicles 9:8	71:12	17:24 22:4	73:17
36:24,25	9:11 17:1	74:17,22	23:16,20	win 40:18
37:2 38:23	17:7 36:2	78:21	25:18 35:3	wish 75:14
38:23 39:7	36:5,7	80:15	42:18	77:18,20
39:15,15	veracity	81:13	43:18	wished 27:15
40:13	7:12	wanted 40:3	44:18	WITNESS
49:11 51:1	verbatim	76:13	58:19	83:17
54:21 57:3	83:9	wanting	76:14,20	witnesses
58:12 60:3	verified	43:19 50:4	78:20	83:8
63:20 65:3	10:7	wants 76:21	Wetherholt	Wolcott 3:8
66:13	verse 41:19	wasn't 53:15	48:25 49:4	17:17,19
70:22 71:1	version 4:20	60:2,5	49:8 55:16	17:19
73:4,18	versus 28:13	77:1 78:17	we'll 10:12	37:14
79:2,3,15	vested 80:7	waste 17:14	10:25 11:1	40:20 41:3
79:18,20	viability	water 17:12	11:10,11	41:23 42:4
80:3,6,16	21:15 24:8	WATSON 3:4	43:24	42:9 43:7
81:16 82:4	25:4 26:17	way 7:25 8:1	51:25	43:9,25
uses 12:14	28:3	43:15 45:7	we're 6:24	64:19,24
13:1 16:9	viable 21:15	46:5,22	9:1 29:3	71:12,18
16:13 32:2	26:14	51:6 52:5	36:25 41:6	71:24 72:2
32:5,9,23	46:25	65:20	42:17	72:9,12,16
		69:23 77:5		

72:18,22	56:24	70:23 71:2	2005 52:10	53:7,9
72:25 73:7	57:18	71:9	2006 14:3	55:19
74:3 77:7	67:25 73:4	12-Step 15:9	22:2 37:12	56:14
Wolcott's	73:12	16:18,20	2008 11:20	57:22
43:22	yearly 59:24	16:21	64:6	59:13,15
women's	years 53:25	124 10:19,23	2008-05 13:4	60:24 61:5
44:25	54:18 55:6	11:1 12:4	33:4	65:8 70:22
wonderful	65:18	13:8 14:12	2009 1:11	73:9,22
45:12	67:25 69:1	17:24	2:10 4:1,5	30-page 18:5
wondering	yellow 8:23	21:24	204 4:12	300 16:3
55:22 61:4	yesterday	22:14	8:11 13:25	3206 11:12
61:12	27:2	23:15	14:9 36:8	13:25
Woods 27:11		25:16	21 10:1	17:24 22:4
27:12 28:5	Z	26:16 35:2	21st 4:12	23:15,20
wording	zone 12:13	35:6 37:8	8:11 9:18	25:18
71:13	31:15,16	42:17	13:25 14:9	26:14 35:3
words 43:4	31:19	43:17 44:2	36:9 68:16	42:18
73:2	zoned 12:22	44:4,18	213 3:6	43:18
work 15:21	zones 21:23	53:9 56:14	22nd 11:20	44:18 46:3
41:12	zoning 29:5	57:22 58:8	24-hour	50:25 51:1
46:24 47:7	29:7 31:19	59:14	35:23	58:13,25
47:8,11,25	31:24	125 14:14	265 13	59:6 73:23
50:19,21	32:16 33:6	127 13:5	275 17	73:23 74:4
62:7 65:10	34:19	39:13	284 2:4	75:11,12
67:5 75:1	64:18	13.44 38:11	29th 13:5	3300 2:8
82:6	73:20	15 27:16,19	39:13	3:10
worked 62:16		55:6	3	35 54:18
82:10	1	169 20		355 3:5
works 44:10	18:25	185 3,4	3 76:2	3604(f) (...)
worms 80:19	1/2 73:23	13:17	30 27:25	19:9
worse 68:7	75:12	79:10	38:19	
worthy 62:13	10 12:11	19.19 38:15	30th 10:19	4
wouldn't	13:13 16:3	1977 59:13	10:23 11:1	44:5 15:1
47:17 67:7	16:6 22:2		12:4,19,21	4:00 2:9 4:2
71:7	25:16	2	13:8 14:12	40th 3:5
writing 71:1	48:13	2-E 81:19	14:14	42 19:8
written 15:5	49:13 60:8	20 1:11 2:10	17:24	435 80:1
wrong 37:10	64:8 74:22	4:1,5	21:24	437 77:22
wrongly 63:3	80:2	20.10.020	22:14	
	10-story	12:9	23:15	5
Y	28:7	20.91 11:14	25:16	5 15:19
yard 76:2	11 74:22	20.91A.010	26:16 35:2	5-BE 81:19
yeah 46:9	1115 4:12	33:9	35:6 37:8	5:47 2:10
49:15	76:14,19	20.98 11:15	42:17	4:2 82:21
67:21	78:1,2,20	34:9	43:17 44:2	50 12:20
75:17	12 16:7	20.98.025	44:4,18,20	545 16:2
year 35:8	46:12	75:18	44:25 46:3	
47:14	48:22	200 55:15,18	46:8 49:2	6
56:19,22	49:12		50:7,22	64:6

6-C 81:19 60 6:12 626-8484 3:6 644-3002 3:11 644-3215 62:2 65 68:18 7 7th 78:21 75 28:8 8 8 5:7 16:7 8:30 15:19 9 9 5:7 16:11 90 16:2,16 16:19 900 58:19 68:17 90071-3101 3:5 92658-8915 3:10 9266 2:12 83:23 949 3:11				
--	--	--	--	--