

ORIGINAL

PUBLIC HEARING ON
THE KRAMER CENTER AT NEWPORT BEACH
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
WEDNESDAY, APRIL 29, 2009



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7 Public hearing was taken on behalf of
8 the City of Newport Beach at 3300 Newport Boulevard,
9 Newport Beach, California, beginning at 4:35 p.m., and
10 ending at 6:25 p.m., on Wednesday, April 29, 2009, before
11 LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
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LAWYER'S NOTES[illegible]

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2
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1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, APRIL 29, 2009

2 4:35 P.M. - 6:25 P.M.

3
4 MR. ALLEN: All right. We're going to reopen
5 the hearing on the Kramer Center at Newport Beach's
6 reasonable accommodation. I'm Thomas W. Allen, the
7 Hearing Officer appointed by the City for this matter.
8 It's Wednesday, April 29th, and we have reconvened in the
9 fire department conference room after suffering a power
10 outage in the City Council Chambers.

11 Everyone's cell phone is a turned off once
12 again, I take it. So let's proceed. Staff has an
13 announcement, and then proceed with a report, please.

14 MS. WOLCOTT: All right. I'm Catherine
15 Wolcott, Deputy City Attorney. I'm here on behalf of
16 Dave Kiff today, because Dave is in Sacramento testifying
17 on the Harmon Bill involving group homes.

18 We wanted to announce that we are continuing
19 two of the hearings that were scheduled for tomorrow for
20 Balboa Recovery. 204 21st Street will still be heard
21 tomorrow at 4 o'clock in the City Council Conference
22 Chambers. Balboa Recovery's facilities at 3206 West
23 Balboa and 1240 30th Street will be continued.

24 MS. OBERMAN: May I ask a question or
25 clarification? Does that mean that each of these aren't

1 going to be considered as separate uses?

2 MS. WOLCOTT: There were separate applications
3 submitted for each one, yes.

4 MS. OBERMAN: Okay. And just confirming if --

5 MS. WOLCOTT: The staff report for 124 -- 204
6 21st Street was set for today. Staff reports for the
7 others are not complete.

8 MS. OBERMAN: Okay. Thank you.

9 MR. NICHOLS: It doesn't -- I mean, this
10 absolutely falls within an integral home.

11 MR. ALLEN: Yeah.

12 MS. WOLCOTT: That's something that we can
13 address tomorrow. This is on a different facility. This
14 is just an announcement of the continuance, so that
15 any -- it was a courtesy to anyone in the room who was
16 planning on attending tomorrow.

17 MR. NICHOLS: On the hearing, you're talking
18 about?

19 MS. WOLCOTT: Yes.

20 MR. NICHOLS: But this one you're expecting to
21 carry over anyway, right?

22 MS. WOLCOTT: We will deal with this when we
23 open this one.

24 MR. NICHOLS: Okay.

25 MS. WOLCOTT: If you're referring to the Kramer

1 Center.

2 MR. NICHOLS: Right.

3 MS. WOLCOTT: Agenda item one, Kramer Center of
4 Newport Beach. This is one facility and two duplexes,
5 and this is a hearing on reasonable accommodation
6 requests.

7 Just to give you an agenda of how we are going
8 to go through at process today, first, Janet Brown will
9 give the Planning Department summary. I'll give a brief
10 background on Chapter 20.98. Then I will be doing the
11 presentation of Kramer Center's reasonable accommodation
12 request and highlighting some of the staff's analysis on
13 it. Then there is the Applicant's presentation. There
14 is no limit on the time for Applicant's presentation.

15 Then we will have the public hearing opened.
16 At that time, any member of the public who is present in
17 the room and wishes to speak may speak for maximum of 3
18 minutes. And we ask that you identify your name and
19 spell it if it's difficult to spell for the Court
20 Reporter so that we have it on the record.

21 Then we'll close the public hearing. The
22 Applicant can return to rebut or clarify comments. Then
23 there will be a period of questions from the Hearing
24 Officer to the Applicant or City staff. City staff will,
25 to the extent that we can, answer any questions that were

1 raised during the hearing by member of the public or by
2 Applicant, and we may have some questions for Applicant
3 ourselves.

4 Then the Hearing Officer will make his
5 determination, which will be to approve the request, deny
6 the request, or continue the hearing to a date certain.

7 Now, I'm going to pass the baton to Janet Brown
8 to give -- oh, the other thing. When Janet is done
9 giving her presentation, I will also be reading a
10 statement from Dave Kiff into the record, since he can't
11 be here today.

12 MS. BROWN: Thank you. Good afternoon, I'm
13 Janet Brown with the Planning Department. I'd like to
14 start by giving a brief background on the Kramer Center.
15 This is an unlicensed sober living facility providing
16 housing for up to 12 individuals in a duplex with six
17 individuals in each unit located at 207 28th Street.

18 Treatment for the residents at 28th Street
19 facility is provided at Kramer Center's licensed facility
20 located at 3388 Via Lido here in the City of Newport
21 Beach. The facility was established in December 2006.

22 As noted in the staff report, Applicant has
23 demonstrated a past pattern of violating state and local
24 laws with regards to licensing and permit requirements.
25 These violations include the housing of minor clients in

1 November of 2006 at the subject property prior to
2 obtaining the proper license from the Department of
3 Social Services.

4 In 2006-2007, the Department of Social Services
5 and Department of Alcohol and Drug Programs investigated
6 the Kramer Center. Both State licensing agencies issued
7 fines and administrative citations to the Kramer Center
8 for violations of state law relating to operating
9 unlicensed while advertising as a licensed facility.

10 Other code violations related to the current
11 operation facility that are known to the City include a
12 fire safety violation that was cleared by reinspection of
13 the facility in 2008, and the failure of Kramer Center to
14 apply for a Federal Exception Permit as required by the
15 City at the time that the facility was used to house more
16 than six resident/clients on-site.

17 In May 2008, pursuant to the requirements of
18 Ordinance 2008-5, which was adopted by City Council in
19 January of 2008, the Kramer Center applied for an
20 application for a Use Permit requesting to continue the
21 operations at the residential care facility for up to 12
22 male and female resident-clients.

23 Public hearings for the Use Permit were
24 conducted on December 10, 2008, and on January 22, 2009.
25 The January 22, 2009, staff report provided details

1 regarding past violations of state and local licensing
2 and permit requirements, and included a recommendation
3 that the Hearing Officer deny the Use Permit because
4 staff was unable to make all of the required findings.

5 Specifically, staff could not make the finding
6 that the use conformed to all of the applicable
7 provisions of Newport Beach Municipal Code Section
8 20.91A.050, which requires that no person with an
9 ownership or leasehold interest or group participates in
10 the operation of the facility will have a demonstrated
11 pattern or practice of operating similar facilities in
12 violation of state or local law.

13 At the January 22, 2009, public hearing, the
14 Applicant requested a continuance for one week to January
15 29th. And on January 28th, the Applicant requested to
16 withdraw their application for a Use Permit.

17 The Applicant has now submitted an application
18 for reasonable accommodation, which is the subject of
19 this hearing today. Applicant has requested an
20 accommodation from the requirement from Section 20.10.020
21 of the Municipal Code to allow the continued operation at
22 the sober living facility.

23 This section of the Code establishes land uses
24 that are permitted by right, conditionally permitted, or
25 not permitted to be in a residential district within the

1 City. The use of the Kramer Center would be classified
2 was a residential care facility general.

3 And per the land use regulations of section
4 20.10.020 this use would only be permitted in the MFR
5 district with approval of a Use Permit. However, in
6 accordance with State and Federal Fair Housing laws, a
7 disabled persons or providers of disabled individuals may
8 request reasonable accommodation of the City's zoning and
9 land use regulations when needed to provide an individual
10 with a disability in equal opportunity use and enjoy a
11 dwelling.

12 Under both State and Federal Fair Housing laws,
13 City's have an affirmative duty to provide reasonable
14 accommodation if the request is made by or on behalf of
15 disabled individuals, the accommodation in necessary to
16 afford the disabled applicant or individual equal
17 opportunity to use and enjoy a dwelling, and the request
18 is reasonable.

19 Cities may find an accommodation request
20 unreasonable if granting the request would result in a
21 fundamental alteration in the nature of the City's
22 program, often described as undermining the basic purpose
23 which the requirement seeks to achieve, or would impose
24 undue financial or administrative burden upon the City.

25 Pursuant to section 20.98.025 of the Municipal

1 Code, the Hearing Officer is authorized to approve,
2 conditionally approve, or deny an application for
3 reasonable accommodation based on five findings, all of
4 which are required to be made in order to grant the
5 reasonable accommodation.

6 In this staff report before you today, staff
7 has indicated that it could be possible to make the
8 required findings if the proposed alternative
9 accommodation were to be adopted.

10 That alternative accommodation includes the
11 reduction in the size or population of the facility to
12 six residents and one full-time on-site staff member, who
13 would be on-site at all times when residents are present;

14 The six residents housed within six bedrooms at
15 the entire duplex building or in one unit of the duplex,
16 with the other unit occupied by a single housekeeping
17 unit;

18 And the restructuring of the operational
19 characteristics of the facility, by leading the
20 involvement of the current administrators, and requiring
21 that a qualified, experienced and reputable administrator
22 be employed, who can ensure a professional and well-run
23 facility that can maintain compliance with state and
24 local laws.

25 Staff makes this recommendation with great

1 concern regarding the ability to enforce the terms of the
2 proposed accommodation given the current administrator's
3 past pattern of violating state and local law relative to
4 licensing and permit requirements.

5 Without the change in the operational
6 characteristics, with the appointment of a qualified and
7 reputable administrator, the finding that the
8 accommodation will not resolve to have any fundamental
9 alternation in the nature of the City's zoning program
10 cannot be made.

11 And further, it would undermine one of the
12 basic purposes of Ordinance 2008-5 which it seeks to
13 achieve, and that is to ensure that unlicensed
14 residential care facilities purporting to serve the
15 disabled are operating in compliance with city, state and
16 federal laws and regulations.

17 That concludes my presentation, and I'm going
18 to turn it over now to Catherine Wolcott of the City
19 Attorney's Office.

20 MS. WOLCOTT: I'm going to read into the record
21 a statement from Dave Kiff, Assistant City Manager.
22 Beginning quote.

23 "I regret that I'm not with you today. As
24 staff member for the City considering this
25 reasonable accommodation application, I note the

1 City's duty, according to case law and guidance
2 from the U.S. Department of Housing and Urban
3 Development, to make every effort to accommodate
4 the rights of persons in recovery to reside in
5 housing of their choice in our community.

6 "As staff has reported, it is feasible to
7 accommodate this use in our community within the
8 context of our Ordinance without making a
9 fundamental alteration in our Ordinance with two
10 clear limitations. One, to limit the persons in
11 recovery here to six persons across the entire
12 duplex building. And two, the two persons
13 integral to the Kramer Center's operation,
14 Mr. Kramer and Ms. Berner, not be involved in
15 the facility's operation in a managerial
16 capacity.

17 "It is with this latter limitation that I
18 have the greatest problem, given that
19 Mr. Kramer, with Ms. Berner's assistance,
20 operated an ADP licensed treatment facility just
21 a few short blocks away from 207 28th Street,
22 and that they have housed persons at 207 28th
23 Street for the sole reason for residing at 207
24 28th Street is to get treatment at their
25 licensed facility.

1 "I cannot envision a straight-face scenario
2 where Mr. Kramer and Ms. Burden can appropriate
3 distance themselves from management at 207 28th
4 Street. I'm open to hearing how this could
5 occur, but I can't see it today. I also can't
6 see how the City would enforce the terms of
7 whatever limitation was agreed to.

8 "The only practical way, again that I can
9 see, for this second limitation to be
10 appropriate is for Mr. Kramer and Ms. Berner to
11 sell the facility at 207 28th Street. At that
12 point, arguably, this application can be treated
13 as a new applicant or a new facility.

14 "Again, though, that said, I'm trying to
15 keep an open mind to hear how I could be wrong.
16 But as the Manager of the Code Enforcement
17 Division that ultimately would be obligated to
18 enforce the conditions of the reasonable
19 accommodation, I do want to stress to the
20 Hearing Officer the staff's concerns about my
21 staff's ability to enforce this limitation.

22 "I do not believe that Mr. Kramer or
23 Ms. Berner have established a relationship of
24 trust with us, and I'm challenged to see how
25 that could be improved going forward.

1 "Sincerely, Dave Kiff."

2 And I will talk a little more about Mr. Kiff's
3 concerns as we get on with all the staff's concerns as we
4 get on with the presentation.

5 Those of you who have sat in these hearings
6 before have heard some of the background on reasonable
7 accommodation. For anyone who has not been in these
8 hearings, I will briefly give some background.

9 Under the Federal Fair Housing Act, as
10 Ms. Brown has said, unlawful discrimination includes
11 refusal to make reasonable accommodations in rules,
12 policies, practices or services, when such accommodations
13 may be necessary to afford a handicapped person with
14 equal opportunities to use and enjoy a dwelling. This
15 puts in affirmative duty on the City.

16 The Federal Fair Housing Act, FFHA, requires
17 cities to make exceptions from usual rules, policies, and
18 practices under a certain set of circumstances.

19 One, when the request to made on behalf of a
20 disabled individual;

21 Two, it the request is reasonable;

22 Three, if the exception, the accommodation, is
23 necessary to afford a disabled individual an equal
24 opportunity to use and enjoy a dwelling.

25 Now, usually we don't have the extreme

1 difficulty establishing the first prong of that analysis,
2 because we ask the Applicant to submit a statement under
3 penalty of perjury that everybody who will reside in the
4 facility will be either in recovery from alcohol or drugs
5 and therefore, under the Federal Code of Regulations
6 defined as disabled, or will have some other disability,
7 if it's a different type of handicapped facility. The
8 source of that is 42 U.S. Code 3604, for anybody who
9 wants to look it up.

10 Requests are considered unreasonable if
11 granting the request would either impose undue financial
12 or administrative burden on the City, or result in a
13 fundamental change in the nature of the City's zoning
14 program or any City program.

15 And that is why we do the analysis that we do
16 at length in the staff report, because we have to analyze
17 both the reasonableness prong and the necessity prong.

18 Fundamental alteration is also described
19 as -- "fundamental alteration" being the undermining of
20 the purpose of the Zoning Code. Fundamental alteration
21 is also described as undermining the basic purpose which
22 the requirement seeks to achieve.

23 Something we did not discuss in the PowerPoint
24 is is that when a City or a housing provider has found
25 that a request is not reasonable, they are also

1 considered to be under an affirmative duty to engage in
2 an interactive process with Applicant.

3 And if the request made is not reasonable, we
4 have a duty to try to find a request that could be
5 reasonable, that wouldn't fundamentally undermine the
6 purpose of the restriction that was put in place to
7 achieve.

8 And that is what we have done in this
9 situation. We have read -- this is from -- a direct
10 quote from the joint statement of the Department of
11 Justice and the Housing of Urban and Development there.

12 When a government entity refuses a requested
13 accommodation because it is not reasonable, it must
14 discuss whether there are alternate accommodations that
15 would meet disability-related needs of the requester.
16 And the disability-related needs of the requester are
17 important in this analysis.

18 If the alternative accommodation must meet the
19 needs and -- would meet the needs and it's reasonable,
20 the government entity must grant the accommodation. And
21 we were informed by the Department of Housing and Urban
22 Development investigator last week that they are -- this
23 is an affirmative duty on our part.

24 We have engaged in an interactive process with
25 Applicant. We looked at what possible accommodations

1 could be made that were reasonable, that did not
2 undermine the fundamental purpose of the restrictions in
3 the Zoning Code. And we focused on the needs of the
4 disabled residents, not on the particular operator.

5 And we will -- that was how we came up
6 with -- the entire team came up with the recommendation
7 to limit to six per dwelling unit or six per the entire
8 building, and to have the operational restrictions on the
9 two individuals who have the past pattern and practice of
10 illegal behavior, which made us unable to make the
11 finding in the Use Permit hearing. We'll talk more about
12 that later.

13 To do the necessity analysis, the first
14 question is, will the accommodation allow the disabled
15 individual to live in a dwelling?

16 In this case, we looked at both the current
17 residents and prospective residents. In the category of
18 prospective residents, we looked at the level of
19 population requested by the Applicant and the level of
20 population recommended by the staff.

21 As to current residents, this use is currently
22 subject to abatement. If we abated the facility now, the
23 current residents would lose their current housing. And
24 for this reason, as in past reasonable accommodation
25 hearings, we have recommended that current residents be

1 permitted to continue their stay until they have
2 completed the program.

3 As to prospective residents, we will get into
4 whether it's necessary with 12 and whether it's necessary
5 with six a little farther on.

6 The next question, would the
7 individual -- disabled individual be unable to live in
8 the dwelling without the accommodation? Is there a
9 direct link between the accommodation and the required
10 equal opportunity? And the equal opportunity is what
11 Federal law requires that we provide.

12 Two prongs that Courts have looked at when they
13 are assessing equal opportunity is, is the required
14 accommodation necessary to make the facility financially
15 viable? And does the requested accommodation provide a
16 therapeutic benefit? Is there a direct relationship
17 between the accommodation requested and some sort of
18 alleviation of the disability-related needs of the
19 Applicants?

20 This is also where I'm going to put the
21 discussion of the California Building Code issues which
22 come into our reasonableness analysis.

23 If there are -- well, relevant occupancy types.
24 As many of you who have read the staff report probably
25 know, the California Building Code defines -- describes

1 occupancy with numbers that sound kind of like a zoning
2 code classification, but they are very different.

3 The Building Code does look at the use that's
4 going on inside a particular building, and they
5 classify -- what we would call use in land use, they call
6 an occupancy type. And they have come up with specific
7 controls and life safety protections for different
8 occupancies, different requirements, to protect at the
9 level that's appropriate for that type of occupancy.

10 R3 occupancy, under the Building Code, is
11 single and two-family occupancies, so single family homes
12 and duplexes.

13 R4 occupancy are recovery facility occupancies,
14 which are housing seven or more disabled individuals
15 within a building.

16 R3.1, are recovery facility occupancies housing
17 six or less in a building.

18 State law establishes the construction
19 standards and life safety requirements based on their
20 operating characteristics and their needs.

21 Go back for a second.

22 If the Kramer Center is housing six or fewer
23 disabled residents within the building at 207 28th
24 Street, it's an R3 occupancy facility. It's feasible
25 that they could meet the life safety requirements. They

1 are very similar to single and two-family occupancies.

2 If there are more than six, if there are seven
3 or eight or if there's 12, they are an R4 occupancy, and
4 there are different, more stringent, requirements for
5 life safety within the building. So that is one of the
6 reasons that we recommended no more than six.

7 We want to emphasize life safety requirements
8 are established by the State Fire Marshal. They are
9 enforced by the Newport Beach Fire Marshal, but the
10 Newport Beach Fire Marshal did not draft them.

11 The City has the authority to allow substitute
12 alternative materials, use and methods that will provide
13 equivalent protection, but we cannot waive that
14 protection.

15 As we discussed earlier, Applicant's requested
16 an exemption to the restrictions of the Newport Beach
17 Municipal Code section 20.10.020, which requires
18 residential care general unlicensed to be located only in
19 a MFR zones with a use permit.

20 The first analysis is, is this request
21 necessary to afford disabled individuals the right to use
22 and enjoy a dwelling?

23 Can a disabled individual live in the home
24 without the accommodation? If the answer is yes, they
25 can live in the home without the accommodation, then the

1 analysis stops there.

2 Does the facility require -- because -- I'm
3 sorry. I should clarify. If they can live in the home
4 without the accommodation, the accommodation does not
5 need to be granted.

6 Does the facility require the requested
7 accommodation at the requested population level to
8 achieve financial viability and supportive recovery
9 environment? And there's a 9th Circuit case that
10 discusses that at least a little is the City of Edmonds
11 v. Washington.

12 Our Municipal Code allows us to consider four
13 factors when we are considering this essay. One, whether
14 the accommodation will affirmatively enhance the quality
15 of life for individuals with a disability, which goes to
16 the therapeutic benefit analysis.

17 Two, whether the disabled individuals were
18 denied an equal opportunity to enjoy the housing type of
19 their choice without the accommodation, whether the
20 accommodation is necessary for financial viability, and
21 whether the existing supply of facilities similar in
22 nature and operation is going to be sufficient
23 to -- already there in existence, to provide the
24 individuals an opportunity to enjoy a dwelling of a
25 similar nature.

1 We analyzed the reasonableness and necessity of
2 this request with regard to the following categories, as
3 I mentioned earlier, current residents, prospective
4 residents at the Applicant's requested level and at
5 staff's recommended level.

6 Necessity, as we've discussed, current -- for
7 the current residents, we did find that there is
8 necessary for the current residents. We are not trying
9 to go in and abate while people are still in the middle
10 of their recovery process.

11 However, the Applicant has not submitted
12 evidence that requires more than six residents -- that it
13 requires more than six residents to be financially
14 viable. The Applicant has not submitted evidence that it
15 requires more than six residents for therapeutic
16 benefits.

17 The Applicant has expressed willingness before
18 the hearing to submit financial information. And the
19 Hearing Officer has requested Counsel for the City and to
20 the Applicant to provide further briefing on necessity,
21 specifically on the financial viability issue and on the
22 availability of other similar housing opportunities
23 within the community.

24 I believe the Hearing Officer has said that he
25 may be asking -- may be directing that there is a

1 continuance, so that we can have the chance to do the
2 write-up and provide him with this information.

3 To give a little bit of direction on where we
4 are going with our necessity analysis, however, I'd like
5 to give you some information from the case called Bryant
6 Woods Inn v. Howard County. This is a situation in
7 which, I believe, Alzheimer patients were being housed in
8 a facility where eight individuals could be housed by
9 right in a rezoning district. And this facility operator
10 wanted to increase from the amount that that County had
11 determined was appropriate to a higher amount.

12 The Court found that increasing the size of the
13 facility from eight to fifteen would provide a financial
14 benefit to the facility operator, but it was not
15 necessary to provide disabled residents with housing.
16 And also, that the plaintiff didn't carry its burden of
17 showing that the accommodation was necessary to provide
18 the disabled with an equal opportunity for housing.

19 Some of the significant factors that the Court
20 mentioned in this case were:

21 There were 30 similar facilities operating in
22 the jurisdiction which had a vacancy rate at 18 to 23
23 percent;

24 Plaintiff failed to present evidence that
25 expansion was necessary for financial viability;

1 And the plaintiff failed to show that the
2 expansion would be therapeutically beneficial for the
3 residents.

4 Also noted is that the Court looked at how the
5 Applicant's request could end up if it were taken to the
6 logical extreme of the Applicant's reasoning, which were:

7 "If Bryant Woods Inn's position were taken to
8 its limit, it would be entitled to construct a 10-story
9 building housing 57 residents, on the rationale that the
10 residents had handicaps."

11 Just because the disabled individuals would be
12 living in the building, we do not feel, means that no
13 reasonable restrictions can be put on the building.

14 Other necessity considerations. As to current
15 residents, we discussed.

16 Prospective residents would lose the ability to
17 live in this duplex, but they would not lose the ability
18 to live in other similar existing facilities. They could
19 have any number of options. If they want to live in a
20 12-bed sober living facility in a duplex, there are a
21 number of them that are provided within the City.

22 At the level proposed by staff for prospective
23 residents, six, there are limited alternative
24 opportunities to live in a small sober living
25 environment, but there may be some available in the City.

1 Mr. Allen has requested that the City provide
2 him with an updated list of the number of sober living
3 beds available in the City at this time. The last time
4 that we did a survey of this was in 2007. We agreed with
5 the Hearing Officer that that is appropriate, if we are
6 analyzing this under this approach.

7 So if this Hearing Officer directs a
8 continuance, we will be coming back with that updated
9 information. And that will give us more information
10 about what the opportunities are in the community to live
11 in a small sober living environment. We may find that
12 there are more than staff is aware of.

13 Other factors in reasonableness. Whether the
14 accommodation would fundamentally alter the character of
15 the neighborhood;

16 Whether the accommodation would result in
17 substantial increase in traffic or insufficient parking;

18 Whether granting the accommodation
19 substantially undermines any express purpose of the
20 General Plan or the specific plan;

21 And whether the accommodation would create
22 institutionalized environment due to the number and
23 proximity of similar uses.

24 We have required findings that we are making
25 under reasonable accommodation. We can only grant the

1 reasonable accommodation if all five findings can be
2 made. Those are:

3 Would granting a request impose an undue
4 financial or administrative burden on the staff? And our
5 initial answer to this was no, but there was some serious
6 reservations about that, particularly those reservations
7 highlighted by Mr. Kiff.

8 We proposed the alternate accommodation with
9 the condition that the two individuals who have been less
10 than forthcoming with us in the past and who have made
11 false statements on the record at that hearing would not
12 be involved.

13 However, we don't -- we have not determined how
14 to structure that condition in a manner that would not
15 create an undue administrative burden trying to enforce
16 it, trying to monitor and make sure that that condition
17 were being followed.

18 We had to make a recommendation, either yes,
19 you know, in favor of granting the accommodation or in
20 favor of denying the accommodation.

21 And we made the recommendation to grant with
22 reservations and with caution, leaving open that we had
23 not heard from the community on this issue, and we had
24 not heard from Applicant on this issue, and that we
25 needed all the information that we could get before we

1 made the final recommendation on what was appropriate
2 here.

3 Would granting the request result in a
4 fundamental alteration in the nature of the City's zoning
5 programs? In that situation, we'd look at what is the
6 request they are asking for, and would granting this
7 undermine the particular purposes of that request?

8 They have asked to be located in the R2 zone
9 with currently residential care facilities that are
10 unlicensed can only be located in an MFR zone. And
11 they've asked to be allowed to locate there without the
12 Use Permit, when our Zoning Code requires that they won't
13 get in an MFR zone with a Use Permit.

14 So we have to look at, what are the basic
15 purpose of the R2 zone, and will they be undermined if we
16 grant the accommodation?

17 And we have to look at allowing the use to
18 continue without a Use Permit. Would that undermine the
19 basic purposes -- the basic purpose of the Use Permit
20 requirement was put in place to achieve?

21 Purposes of the zoning, R2 and MFR Zones.

22 R2, the purpose is to provide areas for
23 single- and two-family residential uses per the quoted
24 section of the Municipal Code. This is a medium to high
25 density, depending on the location.

1 And MFR, the purpose is to provide for single-,
2 two- or multi-family residential uses up to 38 per units
3 per gross square acre, which is also considered to, by
4 our Planning Department, to be a medium to high density.

5 At staff's proposed level of density, which
6 would be either six residents in one unit, single-family
7 unit in the other, or three units -- three residents in
8 one unit, and three in the other, the medium level of
9 density would be achieved.

10 The purpose of the Use Permit is because when
11 uses with particular operating characteristics that
12 require special conditions, special controls, are located
13 in residential zones, we feel it's appropriate to apply
14 controls that will enable them to operate compatibly with
15 other uses in the area and to prevent the negative
16 secondary impacts on other residential uses there.

17 Ordinance 2008-05 requires the Use Permit for
18 all non-conforming uses in residential areas. The
19 purpose of this, as stated in the Ordinance, is to ensure
20 that the purpose of the Zoning Code is achieved, and that
21 adverse secondary impact to non-conforming uses are
22 mitigated.

23 The other purposes are to promote the public
24 health, safety and welfare, and implement the goals of
25 the General Plan uses do not change the character in

1 residential neighborhoods.

2 The other purpose and equally important is to
3 protect and implement the recovery and reintegration of
4 the disabled, in part by avoiding overconcentration that
5 would lead to institutionalization in the area.

6 There are also some operating conditions that
7 are in place in the Use Permit that are intended to
8 protect the living environment and the recovery
9 environment for the individuals who are residing in these
10 houses.

11 Would the purposes of the Use Permit be
12 undermined if this accommodation is granted? In other
13 reasonable accommodation hearings, we have recommended
14 that, with the appropriate conditions, the Use Permit
15 requirement would not be undermined, because our
16 Ordinance also allows the Hearing Officer to put
17 conditions on a reasonable accommodation that is granted.

18 The controls can be the same on a reasonable
19 accommodation as they would be under a Use Permit;
20 therefore, the control section is not undermined.

21 The reasonable accommodation, as we've
22 mentioned before, does not run with the land; therefore,
23 it is not a land use entitlement specific to the operator
24 and the particular use. Or if it's granted to an
25 individual disabled person, it is specific to that

1 specific disabled individual.

2 The staff analysis in this case was that with
3 the conditions, most of the findings required to issue a
4 Use Permit can be made for this facility. We had
5 reservations on some, and we are waiting to hear more
6 evidence before we complete our recommendation.

7 This is why we proposed alternate conditions
8 that we believe would meet the needs of any disabled
9 individuals who were seeking sober living in this
10 environment in the City of Newport Beach.

11 However, we have some areas of concern, as I've
12 mentioned. We have concerns about how to formulate
13 enforceable managerial conditions, we have concerns about
14 administrative burden, and we have concerns about the
15 client -- the level of client supervision that could be
16 provided so that the disabled individuals are not
17 adversely affected by the presence of approximately 13
18 alcoholic beverage outlets in a three block radius
19 surrounding the facility.

20 And we are looking forward to hearing the
21 Applicant's explanation as to why this would be an
22 appropriate location in that situation.

23 The conditions that we've proposed would be a
24 bed cap of no more than six clients in the building, with
25 one manager on-site at all times; that residents that are

1 present are to be control.

2 That second one was left there by accident.

3 Quiet hours from 10 p.m. to 8 a.m.;

4 Quiet hours for television from 10 p.m. to 8
5 a.m.;

6 No secondhand smoke detectable off property.

7 At the Use Permit hearing, the Applicant mentioned that
8 this was problematic, and that they weren't sure how they
9 were going to control secondhand smoke. That is a
10 concern of ours.

11 Another facility believes it may have a
12 solution in that it could -- while maintaining the garage
13 as clear for parking, that facility has said they believe
14 they could move the smoking area to the garage and put a
15 filtration system in the garage so that the smoke was
16 processed there and did not harm the neighboring
17 residents. So that is one option that the Applicant
18 might consider.

19 24-hour hour contact to address neighbor's
20 concerns;

21 Removal of specific individuals with
22 demonstrated past pattern of unlawful behavior from
23 managerial, administrative and therapeutic roles;

24 No residents with personal vehicles;

25 Garages clear for parking;

1 Compliance with all state and local laws,
2 including the California Building Code.

3 Mr. Kiff is interested in discussing the
4 possibility of a 90-day average client stay, because he
5 believes that longer stays within facilities promote a
6 more stable environment within the neighborhood.

7 Also, you're aware that the Applicant has
8 stated their intention of applying for a six-or-under
9 license with the ADP. A condition of any accommodation
10 granted would be that, if the Applicant can obtained a
11 six-or-under license with ADP, this would substitute for
12 any sober living facility that was permitted by the
13 reasonable accommodation. The reasonable accommodation
14 for the sober living would end at that time.

15 Then staff looked at whether or not, with
16 conditions, the use could conform to the operational
17 requirements of Newport Beach Municipal Code 20.91A.050.
18 And the reason we look at this -- it's a long chain of
19 reasoning.

20 In order to show that a reasonable
21 accommodation would not undermine the purposes of the Use
22 Permit, we have to look at what the purposes of the Use
23 Permit are, and we have to look at all of the
24 requirements that a Use Permit would place on people.

25 And if an Applicant could meet those

1 requirements anyway, then we consider that okay. Perhaps
2 the fundamental purpose of the Use Permit operational
3 standards is not undermined.

4 If the Applicant cannot meet all of those
5 requirements in the -- of the operational requirements
6 that would be required for a Use Permit because it's a
7 reasonable accommodation situation, the Applicant is
8 given an opportunity to explain why not being able to
9 comply with those requirements doesn't undermine the
10 fundamental purpose of why those requirements were put in
11 place in the first place.

12 So, for example, one of our -- one of the
13 factors that the Hearing Officer is allowed to consider
14 is, when he's determining whether or not a location is
15 appropriate for a recovery facility, is the proximity of
16 alcohol beverage outlets.

17 It doesn't mean that he has to make his
18 decision based purely on that, but it's a factor that our
19 Municipal Code says that he can consider. So the
20 Applicant will have an opportunity to explain why the
21 proximity of alcoholic beverages outlets does not
22 undermine a purpose of the Zoning Code.

23 Let's see. We believe the Applicant, with
24 appropriate technology, could probably -- if they are
25 committed to it, control secondhand smoke from being

1 detectable off the property.

2 We have some concerns about whether it would be
3 operated in compliance with state and local law. At the
4 level proposed by staff and the level requested by the
5 Applicant, it would comply with the Applicant's standards
6 of a Use Permit.

7 Number four we're having a problem with. Names
8 of managers and owners provided, none of whom having
9 exhibited a pattern or practice of operating similar
10 facilities in violation of state or local law, and the
11 Applicant can address that.

12 We also look at whether or not the use has
13 sufficient on-site parking for the use, and whether
14 traffic and transporting impacts have been mitigated to
15 an insignificant level.

16 It's a little different analysis in a
17 reasonable accommodation. This is a Use Permit standard.
18 The reasonable standard is, would traffic or -- traffic
19 or parking impact be increased substantially?

20 But under Use Permit, with a bed count of six,
21 they would be short one parking spot. If six were being
22 used in the -- if six were in one unit, and the other
23 unit were being occupied by a single housekeeping unit.
24 If there were three in both units, then they would meet
25 the parking requirements for a Use Permit.

1 In past applications of Use Permits, staff has
2 taken into consideration that the -- in many cases, most
3 cases, we are short. The Applicants do not have personal
4 vehicles. And if that is, in fact, the case, the City
5 has made some accommodations there.

6 The average daily trip for a duplex unit with a
7 single family unit living in it would be 13.44. Average
8 daily trips for a residential care facility of only six
9 clients, on-site manager, would be 19.18, which we
10 believe is comparable. If you go to six clients and a
11 single housekeeping unit in the other unit, you are up to
12 25.9, which is nearly double what the average daily trips
13 would be of the duplex.

14 The Applicant has an opportunity, however, to
15 describe their transportation policy and any reasons they
16 feel that this would not be a substantial increase in
17 traffic.

18 Under the reasonable accommodation, we can
19 consider these factors and whether they create a
20 substantial increase.

21 Required findings for a Use Permit, which we
22 are considering when we're analyzing a reasonable
23 accommodation, is whether the fundamental use -- the
24 fundamental purpose of the Use Permit is being
25 undermined, or whether the property is physically suited

1 to accommodate the use;

2 Whether the use will change the character of
3 surrounding neighborhood and create overconcentration,
4 particularly applying the APA standard;

5 And in this case, particularly whether the
6 impact from the neighborhood upon the facility can be
7 controlled.

8 As of the date of the staff report, no van
9 traffic impacts have been reported from neighboring
10 property owners. We may hear differently today. And no
11 deliveries. And the trash collection was done by the
12 regular City trash collection.

13 The questions remaining for staff, as we've
14 discussed, are how to structure and enforce the
15 managerial condition we've proposed;

16 Whether requiring the City to enforce the
17 condition is reasonable;

18 Whether the reduction in bed count protects
19 facility residents' recovery sufficiently;

20 And the financial viability of the facility to
21 supply questions.

22 If -- no matter how hard we've tried to find an
23 accommodation, any accommodation that we can come up with
24 or the Applicant's requests, even with trying as hard as
25 we can, we cannot -- if we don't find it, and we still

1 can't find that it's reasonable, then we are not required
2 to grant the accommodation.

3 And that is our presentation. All right.
4 That's the end of the staff report. If you have any
5 questions?

6 MR. ALLEN: I think I'll hold my questions
7 until we give Applicant an opportunity to make a
8 presentation.

9 MR. COOKSEY: Could I have that last screen up?

10 First of all, let me introduce myself. To
11 those of you who were not from the last hearing on this
12 matter, my name is David Cooksey. I'm a lawyer. I have
13 my law firm in Costa Mesa. I'm here to represent the
14 Kramer Center, and address the questions remaining, which
15 are up there on the screen.

16 We are willing to make the necessary managerial
17 changes and limit the ability for Mr. Kramer to be
18 involved in the day-to-day operation.

19 Michelle Berner will be moving on to other
20 things or in a limited capacity at Kramer Center. We
21 hope to be able to introduce new managerial personnel to
22 the City, so that they can at least feel some comfort
23 with the administrative staff which is going to be
24 dealing with the day-to-day activities at the residence.

25 In analyzing this request, I think it's

1 important that we understand that there was no treatment,
2 testing, counseling that takes place at the premises on
3 27th Street. All of that is taken care of at the 3388
4 Via Lido address, where Kramer Center has its offices,
5 has a large conference room, not as large as this one,
6 but adequate for the numbers that they are dealing with.

7 Under the circumstances, we feel that we
8 can make the City and the City staff comfortable with the
9 management, and we will work with them in every regard to
10 accomplish that.

11 As to the second point up there, we think that
12 it is reasonable for the City to grant us this request
13 for reasonable accommodation, because, really, having six
14 individuals in each duplex unit is no different than
15 having a family of six in each duplex unit. And keep in
16 mind, all that goes on at that facility is that the
17 clients live there, eat there, and sleep there. There's
18 no treatment as such given there.

19 With respect to the bed count -- and I'll
20 combined the last two points in my comments here -- if we
21 reduce the bed count to six for the entire count duplex
22 unit, it's not going to be financially viable for us to
23 continue the operation there.

24 So we are willing to turn over our financial
25 records to demonstrate that the lack of financial

1 viability that the City would require in order to satisfy
2 that particular question remaining.

3 The only other comment that I have to make with
4 regard to the smoke, I'll just tell you that I was a
5 smoker for 20-some years. I started in college, and I
6 finally quit at the age of 40 or 41. And it's a tough
7 thing to do, especially -- I'll tell you one thing,
8 cigarettes always tasted good with alcohol. If any of
9 you have been smokers in the past, you may know what I
10 mean.

11 I think we can do the same thing that another
12 operator has done, which I used to do when I smoked in my
13 home. I have a wife and kids. I used to have a
14 cigarette ashtray that recycles the air within the
15 ashtray itself. And I don't know, but there's probably
16 been some advances since I quit smoking some 21, 22 years
17 ago. But we would be willing to give that a try.

18 I would also make the observation that this
19 particular structure is in a portion of the Peninsula
20 that runs generally east and west. And almost the
21 prevailing winds for that portion of the Peninsula would
22 blow any secondhand smoke towards the commercial parking
23 lot across the street, which I think there's an
24 Albertson's there and other businesses.

25 And it would certainly disburse by the time it

1 got across the street. And we would be willing to make
2 every effort to avoid that problem by having a
3 self-contained smoke abatement technology, if that is
4 feasible.

5 Now, let me say one other thing with regard to
6 the size, the number of beds. I've had some discussions
7 with the City attorney about satisfying any Fire Marshal
8 concerns. And in particular, at the present time, the
9 building is not sprinklered.

10 I do not know what the cost is of putting in
11 fire sprinklers with a fire notice system, so we would
12 have to satisfy ourselves as to what that would cost.
13 That would also effect our financial viability.

14 We're willing to submit the necessary data,
15 paperwork, and whatever else may be needed to satisfy the
16 questions remaining and hopefully satisfy the City as to
17 those questions.

18 I have nothing further at this point.

19 MR. ALLEN: Could I just ask one question? Do
20 you have -- do you have concern with the comments made by
21 staff regarding the availability of other facilities in
22 this area?

23 MR. COOKSEY: You know, I don't have any
24 information on that. I know that there are no facilities
25 like ours within -- I think it's mentioned in the staff

1 report that there's nothing close by. I don't remember
2 what their ratings was.

3 MR. ALLEN: Okay.

4 MR. COOKSEY: But we are not in any cluster.
5 And I think the City attorney can probably verify that.

6 MS. WOLCOTT: Not in any of the immediate
7 blocks, there aren't any. Our point was that there are
8 others --

9 MR. ALLEN: On the Peninsula.

10 MS. WOLCOTT: -- on the Peninsula.

11 MR. ALLEN: Does -- who owns the real property
12 there? Does the organization own the real property?

13 MR. COOKSEY: It's owned by a corporation. And
14 it leases the property to the business. And I'll tell
15 you in all candor that the basic owner, although it's
16 owned through the corporation, is owned by David
17 Kramer --

18 MR. ALLEN: Okay.

19 MR. COOKSEY: -- in the state of Connecticut.
20 He is the father of Todd Kramer.

21 MR. ALLEN: I see. Then Todd Kramer owns the
22 entity that operates the facility --

23 MR. COOKSEY: Correct.

24 THE COURT: -- Kramer Center of Newport Beach?

25 MR. COOKSEY: Correct. But his role has been

1 recently, and will be for the future, limited to
2 principally marketing, obtaining clients for the
3 facility. He will not be involved, and has not been
4 involved, in the day-to-day operation of the residents.
5 Of course, he is involved in some of the activities that
6 take place on Via Lido.

7 MR. ALLEN: Given this exchange of information
8 that's been presented and the concern with Mr. Kramer,
9 would you be able to work out something acceptable to the
10 City separate and apart from this hearing?

11 I would not see us engaging in negotiation over
12 his participation in the operation. And yet, inasmuch as
13 he owns it, he inherently has the power to step in and
14 operate, or -- and so, I would anticipate some sort of
15 arrangement that would have to be made in that respect,
16 if it was voluntary and agreeable to you.

17 MR. COOKSEY: Well, I proposed in a
18 correspondence that I could act as a liaison between the
19 City and Kramer Center. And if there were any problems
20 whatsoever that the City could not readily work out, that
21 they can contact me, and I would be certain that they
22 were worked out to the satisfaction of both parties.

23 MR. MATHENA: Excuse me. Does that mean that
24 you'll no longer be their attorney?

25 MR. ALLEN: I'm sorry. We can't engage in

1 conversation.

2 MR. COOKSEY: And if --

3 MR. ALLEN: But you'll get your turn.

4 MR. COOKSEY: And if, for any reason, I was
5 discharged as their attorney, then I would notify of City
6 of such discharge.

7 MR. ALLEN: Okay.

8 MR. COOKSEY: And that was done, by the way,
9 with the consent of the client.

10 MR. ALLEN: Does that complete your
11 presentation then?

12 MR. COOKSEY: Yes. Does that answer all your
13 questions?

14 MR. ALLEN: Right. All right.

15 So may I, at this time, ask in the staff
16 report -- and Ms. Wolcott, you already went over it in
17 the process of your presentation, but at the top of page
18 11 -- and in this context, we're discussing or the staff
19 report is discussing the concept of necessity for the
20 use.

21 And one of the requirements in that respect, or
22 one of the analysis criteria, actually, is that whether
23 there is an existing supply of facilities of a similar
24 nature and operation in the community. Because that goes
25 to the heart of whether another one is necessary, at

1 least arguably.

2 So up at the top of page 11, it says "The City
3 is aware of many similar existing sober living facilities
4 in which housing for 12 individuals is provided in a
5 duplex building."

6 Recognizing staff isn't under oath and that
7 we're not conducting the hearing in that capacity,
8 nevertheless, I think it's very important for the record
9 to reflect that statement if, in fact, it can be -- it is
10 supported by staff, I just want to clarify who made that
11 observation, and what the basis for it was?

12 MS. WOLCOTT: Would you like more information
13 now, or --

14 MR. ALLEN: We can do it now, and that might be
15 adequate.

16 MS. WOLCOTT: Well, I can give you some
17 information now, and we can give you more updated
18 information --

19 MR. ALLEN: Okay.

20 MS. WOLCOTT: -- at the continued date.

21 THE COURT: If you're going to update that
22 information, why don't we do it all at once, then.
23 Because I think it's going to be appropriate, given the
24 circumstances here, to continue this item for that
25 purpose in any event.

1 MS. WOLCOTT: All right. The attendants for
2 that hearing should be aware that earlier this week,
3 Mr. Allen called our Planning Department and requested
4 updated information.

5 And he requested updated information on how
6 many sober living beds were available within the City,
7 and is now asking how many of those are located within
8 the duplexes.

9 Mrs. Brown passed the message to us in the City
10 Attorney's Office, and also to Mr. Kiff. Mr. Kiff will
11 be performing an undated audit on how many beds are
12 currently available, and there may be some information on
13 the vacancy rates at some of the facilities where he can
14 get that information.

15 And I was not aware that you wanted an update
16 of how many were in duplex units.

17 MR. ALLEN: Understand.

18 MS. WOLCOTT: But it's a very reasonable
19 question. I can say that under the Sober Living By The
20 Sea Living Development Agreement, there's a number of
21 beds permitted. I believe the number is 148 on the
22 Peninsula, West Newport and Lido Island. And I believe
23 the majority of those are in duplexes.

24 I don't know -- and this is one of the things
25 we'd like Mr. Kiff to confirm for us -- whether those are

1 in stock duplexes, or whether they are disbursed, and how
2 many are them are disbursed into six with a single
3 housekeeping unit. I believe that is one of the goals in
4 the Development Agreement.

5 MR. ALLEN: Okay. Great. That's all the
6 questions I have right at the moment.

7 So unless there's any further comment, let's
8 open the public hearing, and we don't have the usual
9 microphone and lighting system.

10 Does anybody have the ability to watch the
11 clock? And I would choose not to do that myself. All
12 right. And we'll stick with the 3 minutes that we
13 normally do.

14 And so let's proceed, and I don't know, but
15 maybe we can just start and go around the room, if that's
16 acceptable. Let's start right over here. And anybody
17 that wants to speak, let's just work down the line.

18 MS. ROY: Well, I'll be first then.

19 MR. ALLEN: Please identify yourself and spell
20 your name for the record.

21 MS. ROY: Yes. My name is Barbara Roy, R-o-y.
22 I live in Newport Beach. I have a property within 300
23 feet of this facility. I spoke at the other meeting, and
24 I still have the same concerns.

25 Really, you need go no further than to read the

1 background of this facility. I mean, these operators
2 have not shown that they merit reasonable accommodation.
3 I wonder. I look at this, and I look at the vans. They
4 have a van driver. He's very busy going back and forth
5 up to Costa Mesa and into this facility and to that
6 facility. There seems to be a lot of traffic going on.

7 I feel that six individuals is certainly
8 different than a family of six with father, mother and
9 children, or whatever. These six recovery people all in
10 the garage all smoking can create quite a lot of noise
11 and activity.

12 The wind blowing, the Santa Ana winds blow.
13 Direction, it isn't always the same winds blowing.

14 I wasn't prepared to speak, but I just feel
15 like -- I don't feel they merit reasonable accommodation.

16 MR. ALLEN: Nobody should feel the obligation
17 to speak --

18 MS. ROY: You pointed at me, and I felt I had
19 to speak.

20 MR. ALLEN: And I don't mean that in any sense
21 except that you don't have to speak because you're here.
22 Thank you.

23 Next?

24 MS. MORNINGSTAR: My name is Linda Morningstar.
25 I'm an owner on 28th Street. My house is 123 28th. So I

1 know a lot about this house. This is my renter. I'm the
2 owner. She's the renter.

3 I did not know this was a facility. All I know
4 is that I will not walk on the same side of that house
5 because of many things. Number one, the smoke. And I'm
6 sorry, my house is on the same side of the street. The
7 smoke doesn't go away. I have been thrown cigarette
8 butts as I've walked past this house.

9 I have been called names. I have a 2-year-old
10 granddaughter, and we've talked past this house, and they
11 have said nasty words and have bad language. And I
12 refuse to walk on that side of the house.

13 I did not even know until I got my little blue
14 card that it was a facility. I thought they were just
15 bad renters. I just thought it was a bad house. And so
16 then when I found out it was, I was very concerned.

17 And then when I hear this man say that, "Well,
18 he hopes that they will have some management." He didn't
19 say "going to have management." He says "hopes to, he's
20 going to have."

21 And for the smoking, he's going to put like
22 these little ashtrays with, like, little fans, and this
23 smoke will go away. I'm sorry, I've been thrown butts
24 at, cigarette butts at. So I have personal experience
25 with this. I've seen trash all around that house. It is

1 a nuisance. It is dirty.

2 And then we say, what's the treatment? I am
3 also a kindergarten teacher in Santa Ana, so believe in
4 equal access for everybody. But I go past there, and I
5 feel uncomfortable. I feel it's not a neighborhood.
6 It's an R2 home. It is not. It's an MFR home. My home
7 is an R2 home. I would not be allowed to do this and
8 just give it to a company and say, "Come on over and just
9 bring in your problem people."

10 I believe that problem people should have a
11 place to go, but not 100 yards from Cassidy's. There are
12 23 alcoholic places. They can walk to 23, not 13.
13 Twenty-three. I can counted them all. You can go into
14 the local store and get a t-shirt that says "Bars of
15 Newport Beach." Oh, great. Great for these kind of
16 people.

17 And 4th of July, if you been on the 4th of July
18 on 28th Street, 2,000 people are in the street drinking.
19 That's what 4th of July is down on 28th Street. Known
20 for drinking. So we're going to be out and say here -- I
21 can literally be in my house on 28th Street and say in my
22 backyard, "Anybody have a beer?" Somebody would bring me
23 one, because that's how it is. That's how it is down
24 there. It's called the war zone. That's what we call
25 our neighborhood.

1 I am totally against this. Do not give them
2 the right to have this accommodation. I've lived in my
3 house since 1971. So I'm not a new person down here. I
4 am extremely against this.

5 UNKNOWN PERSON: I was here strictly to
6 observe.

7 MR. FIELDS: My name is Les Fields. I own a
8 home on 30th Street.

9 And just a couple comments I have is, I know
10 it's supposed to be specific to this address, but I don't
11 have any experience towards this particular facility, but
12 I do have experience of the one that's at 124 30th
13 Street.

14 And just a general comment, not to either one,
15 just that this smoke is a huge problem. That is
16 something that really needs to be -- if you do grant this
17 condition, that that is really met.

18 Because my friend that lives right next door, I
19 visit him quite a bit. And they come out to the front
20 patio and smoke. And when you have six, eight, nine,
21 however many people out there, I mean, it is really,
22 really bad. And cigarette butts and all that, it really
23 is a problem. It's all on the sidewalk and whatnot. So
24 that is something.

25 You mentioned about having some type of

1 a -- what do you call filtration thing in the garage or
2 something. I'm not saying that might be the best thing,
3 but I think anywhere but out on the front patio is
4 probably the best.

5 Because you do have a lot of, you know,
6 children, and everybody comes. I owned a home at 118
7 28th Street. I just sold that last -- I think about two
8 weeks ago. So I'm very familiar with the 4th of July on
9 28th, and all that good stuff, and all the partying that
10 goes on on the 4th of July.

11 But the smoking really is a problem, and that
12 is a concern for, I think, anybody that lives anywhere
13 near any facility that allows that. So I don't know if
14 it's a requirement that you can have a non-smoking
15 facility. Maybe not. I think you can probably smoke
16 under your own private residents.

17 But those are my two concerns. And for the
18 record, at least on the one on 30th Street, when you have
19 six women versus six men, it is completely different.
20 Six women are a lot quieter, and it's a lot less activity
21 than six men. So I just wanted to state that for the
22 record.

23 Thank you.

24 MR. MATHENA: Larry Mathena. I think you know
25 how to spell it.

1 Briefly and frankly, mostly I'm going to quote
2 the City's own language verbatim, and it states, "The
3 Fair Housing Act requires the City focus on the needs of
4 disable residents, not specific facility operators."

5 I think it's important to note that the
6 financial viability and all the other tests only apply
7 once you decide whether or not the necessity for disabled
8 people at this particular location for this particular
9 operator comes into effect.

10 Clearly what I've heard this operator say is,
11 no, they are not applying for a lesser number. And if
12 they are not applying for a lesser number, God knows
13 there are equivalent facilities with room easily
14 available for these people. Period.

15 So once you get to that point in this analysis,
16 again, based on the Applicant's position, you don't need
17 to reasonably accommodate. You're done.

18 Secondly, you know -- and it's interesting.
19 From my perspective -- and I to accept that there is an
20 obligation on the City to attempt to achieve reasonable
21 accommodation, but it requires dancing with a partner who
22 is willing to dance with you. And it's clear to me that
23 that has not gone on.

24 And I also point out that on -- in your own
25 analysis, ultimately, the burden to demonstrate that the

1 requested accommodation is necessary is on the Applicant.
2 I have not seen any data whatsoever from the Applicant
3 proving their unique, absolutely vital status that only
4 they can provide, as opposed to the fact that every other
5 block there's a facility that can do exactly what they do
6 at least as good as them, maybe better. So there's a
7 necessity test that they are ignoring the existence of.

8 Above and beyond, that a couple more things. I
9 think the City is slighting itself and horrifically
10 slighting its own law. There's a reason why your City
11 Councilman said that we want to give the equivalent -- we
12 want to give Use Permits to people who are honorable and
13 respectable and act appropriately. And I would argue
14 that's a fundamental part of the law.

15 And I think you should be ashamed of
16 yourselves, frankly, for suggesting that, oh, we can
17 ignore that as long as they have -- and actually what's
18 proposed is an employee who, by the way, is certainly
19 going to be paid by this -- by these people who
20 repeatedly violate the law, but that's okay. Even though
21 that is not what your law says is okay.

22 And I guess the last point -- and forgive me.
23 It's probably the thing that troubles me most. I don't
24 think ethically you can propose that you can act as a
25 mediator and continue to be an attorney for these people.

1 I don't know how can you even propose it. Because if
2 your clients says to you, "I don't want you telling them
3 anything" --

4 MR. COOKSEY: Then I've been constructively
5 discharged.

6 MR. MATHENA: From which job? And will you
7 tell the City?

8 MR. COOKSEY: I said I would. It's in the
9 materials.

10 MR. MATHENA: Sorry.

11 MR. COOKSEY: That's partly my fault, but you
12 posed the question. I felt --

13 MR. MATHENA: It's okay. I'm sorry. No, no.

14 MS. OBERMAN: Denys Oberman, O-b-e-r-m-a-n.
15 I'm a resident of Newport.

16 I do not live proximate to the Kramer facility,
17 but the Kramer residents regularly come to the beach
18 right in front of my house, and regularly socialize with
19 people in Newport Coast Recovery.

20 And on a regular basis, I see them smoking and
21 drinking beer, and speaking loudly, throwing their
22 cigarette butts as they walk along to and from and ride
23 their bikes in front of my house. When I ask them
24 politely to stop, they don't. And, in fact, they utter
25 obscenities at me.

1 The reality of this type of use -- and I would
2 agree with what Larry Mathena said, and I'd urge the City
3 to consider that this use is not like a summer rental in
4 that the operators perform a health care like function
5 with their clients.

6 They are supervisors. They are counselors.
7 And Kramer Center, albeit off-premises from the
8 residential facility, does, in fact, provide counseling
9 and care to the people that enter that program. And if
10 I'm incorrect, then please, correct me.

11 As such, it's very important for the City to be
12 conscientious in making sure that we have conscientious
13 operators that demonstrate a certain level of
14 responsibility. And that includes respect for and
15 compliance with the law. It includes having professional
16 assistants.

17 And it includes some reasonable reliance on the
18 proprietors and the supervisors that are working in the
19 facility to demonstrate care and responsibility and
20 diligence in taking care of their people. It's not a
21 simple landlord situation. There is care that is
22 provided for these people, and they pay for that care,
23 and they are entitled to that care.

24 And there is -- I think there is a -- I'll use
25 the term "life safety," Deputy Wolcott. It is a matter

1 of public health and safety that is important both for
2 the clients, and their residents in their facilities that
3 are clients of theirs, and also for the community.

4 And how can the City ever be assured that
5 somebody that's demonstrated repeatedly and fairly
6 consistently a pattern of ignoring the laws, supervisory
7 issues -- how can the City stand behind and support and
8 endorse that type of an operator? And, in fact, there
9 are other operators around that demonstrate they are more
10 responsible.

11 Lastly, the issue of overconcentration. There
12 are very clearly plenty are facilities. In this
13 particular neighborhood, there's already
14 overconcentration.

15 Thank you.

16 MR. WETHERHOLT: Drew Wetherholt. Resident of
17 Newport Beach. W-e-t-h-e-r-h-o-l-t.

18 Couple things I'd like to comment on. The
19 Applicant's attorney, some of the comments that he made.
20 First thing is regarding the financial viability of the
21 establishment. We're talking about their financial
22 viability, but I would also like to bring up the
23 financial viability of the various properties, property
24 ownership, within the areas, as far as either rental
25 aspect or impact of value.

1 I'm involved with ownership that is south of
2 this property regarding renting -- trying to rent some
3 condos there, and there are concerns there. There have
4 been objections, because there's a drug rehab on the
5 street. The ownership of that condo has actually moved
6 out of state, because they did not want their 3-year-old
7 daughter living on that street with a drug rehab.

8 Regarding financial records that the Applicant
9 is willing to provide, to illustrate that, I would
10 impress or insist that the City request Federal tax
11 returns from 2006 forward for the Applicant for the
12 operation, the owner of the operation, the corporation,
13 the LLC, and the owner of the real estate.

14 I'm in commercial real estate. It's very easy
15 to manipulate those documents to create a financial
16 statement that looks like it's a distressed financial
17 statement.

18 Regarding the smoking, I mean, I almost find
19 this very comical. The Applicant's attorney says smoking
20 takes good with alcohol. I find that very disturbing
21 when this location is within sight of three or four very
22 established bars that are known for partying. There's 23
23 alcohol establishments within a close walking distance of
24 this location. So if you got them out there smoking,
25 tastes good with alcohol, what's the next step?

1 The other concern there is that let's move them
2 to the garage to smoke. That is very disturbing as well.
3 These properties are in close proximity. If this house
4 catches fire, it certainly will engulf the neighbor's
5 property or create significant damage to that aspect.

6 Thirdly, regarding which direction the smoke
7 goes, there's no question. It drifts right onto the
8 adjacent properties. It does not blow across the street
9 to the commercial lots. And you're welcome to stand
10 there and watch it.

11 MR. COOKSEY: I'm not going to take up smoking.

12 MR. WETHERHOLT: I highly recommend that. If
13 drugs and alcohol don't kill you, the smoking will.

14 And that's really all I have to say at this
15 point. I mean, there are multiple locations in the area.
16 124th Street, for example, is very close by. There's
17 issues there. There's issues how that is impacting
18 values there. There are two properties that are trying
19 to sell two duplexes. And the realtors that are
20 representing that property have indicated that there is
21 problems selling properties that have drug rehabs on the
22 street.

23 That really covers it. Thank you.

24 MR. NICHOLS: Dick Nichols, N-i-c-h-o-l-s. I
25 was on the Council but I'm not now.

1 I just don't think we're obeying the law,
2 either our own law or California law. And I'd like to
3 state that unequivocally.

4 The first thing is California law. That is a
5 requirement of us, as a City, to observe and enforce.
6 That's part about the type of City we are, that we are
7 supposed to be enforcing California law. I don't see it
8 here.

9 Next thing, the Federal law. The Federal law
10 defines reasonable accommodation only for families less
11 than six. It does not define it for a family of 52. It
12 does not define it for a family of 12, in my
13 understanding. It's for houses handling less than six,
14 and they are, by definition, considered to be a family.

15 Okay. Number three, the General Plan rezoned
16 all these areas R2. These areas are all -- have more
17 home -- I mean, they are built they have more people on
18 it than R2. But we just recently went through a
19 rezoning, and we rezoned this to R2. And our City is
20 saying that that's what we're supposed to do. Well, if
21 we're supposed to do it, we need to do it, okay?

22 Then the next thing is that this is an integral
23 home. There is absolutely no question about it. There's
24 a whole thing that you've put down on the transportation,
25 and where people are going, and the fact that they are

1 treated at 3388 Via Lido. That defines an integral home.
2 And an integral home says thou shall license every part
3 of that facility under the same license, or if it can't
4 be done, each one would be given an individual license.

5 And I'm not sure whether that means that they
6 all have to be treated that way or not. I don't know how
7 that works. It's obvious that this can all be treated as
8 under one, okay?

9 Finally, I want to go into this a little bit
10 further. This idea that you've been very good so far in
11 saying that six-or-under in one part of a duplex means
12 that you can't have a six-or-other in the other part of
13 the duplex. Because that would be 2 six-or-unders on the
14 same property and, therefore, it would really be 12. And
15 I think that's a very good position. I think that's a
16 reasonable position to take.

17 Now, we seem to be backing up from all of these
18 things. And we're sort of saying that what we allowed
19 Sober Living By The Sea, which was if they had old
20 six-or-unders in each half of a duplex, that we would
21 just close our eyes and say, okay, we'll allow that to go
22 as a 12-or-under. And the 12-or-under stays in
23 residential areas where it is totally illegal. It's not
24 an R2 with that anymore. It is the only six-and-under
25 qualifies for the exemption.

1 So my comment is, is this thing is definitely
2 an integral facility, and you have to define all the
3 parts of the integral facility. And they all have to be
4 licensed together. And that's according to state law,
5 and it's very, very clear.

6 And my question is, is why are we talking one
7 little facility that we know is separate when there's
8 five or ten others we know that are going from all these
9 places at all these times? There's no question that this
10 is a massive integral facility, as was Sober Living By
11 The Sea, and that this no longer qualifies. It should be
12 just eradicated.

13 And that's my comments. Thank you.

14 MR. ALLEN: Thank you.

15 MR. CULLEN: Okay. My name is Kevin Cullen
16 C-u-l-l-e-n. I'm the owner/operator for Balboa Recovery
17 and also the Admissions Director for Oceans Recovery.
18 Actually, at Ocean Recovery, I wear a lot of hats over
19 there.

20 I was going speak -- I have no opinion on this
21 one way or the other. I've been in business for ten
22 years. I've never heard of the Kramer Center, actually,
23 until this whole thing. And I attend most of these just
24 so I can be a better operator. (Unintelligible.)

25 THE REPORTER: I can't hear you and you're

1 going too fast.

2 MR. CULLEN: I apologize. The only reason I'm
3 here is to attend these and to listen to the complaints
4 and concerns of the residents, to try to do a better job.
5 That's it. That's all. Thank you.

6 MR. ALLEN: Well, I guess we've gone around the
7 room, and all the comments are on the record.

8 Would shall we go with staff responding? I'm
9 sorry. I need to look at the agenda. It's set up so
10 staff responds to the public comments or the Applicant
11 first?

12 MS. WOLCOTT: I believe the Applicant responds
13 to the public comments first, and then staff addresses
14 any questions they have for the Applicant and answers any
15 questions from the public at the same time.

16 MR. ALLEN: How is anyone -- is there anyone
17 that needs to leave, or that we need to shut this down at
18 6 o'clock? We're not in the council chambers now. So
19 may we keep going for awhile then, as far as we're all
20 concerned? All right. Good.

21 So then, Mr. Cooksey, you have an opportunity
22 to respond, if you wish, to any of the comments that were
23 made here.

24 MR. COOKSEY: Well, yeah. I think, from what I
25 hear almost uniformly, everybody's concerned about

1 secondhand smoke, and the litter that some smokers tend
2 to leave behind. It's a difficult problem to police, you
3 know, and I'll grant you that. But we can do our utmost
4 to police that.

5 I'm not up-to-date on secondhand smoke
6 technology. I envision that we can enforce a rule so as
7 to limit how many people would be smoking on the premises
8 at one time, so you don't have a situation where six or
9 eight or ten people are out there all puffing away
10 creating a forest fire. That's all I can say for that.

11 And, you know, there's nothing we can do to
12 eliminate the sources of alcohol in the neighborhood.
13 There's an Albertson's store, I believe, right across the
14 street that carries liquor. There's a liquor store down
15 two blocks or so down Newport Beach Boulevard. And we're
16 not proposing that those people be put out of business.

17 I mean, it's a problem everywhere in the state.
18 We have liquor stores almost on, you know, every other
19 corner in major metropolitan areas. And I just don't
20 know what you can do about that, except I can tell you
21 this.

22 We don't believe we've ever had a client,
23 except perhaps one, who fell off the wagon and purchased
24 liquor in the immediate vicinity, and we're not even sure
25 about that. And we've revealed that information or

1 informed the City of that.

2 We're trying to be as candid and as forthcoming
3 as we can with this application for a reasonable
4 accommodation and give the City every bit of information
5 or every solution that we have in order for them so they
6 can evaluate the sincerity of our intention here.

7 MR. ALLEN: Thank you.

8 Staff have anything further?

9 MS. WOLCOTT: Yes.

10 Okay. First of all, to address Mr. Cooksey's
11 response to the alcohol issue, we asked them about this
12 issue early on and how they would address it and how they
13 would be able to control it.

14 And I believe the written response was that the
15 Kramer Center is not aware of any studies that have been
16 done that show that there is any negative impact on
17 persons in recovery from alcoholism by being located in
18 proximity to alcohol, alcoholic beverage outlets.

19 That may be true. We're not of aware of any
20 studies either. However, we aren't aware of any studies
21 that say that it's a good idea to locate them near
22 temptation either. And Federal courts have taken the
23 opposite view of that expressed by the Kramer Center.

24 In Oxford House v. Edmonds, the court observed
25 that the home stands in a residential neighborhood, away

1 from commercial zones, liquor stores, and illicit drug
2 activities to minimize the likelihood of a relapse by a
3 resident.

4 Oxford House v. Town of Babalon, that it is the
5 location of the houses in a drug-free, single-family
6 neighborhood that played a crucial part in that
7 individual's recovery by promoting self-esteem, helping
8 create an incentive not to relapse, and avoiding the
9 temptations that the presence of drug trafficking can
10 create.

11 They did locate there. They located in this
12 facility in 2006. I believe that was what they purchased
13 the home. At the time the home was purchased, the
14 existing alcoholic beverage outlet's, I believe, nearly
15 all of them, if not all of them, were already present.

16 This, to me, is analogous to the Doctrine of
17 Coming to the Nuisance. You came to the area that was
18 already established full of liquor stores and bars.
19 And -- well, maybe one liquor store, full of bars. And
20 that is where you chose to establish.

21 So we were looking for the Kramer Center to
22 explain to us what there controls were, and to give an
23 explanation of why that shouldn't impact. I think we
24 were looking for something other than, "We're not aware
25 of any studies that say this has an impact." You're

1 supposed to be the experts in recovery. We were waiting
2 to hear from you. I haven't heard an answer to that
3 concern.

4 Let's see. Going back to some comments for the
5 members of the public.

6 Oh, another one for Mr. Cooksey at the
7 beginning. Todd Kramer's role will be limited to
8 marketing. Staff has some concerns with that. Marketing
9 is one of the areas where the complaints in 2006 and 2007
10 came in to the City. That is the area where they were
11 cited by ADP for advertising as a licensed facility when
12 they were not. And it was not just on their Web site.
13 We received reports of, I believe, on CNN. Local cable
14 TV, they were also advertising.

15 Mr. Kramer advertised himself on the Web site
16 in 2006. He advertised his qualifications as Todd
17 Kramer, Ph.D. And then he ran through the sequence of
18 other degrees he had. And then at the bottom of the
19 paragraph, it said that he's a doctoral candidate at the
20 University of Phoenix at the time.

21 I have concerns about an individual who is that
22 loose in his representation of qualifications in a
23 marketing setting being still in charge of their
24 marketing.

25 The Web site is the first thing that potential

1 clients of the Kramer Center see. It is what first drew,
2 I believe, the majority of the girls who were admitted
3 for the facility was licensed back in 2006, or so I was
4 told by the parents who called us at the time.

5 If you look at the Kramer Center's Web site
6 today, you will see any number of really beautiful shots
7 of Newport Beach. And the majority of them are in Corona
8 Del Mar or in Newport Coast. In some cases, they appear
9 to be taken behind the gates of Newport Coast. They did
10 have some pictures of the Kramer Center's view from the
11 338 Via Lido building. They did not have any that looked
12 like 207 28th Street.

13 And I have some concerns about, you know, if he
14 is -- if Mr. Kramer is still in charge of advertising,
15 this misleading advertising would continue.

16 Mr. Kramer was also in charge of intake, and
17 was the one who performed the interventions, and brought
18 the girls who were brought to the facility in 2006
19 on-site. And if he is still in charge of going out and
20 getting new clients for the Kramer Center, the City will
21 not be able to find that to be an acceptable condition.

22 Moving to public concern about public contact.
23 Let's see. I had a question for Ms. Oberman. She said
24 that Kramer Center residents come to the beach in front
25 of her house, smoke and drink beer. And I was wondering

1 how you know that they are residents of the Kramer
2 Center?

3 MS. OBERMAN: Because I talked -- during the
4 years that occurred, I talked to people that were
5 residents in Newport Coast Recovery on a regular basis,
6 and they were regularly socializing with girls on the
7 beach.

8 And they said, "Well, we're friends with -- we
9 have a friendly relationship with the people from Kramer
10 Center, and they come down here all the time." And they
11 even said that it was against -- it was against Newport
12 Coast Recovery house rules, and yet -- and the manager
13 admitted that. And yet, it was allowed to continue.
14 There was open discussion on a regular basis.

15 MS. WOLCOTT: Did you personally view somebody
16 who was a resident of the Kramer Center drinking beer?

17 MS. OBERMAN: Yes. Repeatedly.

18 MS. WOLCOTT: And you knew that that was a
19 resident of the Kramer Center because of -- that
20 individual had been pointed out as a Kramer Center
21 resident by someone from Newport Coast Recovery?

22 MS. OBERMAN: Correct, by the guys that were
23 with those girls.

24 MS. WOLCOTT: Okay. I think the only other
25 questions I had to address were Mr. Nichols'. He stated

1 that -- I believe something along the line of the Federal
2 law does not define or require reasonable accommodation
3 for houses with less than six.

4 MR. NICHOLS: Greater than six.

5 MS. WOLCOTT: Greater than six.

6 Federal law for reasonable accommodation
7 applies to a disabled individual or individuals, whether
8 it's one or 20 or 50. The reasonable accommodation goes
9 to the handicapped status.

10 I believe you may be thinking of state law,
11 which the state law, Health and Safety Code section
12 11834.23, states that "any licensed facility with six or
13 fewer residents is treated -- is subject to the same
14 controls by any local government as would be applied to a
15 single family unit." We cannot apply different controls
16 to a licensed six-or-under. That's different from
17 reasonable accommodation.

18 MR. NICHOLS: Isn't it -- just -- excuse me.
19 Isn't it -- the Federal judge made the decision that
20 six-or-under did not have to get a California license,
21 right?

22 MS. WOLCOTT: No. No, sir.

23 MR. NICHOLS: They do have to have a California
24 license, all of them?

25 MS. WOLCOTT: Whether or not you have to have a

1 license under the State of California depends on what is
2 going on at the property. If they are giving treatment
3 services, and there's five different types of non-medical
4 treatment that were listed in the Health and Safety Code,
5 if they are giving those, providing those services
6 on-site at the facility, the residential facility then a
7 requires an ADP license.

8 And to answer your second question, because the
9 Kramer Center was licensed to give outpatient treatment
10 at the 338 -- 388 Via Lido facility, ADP did not require
11 them eventually. Although, they did apply for an ADP
12 license at one time.

13 ADP, I guess, has determined that they could
14 provide sober living in the 207 28th facility and get
15 outpatient treatment at the Kramer Center's licensed
16 facility. And that is why ADP has allowed that
17 particular pattern to exist.

18 I believe that is all. I do have another
19 question for Ms. Oberman about when she saw the --

20 MR. MATHENA: She left.

21 MS. WOLCOTT: When she comes back, we can ask
22 that question.

23 Kit, do you have any questions?

24 MR. BOBKO: (Nods negatively.)

25 MS. WOLCOTT: Okay.

1 MR. ALLEN: All right. So we are done.

2 Anything, Mr. Cooksey, that you would feel the
3 need to present?

4 MR. COOKSEY: No. I would like to know the
5 answer to the question proposed by Ms. Wolcott has of
6 Mrs. Oberman as to the timing of that observation.

7 MR. ALLEN: All right. I presume Ms. Oberman
8 will be back.

9 MR. MATHENA: She left her jacket here, so
10 yes.

11 MR. ALLEN: One question I had, Ms. Wolcott,
12 you indicated that a Federal investigator or -- and that
13 may be an incorrect characterization -- was here recently
14 discussing with you the reasonable accommodation
15 requirements, and that there is the requirement that you
16 attempt to work with Applicant to achieve a restitution
17 of concerns between -- I did hear you correctly that you
18 are required -- and I don't know whether this is a legal
19 requirement -- to work with an Applicant in an effort to
20 achieve a resolution of conflict between you?

21 MS. WOLCOTT: Well, the HUD DOJ position paper
22 says that we should, and they say it very strongly. The
23 HUD investigator, who I spoke with for two and a half
24 hours last week about a number of Fair Housing complaints
25 that have been made, including by the Kramer Center, said

1 that we had a duty to engage in an interactive process
2 with them, and to try to come up with another
3 accommodation that could meet their needs.

4 MR. ALLEN: An interactive relationship with an
5 Applicant?

6 MS. WOLCOTT: Yes, to try to find another
7 accommodation that could meet the needs of the disabled
8 individuals. He didn't specify the house provider.
9 That's -- to the best of my knowledge, that's never been
10 put in the law. But he said to try to find an
11 accommodation which would enable you to meet the needs of
12 that individual.

13 He said that it was case law and referred to a
14 case. I've looked at that, U.S. Airways, I believe.
15 I've looked at what it says, and I'm not seeing the same
16 thing that he's seeing. We would like to do more
17 research on that issue. Meanwhile, I've been following
18 that procedure all along just as best practices --

19 MR. ALLEN: In other words --

20 MS. WOLCOTT: -- with this and other
21 Applicants.

22 MR. ALLEN: -- you've been undertaking that
23 without any requirement directly imposed on you?

24 MS. WOLCOTT: Correct, with this and other
25 applicants in the past.

1 MR. COOKSEY: And I will affirm that that is
2 true. And she has -- Ms. Wolcott has been very good
3 about trying to work through these problems, and I
4 appreciate her attitude in that regard.

5 MR. ALLEN: Good, thank you.

6 You indicated that Mr. Kiff would appreciate
7 the opportunity to present additional information with
8 respect or his position with respect to this application
9 before a decision is made?

10 MS. WOLCOTT: Yes. I don't have authority to
11 say that the conditions that Applicant has proposed would
12 be acceptable to staff. That's Mr. Kiff's purview.

13 MR. ALLEN: All right.

14 MS. WOLCOTT: I would say we appreciate
15 Mr. Cooksey's offer to serve as a liaison with the
16 Applicant; however, it was the feeling of staff and
17 outside Counsel also that, while it was a generous offer,
18 it was not what we were looking for to control the
19 operations that are going on. And there was some
20 question whether they would be able to control their
21 client either.

22 MR. ALLEN: Okay. Thank you.

23 I had called Ms. Wolcott and Ms. Brown with
24 respect to the legal concerns regarding the burden of
25 going forward with presenting evidence primarily on the

1 issue of necessity. That seems such a compelling
2 ingredient in this reasonable accommodation
3 determination.

4 MR. BOBKO: Mr. Allen?

5 MR. ALLEN: Yes.

6 MR. BOBKO: Excuse me for a moment. I think
7 it's important for the record to clarify that your phone
8 call with the City attorney was succinct and not
9 substantial, and that she immediately referred you to
10 City staff; that that wasn't, in fact, an ex-parte
11 communication with this City.

12 MR. ALLEN: That's exactly correct. We do not
13 have any extended conversation. We immediately diverted
14 the call, and I called Ms. Brown back and didn't further
15 communicate with Ms. Wolcott. That's correct.

16 But I did ask Ms. Brown to please go forward
17 with the concept of assistance to me, and information to
18 Mr. Cooksey as well, with respect to the burden of proof
19 with respect to making a determination as to the
20 availability of accommodations in the City.

21 The staff reports in these matters recently
22 have all referenced good information that was done by the
23 City with respect to 2007. I thought it might be
24 desirable, if the information was available, to update
25 that information. And, furthermore, to make the

1 determination as to where the burdens lie with respect to
2 demonstrating who, in fact, is responsible for showing
3 the factors that come together for necessity.

4 And several of them are readily available,
5 based on the applications. But the information about
6 what is, in fact, out there in the community is quite
7 different. And that is, after all -- that goes to the
8 very heart of what this whole business is that we're
9 working on to attempt to achieve, reasonable
10 accommodation but not overconcentrations, and filling the
11 needs of the community, but not necessarily putting more
12 than are necessary to reach -- to meet the needs of the
13 community.

14 So anyway, does that sufficiently describe what
15 I was attempting to say, Ms. Brown?

16 MS. BROWN: Yes, sir.

17 MR. ALLEN: And Mr. Cooksey, if you wish to
18 make input into this, I invite that. Because I think
19 you're probably seeing the issues here that we face.

20 And I see, although I don't have sufficient
21 legal research done to know, that there's financial
22 information that clearly the City cannot supply to assist
23 in making determinations. And several of the findings
24 here that do relate to the financial issues of the
25 Applicant means that the Applicant carries the burden of

1 demonstrating the financial needs that its seeking to
2 avail itself of. And so in any event, I welcome that in
3 any presentation that you give.

4 And so with that in mind, what amount of time
5 would be appropriate for us to continue this matter?
6 And, frankly, I am impressed with the City's analysis and
7 determinations here, but the six or 12 is compelling with
8 respect to necessity.

9 And so I'd like to withhold determination on
10 that, while placing on the record the observation that
11 the City work that's been done on this application is
12 sound, it seems to me, and deserves approval. But the
13 six or 12 is still an issue that's really open in my
14 mind.

15 MS. BROWN: So, Mr. Allen, if I may, just make
16 sure that I understand it, you're directing us to prepare
17 stated information on the availability of facilities in
18 the City, number of beds that are available.

19 Also you've stated that the burden with regards
20 to financial viability lies with Applicant. And so
21 you're directing the Applicant to provide additional
22 information?

23 MR. ALLEN: Well, I wasn't doing that as
24 such.

25 MR. BOBKO: Mr. Allen, if I may? I have a

1 suggestion if you let me chimed in.

2 What I think I've heard you say, and how I
3 think this will be best handled, is if staff actually did
4 the objective research about the number of beds and such.
5 Because, truly, they are the only ones who have that
6 information. There's no reasonable way that the
7 Applicant could be familiar with that information.

8 Having said that, then, what I would propose is
9 that we put a date -- we suggest a date. And I think the
10 20th of May might be the best date for that. And we
11 allow each, the City and the Applicant, if they'd like,
12 to submit a supplemental brief to you. And for our own
13 sanity, let's say not more than 10 pages, or something,
14 something like that.

15 MR. ALLEN: Sure.

16 MR. BOBKO: And then at the hearing, we can
17 make our various presentations if the briefing isn't
18 enough.

19 MR. COOKSEY: The documentation that would go
20 with the briefing would probably be more than 10 pages.
21 I haven't seen the financial records.

22 MS. WOLCOTT: We would like it to be, yes.

23 MR. BOBKO: Of course. I simply mean the
24 briefing on our -- like a motion for summary judgment can
25 only be 20 pages, same kind of thing.

1 MR. COOKSEY: Right.

2 MR. BOBKO: And if there's exhibits and whatnot
3 that are attached to that, you can certainly attach
4 those.

5 MR. COOKSEY: Okay.

6 MR. BOBKO: But that will give your client a
7 chance to locate documents that you think are germane,
8 give us a little time to digest them, and then we won't
9 overburden you with too much paper.

10 MR. ALLEN: That raises a question of whether
11 there is a need to establish any deadlines for
12 presentation of the information, or whether you believe
13 you can work that out between the Applicant and
14 yourselves without some order from the Hearing Officer
15 for a time to submit.

16 MR. COOKSEY: May I inquire? Is there any
17 problem with financial documents remaining confidential,
18 or are they going to be a matter of public record?

19 MR. BOBKO: The City -- I think there's
20 probably a business record type privilege here, so --

21 MS. WOLCOTT: There is.

22 MR. BOBKO: -- we would -- with the Hearing
23 Officer's approval, we would stipulate that they would
24 keep those documents confidential for use only between
25 the City and staff.

1 MS. WOLCOTT: If documents are required to be
2 submitted, financial documents, for a permit, it's in our
3 Code that we keep those confidential. And the Hearing
4 Officer can review them in camera. And that's because of
5 trade secrets, business unfair competition issue.

6 MR. COOKSEY: Right. That would be agreeable
7 with us, the confidentiality.

8 MR. BOBKO: And then there may also be some
9 issues that perhaps could even be -- we might need to
10 have a declaration that is submitted under seal if we
11 need to refer to numbers in our brief, so that those
12 numbers don't become public record.

13 Because we might, you know, keep the documents
14 confidential, and then in our briefing, if we need to
15 refer to something, that's still confidential. So if
16 that comes about, we will keep in mind, if the Hearing
17 Officer is willing, to take the thing under seal.

18 MR. ALLEN: Yes. So you're looking at May the
19 20th for the continuance date; correct?

20 MR. COOKSEY: Correct.

21 MR. ALLEN: So could we establish a deadline --

22 MR. BOBKO: Is Monday before, okay?

23 MS. WOLCOTT: For submission of financial
24 information to us?

25 MR. BOBKO: No, no, for briefing.

1 MR. ALLEN: I'm involving in a hearing all day
2 the 19th. And so, I mean, if they were there on Monday
3 morning, that would be great. But Monday evening, I
4 wouldn't have time to even barely reading them before.

5 MR. BOBKO: Friday the 15th?

6 MR. ALLEN: That would be very acceptable.

7 MR. COOKSEY: We have not, previous to this,
8 delivered anything directly to the Hearing Officer.

9 MR. BOBKO: He's going to have his own brief.

10 MS. WOLCOTT: Oh, your brief, yeah.

11 MR. COOKSEY: How do we go about submitting to
12 you directly? Obviously, the City attorney is going to
13 get a copy, but how would you --

14 MR. ALLEN: I am located very close to City
15 Hall. If -- when you bring or deliver, whatever means
16 you use to bring that to City Hall, if the administrator
17 from the City Attorney's Office, or Ms. Brown's office
18 can notify me, I can get it just immediately virtually,
19 so --

20 MS. WOLCOTT: Why don't you leave it with the
21 City clerk.

22 MR. COOKSEY: I'll leave it with your office.
23 The City clerk is not going know what it is.

24 MS. WOLCOTT: We'll leave it with the City
25 clerk.

1 MS. BROWN: The City clerk's office.

2 MS. WOLCOTT: If it's under seal to the Hearing
3 Officer, you can leave it with the City clerk.

4 MR. BOBKO: Hang on.

5 MR. COOKSEY: It's going to be due, what, the
6 15th?

7 MR. ALLEN: 15th, please.

8 MS. WOLCOTT: Okay. We'll take it. Taking the
9 advice from outside Counsel, you can deal with our
10 office.

11 MR. COOKSEY: It may be that I'll just e-mail
12 it to you with attachments.

13 MR. BOBKO: You can probably send it to
14 Mr. Allen by e-mail as well.

15 MR. ALLEN: That's best, absolutely.

16 With respect to the work that Mr. Kiff is able
17 to do inventory-wise, is he actually able to accomplish
18 that in that period of time?

19 MR. BOBKO: I don't know.

20 MR. ALLEN: It sounds like a rather significant
21 task to me, but it's because I don't understand the
22 processes.

23 MS. WOLCOTT: We're always fine with the longer
24 continuance, given the number of hearings that we have
25 coming up back to back.

1 MR. ALLEN: I'm assuming you'd have involvement
2 in this, too, but I don't know that.

3 MR. BOBKO: Okay. Mr. Hearing Officer,
4 perhaps, or your Honor, happens it would be best if we
5 put it out a little further than that. Mr. Cooksey, if
6 that's acceptable, we can come back with another date,
7 if --

8 MR. ALLEN: I see this information as being
9 significant and probably used in subsequent hearings, not
10 just one, and you don't want to be --

11 MS. WOLCOTT: Rushed.

12 MR. ALLEN: Yes. I don't have enough
13 information available.

14 MR. BOBKO: Why don't we talk off the record
15 and get a date.

16 MR. ALLEN: Off the record.

17 (Pause in proceeding.)

18 MR. ALLEN: On the record.

19 So this matter will then be continued to June
20 the 3rd, at 4 p.m., I guess, and the briefs that have
21 been discussed will be submitted by close of business on
22 the 29th and transmitted to the Hearing Officer on the
23 29th, I trust. Thank you.

24 MR. COOKSEY: Ms. Reporter, are we adjourned
25 now?

1 MR. ALLEN: We are still on the record at the
2 present time.

3 Is there anything else?

4 All right. Then let's close the hearing and
5 continue it until June the 3rd. Thank you very much.

6 (Ending time: 6:25 p.m.)
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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: MAY 12 2009

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