

Yellowstone is a non-profit organization. Yellowstone has no investors and no loans. The organization uses the income from residents to cover its costs and Yellowstone makes no profit from the residents. The organization is run by a group of volunteers who are committed to returning the residents back to the community clean and sober as tax paying citizens who can help other alcoholics. As a result, Yellowstone's small budget cannot accommodate the \$2,200 application fee. Yellowstone respectfully requests that the City make a reasonable accommodation in accordance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of January, 2009, in Newport Beach, California.


ANNA MARIE THAMES

COST ANALYSIS OF OUR HOMES IN SANTA ANA HEIGHTS

IN GENERAL, OUR WEEKLY FEES ARE BASED ON A SLIDING SCALE FROM \$50.00 TO \$160 PER WEEK

OUR MORTGAGES AVERAGE \$4500 PER MONTH

A MINIMUM OF 15 RESIDENTS IS NEEDED TO PAY ALL THE EXPENSES FOR EACH HOUSE, INCLUDING
LIGHTS, GAS, WATER AND TRASH.

RENTS: SLIDING SCALE: \$50.00 TO \$160.00 PER WEEK

AVERAGE: RESIDENTS: 16

AVERAGE RENT \$100

MONTHLY AVERAGE: \$6400 INCOME

EXPENSES: FOR EACH HOUSE

AVERAGE UTILITIES \$ 800 LIGHTS, GAS, WATER, PHONE

FOOD: \$ 900

MORTGAGES: AVERAGE \$4500

MONTHLY AVERAGE \$6200 EXPENSES

RECEIVED BY
PLANNING DEPARTMENT

FEB 05 2000

CITY OF NEWPORT BEACH

Yellowstone

SOUTHERN CALIFORNIA DRUG AND ALCOHOL TREATMENT CENTER

Call Today (888) 941-9048 - After Hours (949) 678-9000

Thursday, February 12 - 2009

A HIGHLY SUCCESSFUL AND LOW COST DRUG AND ALCOHOL RECOVERY PROGRAM FOR WOMEN AND MEN

Home

InPatient Programs

Out-Patient
Programs

Detox Services

Programs Available

Our Homes

Our Staff

Mission Statement

Schedule

Contact Us

LEGAL PROBLEMS?



WE CAN HELP!

LICENSED AND CERTIFIED BY THE STATE OF CALIFORNIA

Yellowstone Recovery Financial Requirements

- **90 Days: \$7,500 Residential Treatment**
- **Sober Living: \$160 - \$180 per week**
- **Outpatient: Sliding Scale \$40 - \$80**

Some scholarships available after 30 days



Admission Requirements

CSE for an appointment or telephone interview.

1-888-941-9048

Or Email Us At: honeythames@yahoo.com

Yellowstone offers a one-year program of care.

Services Include:

Court Liaison • 12 Step Recovery • Counseling
Art Therapy Life Skills Training • Job Placement Program
Sponsors Family Meetings • Sober Fellowship
Sober Softball • Sober Camping

Yellowstone

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February 13, 2009

RECEIVED BY
PLANNING DEPARTMENT

FEB 13 2009

CITY OF NEWPORT BEACH

VIA EMAIL AND FIRST CLASS MAIL

Ms. Cathy Wolcott
Ms. Janet Brown
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658-8915

Re: *Yellowstone Use Permit Applications and Reasonable Accommodation Requests*

Dear Ms. Wolcott and Ms. Brown:

It has recently come to my attention there may be discrepancies between materials Yellowstone submitted with respect to its use permit applications and requests for reasonable accommodation for each of the four Yellowstone properties. Although this firm and the representatives of Yellowstone have made our best efforts to be clear and consistent, the materials submitted to the City in May 2008 reflect some inaccurate information. The purpose of this correspondence is to clarify these inconsistencies.

Group Meetings

Neither group treatment meetings nor individual treatment meetings occur on any of the four Yellowstone properties. All treatment is performed off site in Costa Mesa. The only meetings that occur at each of the four homes are weekly house meetings with the residents to discuss potential new residents and other administrative matters.

Visitors

Visitation with family and friends occurs on Sundays at Yellowstone's Costa Mesa facility located at 154 East Bay Street.

Ms. Cathy Wolcott
Ms. Janet Brown
February 13, 2009
Page 2 of 2

Contractual Arrangements with Residents and Resident Selection

In May 2008, Yellowstone submitted a request for reasonable accommodation that each of the four homes be treated as a Single Housekeeping Unit. It was recently brought to my attention that Yellowstone's response to Question 16, regarding resident interaction, needs clarification.

Yellowstone does not have a contractual relationship with the residents of its properties. With respect to the residents of the four Yellowstone homes in Santa Ana Heights, Yellowstone's position is correctly stated in a letter to the City dated January 29, 2009: "the makeup of the Property is determined by the residents of the unit rather than the property manager." More specifically, Yellowstone's Board of Directors does not determine who resides in each of the four homes. New residents are introduced and approved by the current residents during house meetings or they are not accepted. Many of Yellowstone's residents transition to sober living directly from treatment. Other residents learn about Yellowstone from other recovery centers or by community referral.

Parking

In May 2008, when the original Yellowstone use permit and reasonable accommodation applications were submitted to the City, Yellowstone requested that four cars be permitted to park at the 1561 Indus property. There is adequate room for four cars to park at 1561 Indus, however only the two resident managers for the home park on site. With respect to the three other Yellowstone properties, it has consistently been Yellowstone's position that only the two resident managers of the homes are allowed to park vehicles on site.

I hope that this clarifies the ambiguities in our previous submissions to the City. As always, if you have any questions regarding this correspondence, please feel free to contact me.

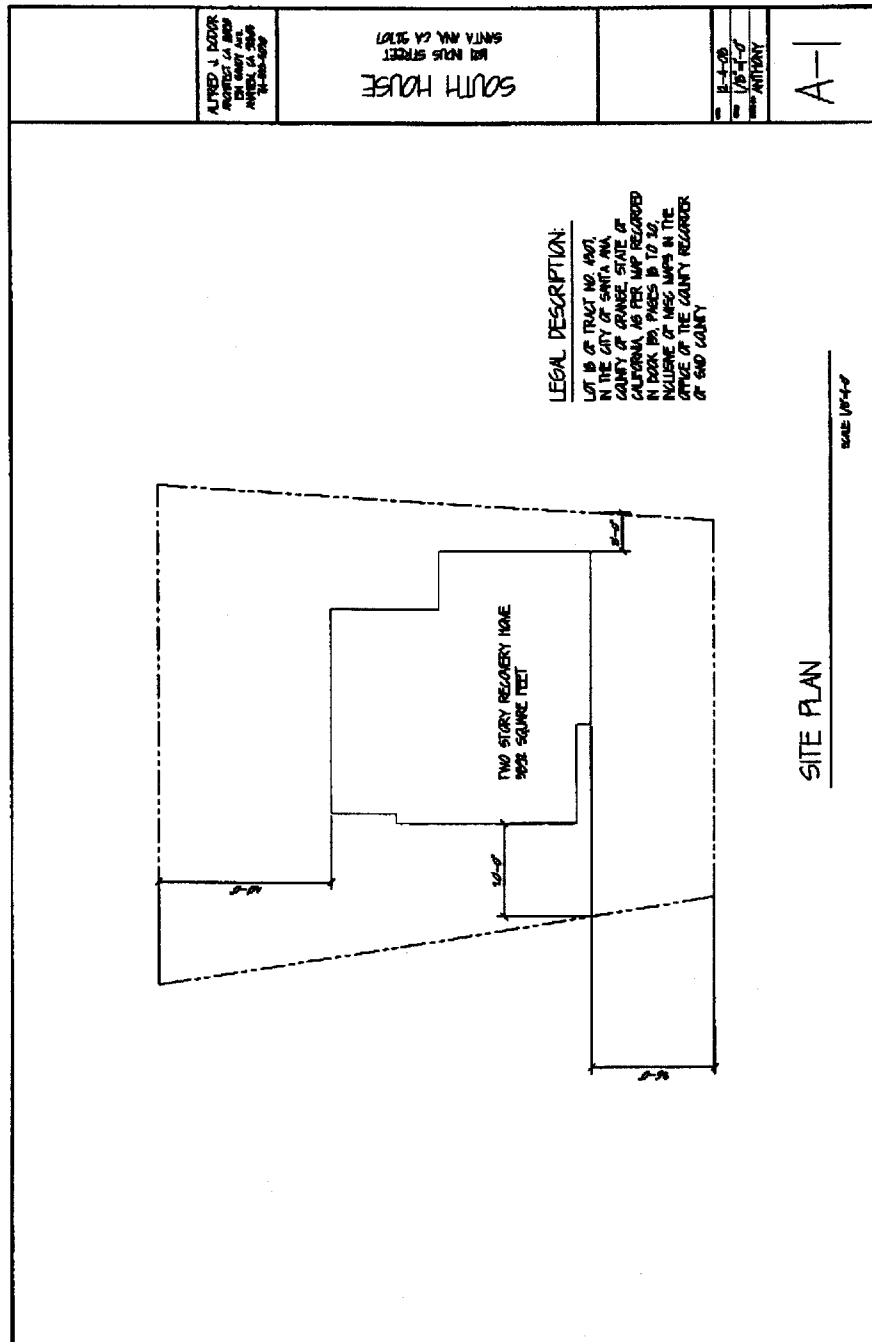
Very truly yours,

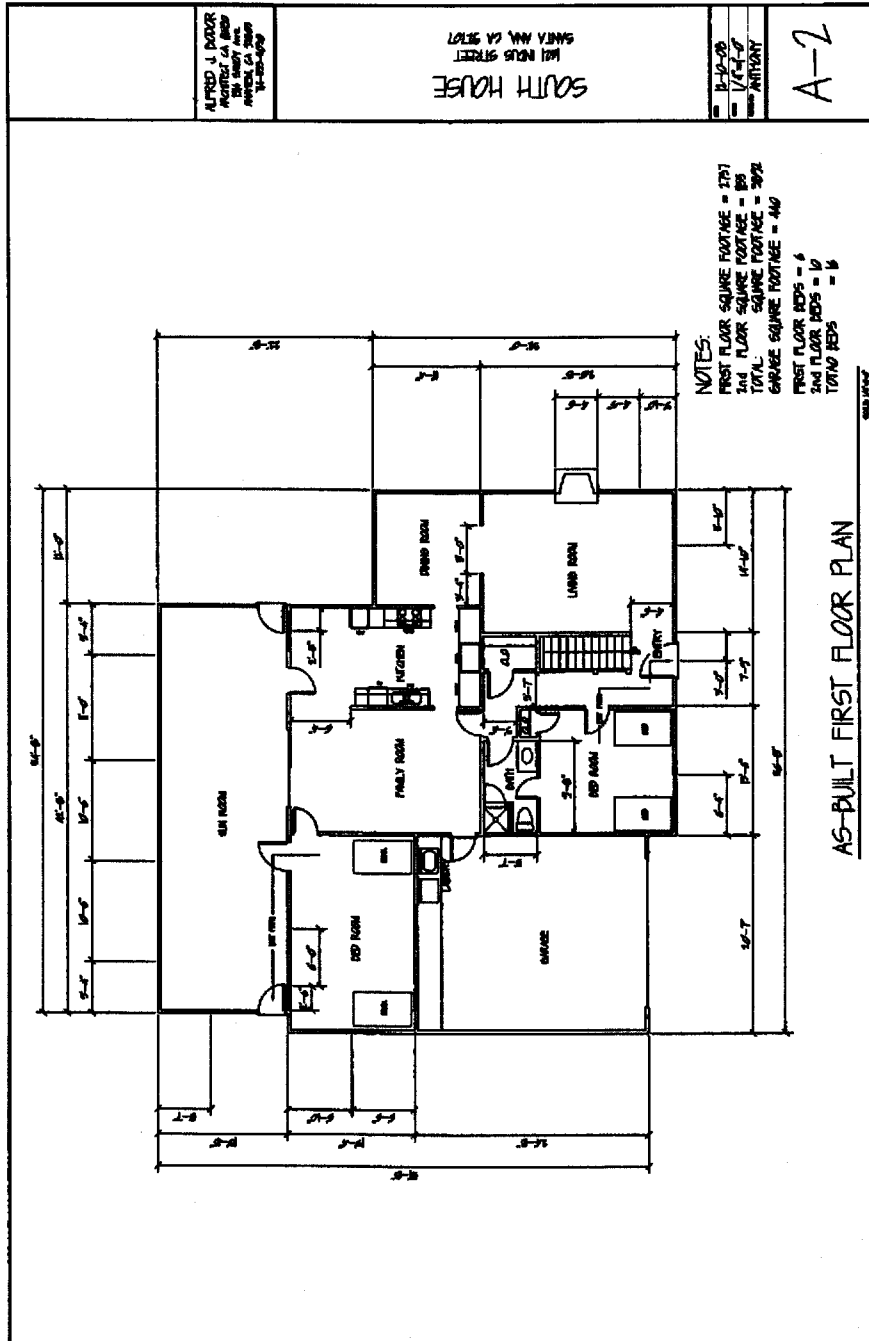
DAVIS ZFATY
a professional corporation

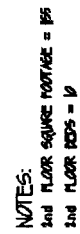

NICOLE COHRS, ESQ.

EXHIBIT 4

SITE PLAN AND FLOOR PLANS







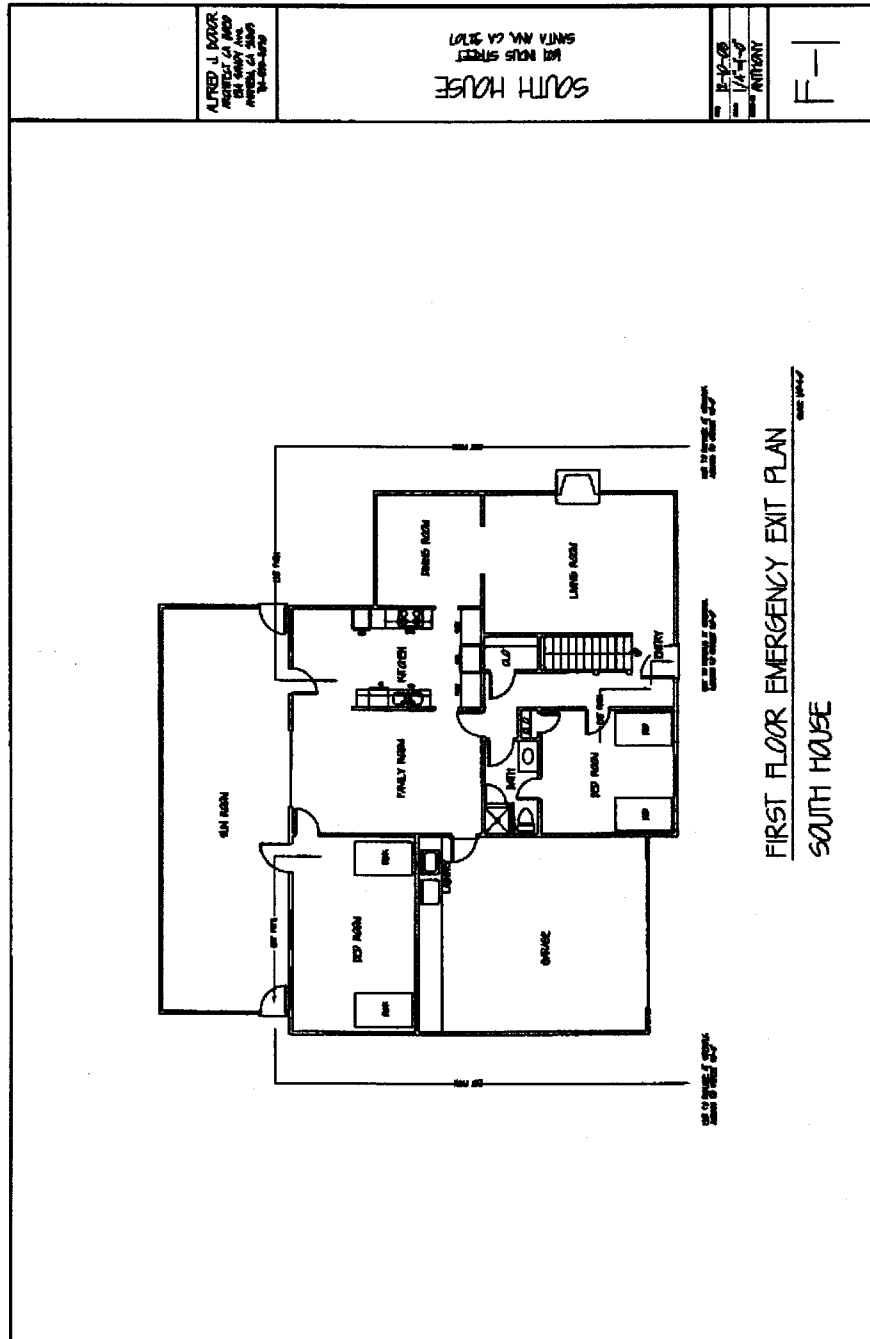
AS-BUILT SECOND FLOOR PLAN

ALFRED J. BOGOR
ARCHITECT & DESIGNER
154 SANDY AVE.
ANNARB, CA 92003
714-699-6970

LONG 47 AND ALING
JERRY'S SIGN FOR
SOUTH HOUSE

DATE	12-10-00
TIME	11:51-0
LOCATION	ANYWAY

A-3



ALFRED J. MOORE
REGISTERED AS ARCHITECT
IN CALIFORNIA
ARCHITECT NO. 12500
1960-1969

EXHIBIT 5

FIRE MARSHAL CORRESPONDENCE AND FIRE CODE ANALYSIS SUBMITTAL



NEWPORT BEACH FIRE DEPARTMENT

P.O. Box 1768, 3300 Newport Blvd., Newport Beach, CA 92658-8915

STEVE LEWIS, FIRE CHIEF

January 29, 2009

Dr. Honey Thames
154 East Bay Drive
Costa Mesa, CA 92627

Re: Code Analysis for Yellowstone Recovery: 1561 Indus Street; 1621 Indus Street; 1571 Pegasus; 20172 Redlands, Newport Beach

Dear Dr. Thames:

Thank you for submitting the code analysis and floor plans for the above referenced properties. After reviewing the analysis, we have identified the following areas which will require further clarification:

1561 Indus Street

1. Item # 5: Exception 1 to California Building Code (CBC) Section 903.2.7 excludes single family homes "unless...classified as Group R4". Recovery or treatment facilities for more than 6 clients are classified as Group R4 by Section 310 of the CBC.
2. Item # 6: Stairwell and other components of the means of egress must be illuminated at all times. A switched circuit is not permitted. CBC Section 1006.3 requires back-up emergency lighting for the means of egress. The back-up illumination shall operate automatically and shall last for a minimum of 90 minutes. Please indicate how the illumination will be accomplished.
3. Bedroom egress windows shall be in accordance with CBC Section 1026. Please indicate the net clear opening dimensions as well as the height above the floor for each bedroom window opening.

January 29, 2009

Code Analysis for Yellowstone Recovery: 1561 Indus Street; 1621 Indus Street;
1571 Pegasus; 20172 Redlands, Newport Beach.

1621 Indus Street

1. Item # 5: Exception 1 to California Building Code (CBC) Section 903.2.7 excludes single family homes "unless...classified as Group R4."
2. Item # 6: Stairwell and other components of the means of egress must be illuminated at all times. A switched circuit is not permitted. CBC Section 1006.3 requires back-up emergency lighting for the means of egress. The back-up illumination shall operate automatically and shall last for a minimum of 90 minutes. Please indicate how the illumination will be accomplished.
3. Bedroom egress windows shall be in accordance with CBC Section 1026. Please indicate the net clear opening dimensions as well as the height above the floor for each bedroom window opening.

1571 Pegasus Street

1. Item # 5: Exception 1 to California Building Code (CBC) Section 903.2.7 excludes single family homes "unless...classified as Group R4."
2. Item # 6: Stairwell and other components of the means of egress must be illuminated at all times. A switched circuit is not permitted. CBC Section 1006.3 requires back-up emergency lighting for the means of egress. The back-up illumination shall operate automatically and shall last for a minimum of 90 minutes. Please indicate how the illumination will be accomplished.
3. Bedroom egress windows shall be in accordance with CBC Section 1026. Please indicate the net clear opening dimensions as well as the height above the floor for each bedroom window opening.

January 29, 2009

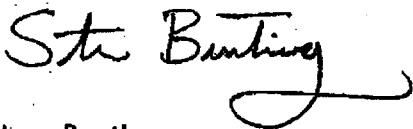
Code Analysis for Yellowstone Recovery: 1561 Indus Street; 1621 Indus Street;
1571 Pegasus; 20172 Redlands, Newport Beach.

20172 Redlands Drive

1. Item # 5: Exception 1 to California Building Code (CBC) Section 903.2.7 excludes single family homes "unless...classified as Group R4."
2. Item # 6: Stairwell and other components of the means of egress must be illuminated at all times. A switched circuit is not permitted. CBC Section 1006.3 requires back-up emergency lighting for the means of egress. The back-up illumination shall operate automatically and shall last for a minimum of 90 minutes. Please indicate how the illumination will be accomplished.
3. Bedroom egress windows shall be in accordance with CBC Section 1026. Please indicate the net clear opening dimensions as well as the height above the floor for each bedroom window opening.

If you have any questions regarding these issues, please call me at 949-644-3106.

Sincerely,



Steve Bunting
Fire Marshal

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PLANNING DEPARTMENT

JAN 29 2009

CITY OF NEWPORT BEACH

January 29, 2009

Mr. Steve Bunting
Fire Marshall
CITY OF NEWPORT BEACH
FIRE AND MARINE DEPARTMENT
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, Ca 92658-8915

RE: Yellowstone Recovery ("South House" Residence)
Coda Analysis For The Existing Building

Dear Mr. Bunting,

Alfred J. Boder, Architect has been contracted by Yellowstone Recovery to review details of their existing building, titled "South House", located at 1621 Indus Street, Santa Ana, Ca 92707. Yellowstone Recovery intends to change the use of the building from a single-family residence to a Residential Facility for the non-medical rehabilitation of drug abuse and alcoholism. We have surveyed the existing building and the summary of our findings and conclusions are as follows:

- A. The existing building was constructed in 1961, and was built as a single-family residence, occupancy type R-3. The building is a two-story structure with an attached garage.
- B. The building is set back from the front property line 26'-0". The side yard set back is 20'-0" clear on the north side and 8'-0" clear on the south side of the structure.
- C. As the attached plans indicate, the residence is entered through the front door that faces the addressed street. The first floor consists of a living room, dining room, kitchen, family room, bathroom, and two bedrooms. The second floor consists of four bedrooms, and two bathrooms.

Based on this research, the following code issues are in compliance with the current code requirements of the California Building Code, CBC 2007.

- 01. **Location On The Property:** As indicated on the attached plans, the building setbacks for the side yard is 20'-0" from the property line. This distance includes the attached garage. Per CBC section 6, Table 602, the minimum fire separation distance is five feet. This setback is achieved to the property lines.

Conclusion: The wall of the garage at the side yard is not required to be of fire rated construction and there are no penetrations or openings in the attached garage wall.

02. **Section 419, Group I-1, R-1, R-2, R-3, R-3.1, R-4:** 419.2, Separation walls. Section does not apply. Note that the common wall between the attached garage is of one-hour fire rated construction to the bottom of the roof diaphragm and the door from the house is a hour rated fire door.

03. **Section 419.3, Horizontal Separation:** This section does not apply per section 711.1.

04. **Section 425, Special Provisions For Licensed 24-Hour Care Facilities in Group R-1, R-3.1 or R-4 Occupancy (SFM):** Per section 425.3.5, Limitations – Seven or More Clients; The second floor area is less than three thousand (3,000) square feet and therefore a one-hour fire rated construction is not required.

05. **Section 425.7, Fire Protection System Provisions:** Section 425.7.1, Automatic Fire Sprinkler Systems. Per section 903.2.7, Group R, an automatic fire sprinkler system is not required per exceptions 1 and 3.

Section 425.7.2, Fire Alarm Systems: Per section 907.2.8 an approved, hard-wired fire alarm system is installed as required per section 907.2.8.2.

Section 427.7.3, Smoke Alarms: Per section 907.2.8.3, battery powered smoke detectors/alarms are installed in the required areas per section 907.2.10.

Section 906.1, Portable Fire Extinguishers: Portable fire extinguishers are installed and located per the California Fire Code.

06. **Chapter 10 Means Of Egress:** Section 1006, means of egress illumination. There is illumination at the top, middle, and bottom of the staircase.

Section 1009, Stairways: Per section 1009.1, exception 1, the staircase complies with the code requirement.

I believe that this is a complete analysis of the code related items which apply to this building during the change of occupancy. Please call Anthony Grillo, my representative, at (949) 678-3214 if you have any questions.

Sincerely,

Alfred Bodor – Architect

Attachments; Scale as-built plans



EXHIBIT 6

**LETTERS IN SUPPORT
(Submitted by Applicant)
AND
LETTERS IN OPPOSITION**

DATE: 01/24/09

TO WHOM IT MAY CONCERN

FROM: THE CROSSING CHURCH, JACKIE DAVIS

THE CROSSING CHURCH IS JUST A MILE AWAY FROM YELLOWSTONE.

WE ALL NOTICE WOMEN COMING TO OUR MEETINGS AND GETTING INVOLVED.
THEY HELP WITH HANDLING OUT THE CHURCH BULLETINS, FOR EXAMPLE.

LAST YEAR THEY HELPED US SERVE FOOD TO THE HOMELESS.

YELLOWSTONE WOMEN AND MEN STAY INVOLVED WITH OUR CHURCH

WE ARE VERY PROUD THAT YELLOWSTONE IS PART OF OUR COMMUNITY.

WE DO WHAT WE CAN TO HELP OUR NEIGHBOR YELLOWSTONE

JUST AS THEY HELP US.

PLEASE CALL IF WE CAN ANSWER ANY QUESTIONS:



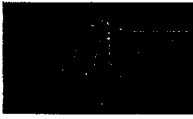
JACKIE DAVIS, THE CROSSING CHURCH, 949 566 7901

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JAN 29 2009

CITY OF NEWPORT BEACH

YS 00470


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PLANNING DEPARTMENT
FEB 3 2 2009
CITY OF NEWPORT BEACH

January 29, 2009

VIA FIRST CLASS MAIL

Ms. Janet Brown
CITY OF NEWPORT BEACH
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: *Yellowstone – Letters of Support*

Dear Janet:

I noticed that the Exhibits to previous Use Permit Applications included letters from neighbors surrounding the homes. Enclosed are copies of letters from alumni of the Yellowstone homes showing their support. I thought you may like to include these as exhibits to our Use Permit Application. As always, please feel free to contact me if you have any questions.

Very truly yours,

DAVIS ZFATY



NICOLE COHRS

Enclosures

cc: Cathy Walcott, City of Newport Beach

My name is Angie and I checked into Yellowstone in 2002. My using and drinking had really spun my life out of control, I was completely lost and felt like I was being eaten alive from the inside out, I was so empty and broken down in the final days of my disease. I couldn't imagine my life any other way. Yellowstone introduced me to A.A. and Recovery and to a higher power. My life has surely been turned around in a way I could have never thought possible. I feel free today and not a slave to a life that had no promise what so ever nor a purpose. I will forever be grateful to have the days and years that Yellowstone taught me how to live sober.....I built my foundation at Yellowstone, I learned how to be a friend again, how to be honest again, how to be dependable again, how to be a good sister, auntie, and daughter.....I have made TRUE and REAL FRIENDS through Yellowstone.....I trade in my old friends for these new sober ones. My life has a real purpose today and Yellowstone helped me find my way to it.

I could go on and on about all the wonderful things that recovery and Yellowstone has given me but I doubt any words could ever truly express what I've been given by being freed from my disease. I come to Yellowstone every week and am still apart of this place still to this day....6 years later.

I hope it is here for other girls to come back and work with the new comers the way I have been given the chance too. It saves me in times when I need it most.

Truly Blessed,

Angela M.

Angela M.

Sobriety Date 11-16-02

My name is Gina and I have been sober for 92 days.

I came to Yellowstone because my life was going nowhere and I couldn't get sober on my own.

Yellowstone has helped me in so many ways. I'm learning the program of Alcoholics Anonymous and how to live as a sober woman. I'm learning how to be responsible. I've met wonderful people here that care about me and support me.

My relationship with my family and my son is being restored and I'm working again.

I am forever grateful to Yellowstone for teaching me a new way of life ONE DAY AT A TIME.

Sincerely,

Gina 

Gina G

Sobriety Date 10/20/08

Hi my name is Gloria I have been sober for two and a half years. I went through Yellowstone and truly believe that had this home not provided me with the foundation that I needed in AA I would not have a life today, nor would my daughter have her mother or my husband her wife. When I decided to get help I couldn't think of going anywhere else. This is where I had seen women come back from the gates of hell and learn to become women of dignity with a joy for life that was unimaginable to me. Had I not found Yellowstone I would have never known that there was a way out of the misery and despair my life had become.

Yours Truly



Sobriety Date
8-21-2006

My name is Erika and I have been sober for 2 ½ years. If it wasn't for a place like Yellowstone, I would probably be dead today. I lived at Yellowstone for over a year where I was able to build a foundation upon how to live life on life's terms. Because of the opportunity that I got at Yellowstone I no longer have that hopelessness that I lived with for so long. I am able to be present in the lives of my children who I now have joint custody of.

Yellowstone is the place that I will continue to come back to and visit the new girls who are struggling the same way I once did. Thank God for Yellowstone.



Sincerely Yours,

Erika [redacted]

7/15/06 - sobriety date.

MY NAME IS MEGHAN DOYLE AND I HAVE BEEN
SOBER FOR FOUR YEARS.

I CAME TO YELLOWSTONE AFTER BEING LOCKED OUT
OF MY MOM'S HOUSE.

I STAYED AT YELLOWSTONE 13 ½ MONTHS.

I LEARNED HOW TO WORK, LIVE A SOBER LIFE,
SUIT UP AND SHOW UP EVERY DAY TO MY JOB,
AND HANDLE LIFE SITUATIONS FOR THE FIRST TIME.

I AM VERY GRATEFUL TO YELLOWSTONE AND
THE PROGRAM OF ALCOHOLICS ANONYMOUS.

I AM SELF SUPPORTING NOW AND MAKE AMENDS.

I CAN BE OF SERVICE TO OTHERS TODAY.

SINCERELY

MEGHAN D [REDACTED] Meghan D [REDACTED]

SOBRIETY DATE: 04/18/05

MEMO TO: JANET BROWN, CITY OF NEWPORT BEACH

FROM: HONEY THAMES, YELLOWSTONE

SUBJECT: LETTERS OF SUPPORT

COULD YOU PLEASE ADD THESE LETTERS OF SUPPORT TO
OUR APPLICATION.

ONE IS FROM ST. JOHN THE DIVINE CHURCH AND THE OTHER IS FROM
A MOTHER WHOSE SON COMPLETED OUR PROGRAM TWO YEARS AGO.

FINALLY, WE HAVE A PETITION FROM OUR NEAREST NEIGHBORS
(WITHIN 300 FEET) SUPPORTING US AS A GOOD NEIGHBOR.

THANKS IN ADVANCE FOR YOUR HELP



DATE: 2/03/09

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PLANNING DEPARTMENT

FEB 05 2009

CITY OF NEWPORT BEACH

*FROM THE DESK
OF
Kimberly Black*

February 3, 2009

Dear Yellowstone Staff,

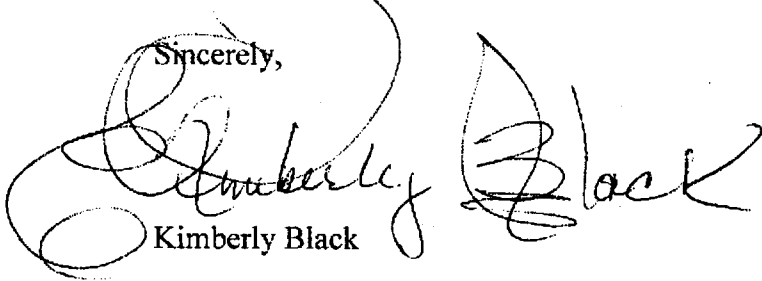
I wanted to take a few minutes to thank you all for the wonderful care my son received while at Yellowstone, as well as the continued support during his time in your sober living program.

Today, I am proud to say my son is **clean and sober**! It's been almost three years since I called you on the telephone, desperate for help. Not only did you open your doors to us, but your hearts as well. I delivered to your doorstep a young man addicted to heroin (among other things) and suicidal. A few short months later I had my son back. You gave him the tools he needed to succeed. He worked very hard and today he is healthy and happy. I know his continued success will be in part to the support he still receives. He in turn gives back by helping others in their sobriety.

I don't know where we would have turned had you not been there for us. I wish for families like ours that your doors will always be open and those arms that so warmly embraced us will never turn away a parent whose child is in danger.

Thanks again for all your help and support.

Sincerely,



Kimberly Black

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PLANNING DEPARTMENT

FEB 05 2009

CITY OF NEWPORT BEACH

Y²⁸ 00478

St. John the Divine Episcopal Church

A parish of the Diocese of Los Angeles
A congregation of the Episcopal Church in the United States
A part of the world-wide Anglican Communion

The Rev. Dr. Barbara R. Stewart, Rector

183 E. Bay Street phone 949-548-2237
Costa Mesa, CA 92627-2145 fax 949-548-2238
www.stjohncm.org
bstewart@stjohncm.org

January 31, 2009

To Whom It May Concern:

I write in support of Yellowstone. The services offered by Yellowstone, helping people live sober and clean lives, are necessary in our society and important to the establishment and ongoing welfare not only of the individuals involved, but our community as well. To begin the process of reclaiming lives lost to alcohol and drugs is something to be valued and appreciated. St. John's is pleased to be able to support the work done by Yellowstone by offering our facility for some of their work.

Sincerely,

Barbara R. Stewart +

The Rev. Dr. Barbara Stewart

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PLANNING DEPARTMENT

FEB 05 2009

CITY OF NEWPORT BEACH

YS 00479

YELLOWSTONE IS A GOOD NEIGHBOR

NAME WAYNE RegALLA YELLOWSTONE
ADDRESS 1561 Pegasus IS A GREAT
NEIGHBOR

S.A. PUSAKA 714 4299474
NEWPORT BEACH

NAME Brian Weckich

ADDRESS 1552 Pegasus

Newport Beach 714-662-1406

NAME SEAN JAVIS

ADDRESS 1601 Pegasus St.

Newport Beach

NAME Michelle Abraham

ADDRESS 1592 Pegasus St

RECEIVED BY
PLANNING DEPARTMENT

FEB 05 2000

CITY OF NEWPORT BEACH

DATE: 2/5/09

TO: Dave Kiff, Asst. City Manager

FROM: Rita Bosley, Resident in Pegasus Tract, NB

RE: Yellow stone Women's First Step House
Public Hearing on group residential use permits
1561 Indus, 1621 Indus, 1571 Pegasus, 20172 Redlands, NB

We have four sober living homes within a few hundred feet of each other in the Pegasus Tract, and I am fed up with my rights being subordinated to theirs. I am not a special interest group, so I have to rely on those who represent me to make sure the right thing happens. Can I rely on the City of NB?

I oppose each of the four applications for permits and exempt status. The laws were put into effect for the purpose of keeping residential neighborhoods for families. These homes are not families, nor do the owners and residents of them care about the people who live here. Their only interest is making money as indicated by the request for three residents/ bedroom instead of 2. This is a single family neighborhood and even rentals are not officially lawful.

To justify my strong feelings, just look what their presence is doing to aggravate the precarious situation the local residents are suffering. We have lived with the noise of the airport and have fallen into the problems of the slacking economy about which we can do very little. But to add insult to injury, we are forced to accept our rights being trampled with the current situation with the sober living homes. This places undue hardship on our properties.

First, their presence in such great numbers for a very small area have changed the family nature of our neighborhood. Families are reluctant to let their children ride around the block on their bikes because of encounters their children may have with "recovering" people.

Secondly, selling a property in this tract requires disclosing the presence of these homes so close to each other and other properties. Therefore, property values and sales have been affected. Getting refinancing is impossible because the last homes sold were sober living homes which went for forced sale prices.

Third, we have cigarette butts and beer cans in front of our homes, even though the homes are supposed to be alcohol/drug free. Not only are the SL residents using, but so are their families who visit. SL residents also travel around the neighborhood in "gangs" as they go from home to home.

Fourth, cars line the street on nights and weekends, leaving no parking for regular residents' cars and their guests. It is an invasion of our neighborhood.

ENOUGH IS ENOUGH!!! If these requests are granted and the homes become such cash cows, why wouldn't every home in the neighborhood be a potential SL residence. Our large homes are even more attractive in this economy.

Maybe the State should reimburse each local resident for undue hardship on us if these exceptions are enacted. The decision is yours! I hope the City uses its power wisely. And I am aware of the City's efforts to find a workable solution. Thank you, Dave, for your efforts towards our community in the past.

Brown, Janet

From: Kiff, Dave
Sent: Friday, February 06, 2009 11:24 AM
To: Brown, Janet; Wolcott, Cathy
Subject: FW: Re: Hearing February 12, 2009 - Group Residential Permits - Yellowstone Women's First Step House, Inc.

For the record. We appear to be having assembly uses out there, too, among other things.

From: Chet Groskreutz [mailto:Chet@IvankoBarbell.com]
Sent: Friday, February 06, 2009 11:23 AM
To: Kiff, Dave
Cc: Victoria Groskreutz; Rita Bosley; Prodancer1@aol. com
Subject: FW: Re: Hearing February 12, 2009 - Group Residential Permits - Yellowstone Women's First Step House, Inc.

-----Original Message-----

From: Chet Groskreutz [mailto:Chet@IvankoBarbell.com]
Sent: Friday, February 06, 2009 11:13 AM
To: Dave Kiff
Cc: Prodancer1@aol. com; Victoria Groskreutz; Rita Bosley
Subject: Re: Hearing February 12, 2009 - Group Residential Permits - Yellowstone Women's First Step House, Inc.

Re: 1561 INDUS STREET
1621 INDUS STREET
1571 PEGASUS STREET
20172 REDLANDS DRIVE
Applications for the above use permits

Dear Dave:

I met you sometime ago at one of the annexation hearings when Santa Ana Heights annexation was being discussed.

I wanted to e-mail and voice my opposition to all (4) of the applications Yellowstone has applied for based on the following complaints:

1. Vehicles that are not being used:

I oppose all (4) applications.

Although we have been told by Yellowstone officials at their own meetings that none of their residents are allowed to drive, we have evidence that the exact opposite is true, there are residents who are driving cars or trucks and parking them on our streets, many times loaded with personal possessions for extended periods of time. They just move the vehicles from street to street to avoid being ticketed or towed.

2. Parking problems:

I oppose all (4) applications.

On their meeting nites and during the day and on weekends, we cannot use any parking in front of our own homes because the spaces are full of attendees for these meetings. I have posted notes on vehicles on several occasions during their meetings in the past years, telling the owners that the next time they park illegally I am going to have their car towed because it was blocking my driveway. Additionally, I have picked up soda cans, cigarette butts, even beer bottles (

interesting since these are supposed to be sober living homes) and other trash all over the street and on the sidewalk after these "meeting nites". The meetings break up around 9:00 pm but often the attendees stand around in the street until 10:00 p.m. or later talking loudly and disturbing my granddaughters who are asleep.

3. Residential requirements exemption request for more than two residents per bedroom plus one additional resident:

I oppose all (4) applications.

I oppose any variance from the existing NBMC. As it is, there is no control over the massive influx of visitors to the residents of these homes, day and nite, visitors are constantly going back and forth from vehicles to these houses... This means that in one of these 4-5 bedroom homes, they could have as many as they want per bedroom....all it says is that they are asking for more than two residents per bedroom, it could be 3, 4, or even 5 or more residents per bedroom and that would mean in one 5 bedroom home, they could stick up to 25 people or more in the house! If 1 or 2 visitors come daily per resident, there's another potentially 100 people per day coming into our neighborhood, plus the 100 or so living in the houses, that's a potential of 200 more people in our neighborhood...and the potential public health and safety impact should be obvious and in my view is a blatant disregard for the rights of taxpaying residents by Yellowstone Inc., it's nothing personal to them, it's just business!

4. Unlicensed adult alcohol and/or drug abuse facilities:

I oppose all (4) applications.

I oppose any applications for the approval of the above use permits for operation of unlicensed adult alcohol and/or drug abuse facilities. Right now...these homes are unlicensed and therefore are not under any licensing regulations. They are exempt. They should not be exempt. They should apply for the proper licenses that all other facilities of this kind is required by law to have. Their impact as a business on our residential community is and has been devastating.

5. Public safety :

I oppose all (4) applications.

Last week, I think it was January 28th, when I came home, at about 9:50 pm. out complete tract was blocked off and I could not get into Pegasus Street because the police officer told me that there "was a man with a gun" in our neighborhood. It took a half an hour before I was finally let into my own neighborhood to go to bed, due to some wacko who allegedly had a gun. We never had in the 30 years I have lived in my house, ~~ever~~ anything like this happen. I do not think that this was coincidental and I believe that sooner or later, there will be one of these residents from an unlicensed adult facility or a relative or acquaintance of one of them, who will successfully commit some serious crime against someone. Statistically, to have this many (4) homes in such a small concentrated area, it's no surprise that there has only been (1) situation like what happened on Wednesday. Fortunately, no one was hurt...but I fear the next time and there most assuredly will be a next time, if these unlicensed homes are allowed to go unchecked, we may not be so lucky.

6. 100% cost recovery approval:

I oppose all (4) applications.

I oppose this request on the grounds that this is a residential neighborhood and not zoned for business. 100% cost recovery translates to pay for services rendered at these homes...and thus Yellowstone is running (4) run for profit businesses out of our residential neighborhood.

7. Decline in property values:

I oppose all (4) applications.

Recently, we attempted to refinance our home and we were told that the appraised value of our home was affected by neighborhood properties. These values had fallen drastically. We believe the decline in values has been caused in great measure, by the operation of these (4) homes in our neighborhood. We believe that these home have had a negative impact on our property values and that we have suffered financial damages up to and including the inability to receive a

fair appraisal of the value of our home due to the impact caused by the operation of the (4) Yellowstone properties as per above mentioned.

In summary, I oppose all (4) applications for the YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC.

Sincerely,

Chet P. Groskreutz
1551 Pegasus Street
Newport Beach, Ca.
Ph.(714) 545-1832
Bus.:(310) 514-1155

Brown, Janet

From: Kiff, Dave
Sent: Monday, February 09, 2009 7:21 PM
To: Brown, Janet
Subject: FW: Yellowstone Group Homes, West Santa Ana Heights

From: mike mcdonough [mailto:mmcdonough01@hotmail.com]
Sent: Monday, February 09, 2009 7:12 PM
To: Kiff, Dave
Subject: Yellowstone Group Homes, West Santa Ana Heights

Mr. Kiff,

I own 1562 Pegasus Street, Newport Beach. My wife and I are opposed to the granting of use permits for the Group homes in our neighborhood. We have resided at this location for 36 years, my four children grew up on this street, playing with the children of other long time residents. We have always felt safe in the past but now don't allow our grandchildren play in the front yard.

On a daily basis we observe individuals wandering the neighborhood, often in groups of 3 or 4, with no apparent business or destination. Trash, bottles, and cigarette butts on the street and parkways has increased, parking of vehicles for several days at a time is common, and groups from meetings mill about talking loudly. All these issues cause a negative impact on the neighborhood. In the last 2 years my vehicle has been entered at least twice and property stolen. Are the thefts related? No way to know for sure.

Four sober living homes are within 100 yards of my front door. I have been advised by a real estate agent that I must disclose, to prospective buyers, the location of Sober Living Group homes close to my property. This has a negative impact on property values and if these properties are allowed to house, expand or increase the number of clients property values will continue to fall.

Another consideration is the cost of city services to these locations. The NBFD has responded several times on medical aid calls to sober living homes in the neighborhood. These drug and alcohol related medical calls are time consuming, costly in relation to personnel and equipment, and disruptive to the community.

I urge the City to deny the use permits for these property and return our neighborhood to a family oriented community.

Thank you,

Mike McDonough
1562 Pegasus Street
Newport Beach, Ca

Brown, Janet

From: Brian Wecklich [bwecklich@hotmail.com]
Sent: Thursday, February 12, 2009 9:04 AM
To: Brian Wecklich; Brown, Janet
Subject: Public hearing for use permits

Hello

I'm writing about the public hearing regarding the 4 rehab houses in the area of Pegasus St. Newport Beach. My house is located at 1552 Pegasus st. Newport Beach. I have not had any issues with the houses you are trying to address at this time. At the same time I do not want to see any issues in the future. The issue that comes to attention is parking in our neighborhood. Where these houses do not contribute to the problem at present I want to make sure they do not in the future. There is a rehab house at the corner of Pegasus and Santa Ana Ave that is run by another group. I do not know what the name of that group is. They are a major problem as far as parking goes. There are so many vehicles from that house that they park in front of four or five houses up the street. They have inadequate parking for their operation. If these type houses are going to operate in our neighborhood I want to make sure they do not infringe on the others in the neighborhood. So I guess I am saying that some sort of parking regulation or enforcement should go along with the Use Permits they are requesting.

Thank You

Brian Wecklich
1552 Pegasus St
Newport Beach, California

714 609 1441
BWecklich@Live .com

Brown, Janet

From: Michelle Rosenthal [shoppingfenatic143@yahoo.com]
Sent: Thursday, February 12, 2009 4:45 PM
To: Brown, Janet
Subject: PUBLIC HEARING 2/20: USE PERMITS FOR REHAB HOUSES

To City of Newport Beach:

My name is Michelle Rosenthal. I am a homeowner living at 1661 Indus Street. My husband and I just moved to this neighborhood in November 2007. It was not until after we moved into our neighborhood and began asking questions that we learned of these "rehab businesses" in our area. It was rather disappointing to find this out and it wasn't something that was disclosed at the time we purchased our home.

The scenario is quite simple. These are not homes...they are businesses:

- Cars and people are constantly coming and going
- These addicts wander from home to home without any regard for traffic
- Their shuttle vans are parked all over the neighborhood
- They host weekly meetings inviting more people like themselves into the neighborhood, parking all over the streets, smoking, and hanging in the streets
- They take no pride in their homes and do not maintain them to the standards as a homeowner normally would
- People congregate and smoke in their front yards
- They generate massive amounts of trash with more people than a normal family living under one roof

Bottom line, they depreciate the value of our neighborhood, I am not an addict, I am not in rehab, and do not wish to have these people living a few doors down from me.

I paid FULL PRICE for my home, am a decent citizen and homeowner....why do I have 4 homes being ran as businesses in my neighborhood, making a profit off people who are "recovering" from drug/alcohol abuse? "Halfway house" is what they call it and half way is how they maintain it and portray the neighborhood. My husband and I want to live in a family environment. If we stepped up the prestige of our community and became part of the city of Newport Beach, clean house and get the riff-raff out. PULL THEIR PERMITS AND GET THEM OUT OF OUR NEIGHBORHOOD PLEASE.

Thank you for your time and attention to my strong feelings on this issue.

Exhibit No. 7
Reasonable Accommodation
Application dated August 22, 2008

RECEIVED BY
PLANNING DEPARTMENT

AUG 25 2008

CITY OF NEWPORT BEACH



DAVIS • RAYBURN
A PROFESSIONAL LAW CORPORATION

August 22, 2008

8005-003

VIA FIRST CLASS MAIL

Ms. Janet Brown
CITY OF NEWPORT BEACH
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: Notice of Incomplete Application: 1621 Indus Street

Dear Ms. Brown:

As you know, this firm is general counsel for **Yellowstone Women's First Step House, Inc. ("Yellowstone")**. We are in receipt of the City of Newport Beach's Notice of Incomplete Application for the property located at 1621 Indus Street (the "Property").

In response to that notice, we provide herewith the following:

1. Application Form 100, Item 2, Property Owner Information: the requested information is enclosed herewith.
2. Item 3B: We have no information regarding other similar uses and we appreciate the City's offer to provide this information.
3. Item 4: We cross-reference and incorporate the other applications, which are being provided concurrently under separate cover.
4. Item 5: We have no information regarding other conditional uses and we appreciate the City's offer to provide this information.
5. Item 6: A site plan is enclosed herewith.
6. Item 8B: Resident capacity is 16. Total capacity is 18.
7. Item 8C: A floor plan is enclosed herewith.
8. Item 8L: The acknowledgement re secondhand smoke is enclosed herewith.
9. Item 10D: Dr. Thames is the facility Director.
10. Form 200: A board resolution is enclosed herewith.
11. Form 850: Fire Marshall Clearance is enclosed herewith.
12. Request for reasonable accommodation: See the enclosed form.

The one item that we have not included in this correspondence is the requested \$2,200.00 fee. After reviewing the code, we have been unable to locate any discussion of such fee. We mention this not to question the City's authority to impose such a fee, but rather because we have not seen any statutory scheme that should provide for a hardship exception. We would respectfully request that the City furnish such authority, and also provide us with any exemption

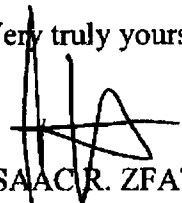
City of Newport Beach
August 22, 2008
Page 2

application. Alternatively, we would request an extension of time to remit such fee so that we might be able to raise the funds necessary to accommodate the City's request.

As a final note, it is worth mentioning that it is our understanding that the Property is still currently located in an unincorporated area of Orange County known as Santa Ana Heights, and that the Newport Beach annex of the property is not yet complete. If this is true, then we would submit that the city of Newport Beach does not have jurisdiction over this property. Any response that the City can provide regarding this matter would be greatly appreciated. To the extent that our understanding is correct, we would ask that the City simply hold our application until such time as the annexation is complete, so that the parties are not required to reinitiate this process.

Please accept our apologies for the delay in providing the enclosed information. As always, if you have any questions regarding these applications, please feel free to contact us.

Very truly yours,



ISAAC R. ZFATY

IRZ/jmk

cc: Yellowstone (attn: Dr. Anna Marie Thames)

This Document was electronically recorded by
ER Cert Mail D

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder



9.00

2007000110650 10:25am 02/21/07

100 96 D10 2

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RECORDING REQUESTED BY:

ANNA MARIE THAMES

WHEN RECORDED, MAIL TO
AND MAIL TAX STATEMENTS TO:

Dr. A.M. Thames, Trustee
28 Ima Loa
Newport Beach, CA 92663

THIS SPACE FOR RECORDER'S USE ONLY

APN: 119-361-04

The undersigned Grantor declares that this conveyance transfers
her interest to her Revocable Living Trust and
is exempt from the Documentary Transfer Tax pursuant to R & T Code §11911.

DEED TO A REVOCABLE TRUST

DR. ANNA M. THAMES,

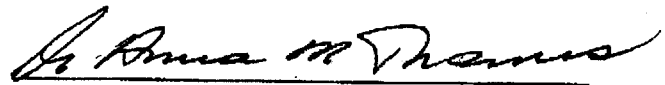
HEREBY GRANTS TO

ANNA MARIE THAMES, as Trustee of THE THAMES TRUST, U/A dated January 25,
2007,

The real property at 1621 Industrial Street, Santa Ana, California, described as:

LEGAL DESCRIPTION IS HEREBY ATTACHED AS EXHIBIT "A" AND IS MADE A PART
HEREOF.

Executed on January 25, 2007, in Orange County, California.

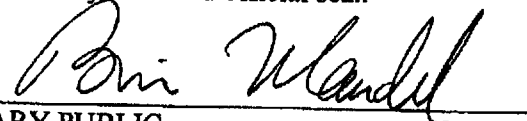

DR. ANNA M. THAMES

STATE OF CALIFORNIA

COUNTY OF ORANGE

On this 25 day of January, 2007, before me (BRIAN MANDEL, a Notary Public in and for said State), personally appeared DR. ANNA M. THAMES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


NOTARY PUBLIC

[SEAL]



YS 00492

TO: CITY OF NEWPORT BEACH

FROM: DR. ANNA THAMES, OWNER

RE: AUTHORIZATION

THIS IS AN OFFICIAL AUTHORIZATION TO MAKE
APPLICATIONS FOR MY RESIDENCE AT

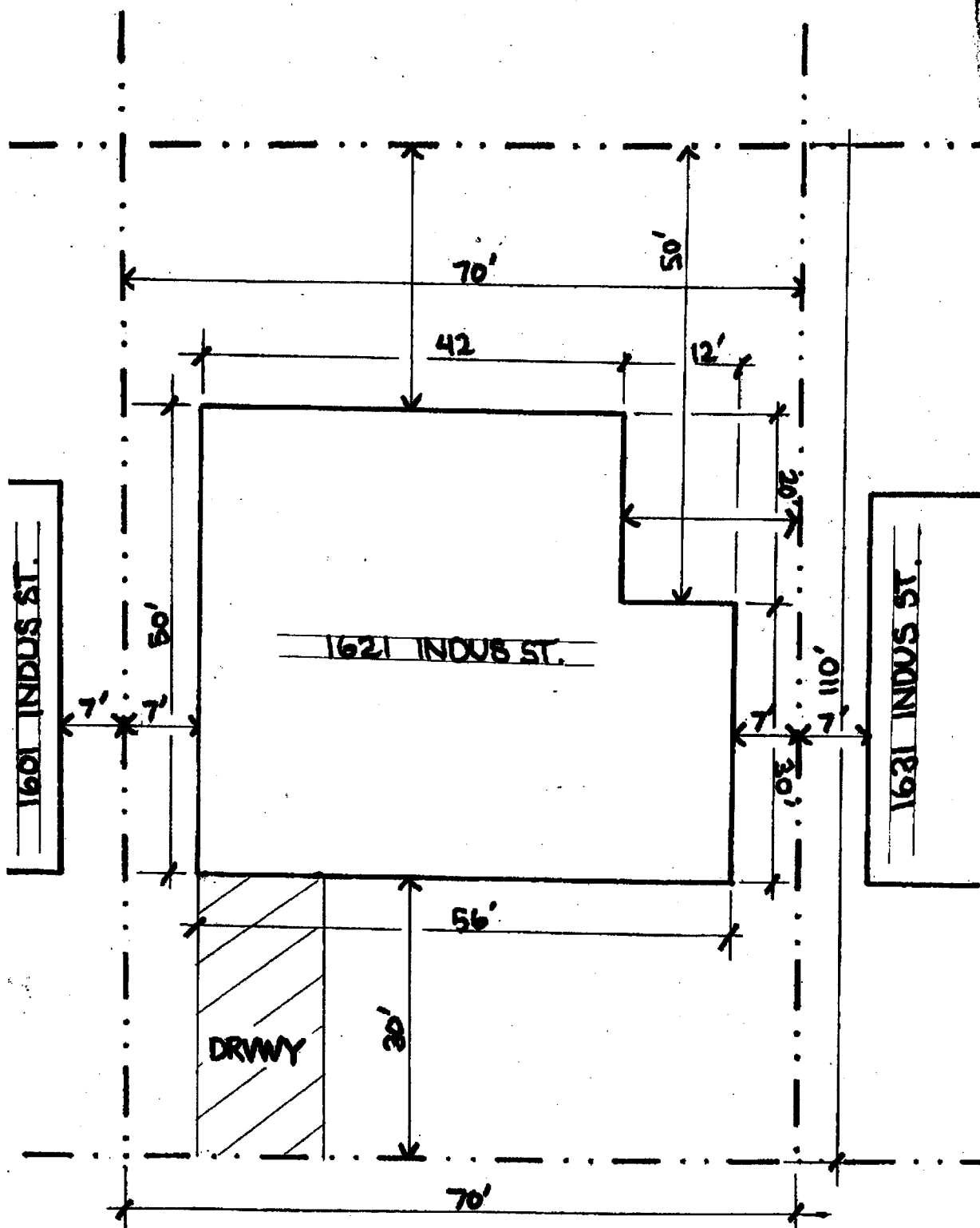
1621 INDUS , NEWPORT BEACH, CAL.

IT IS CURRENTLY LICENSED WITH THE STATE OF
CALIFORNIA.

DATE AUTHORIZED: JUNE 30, 2008

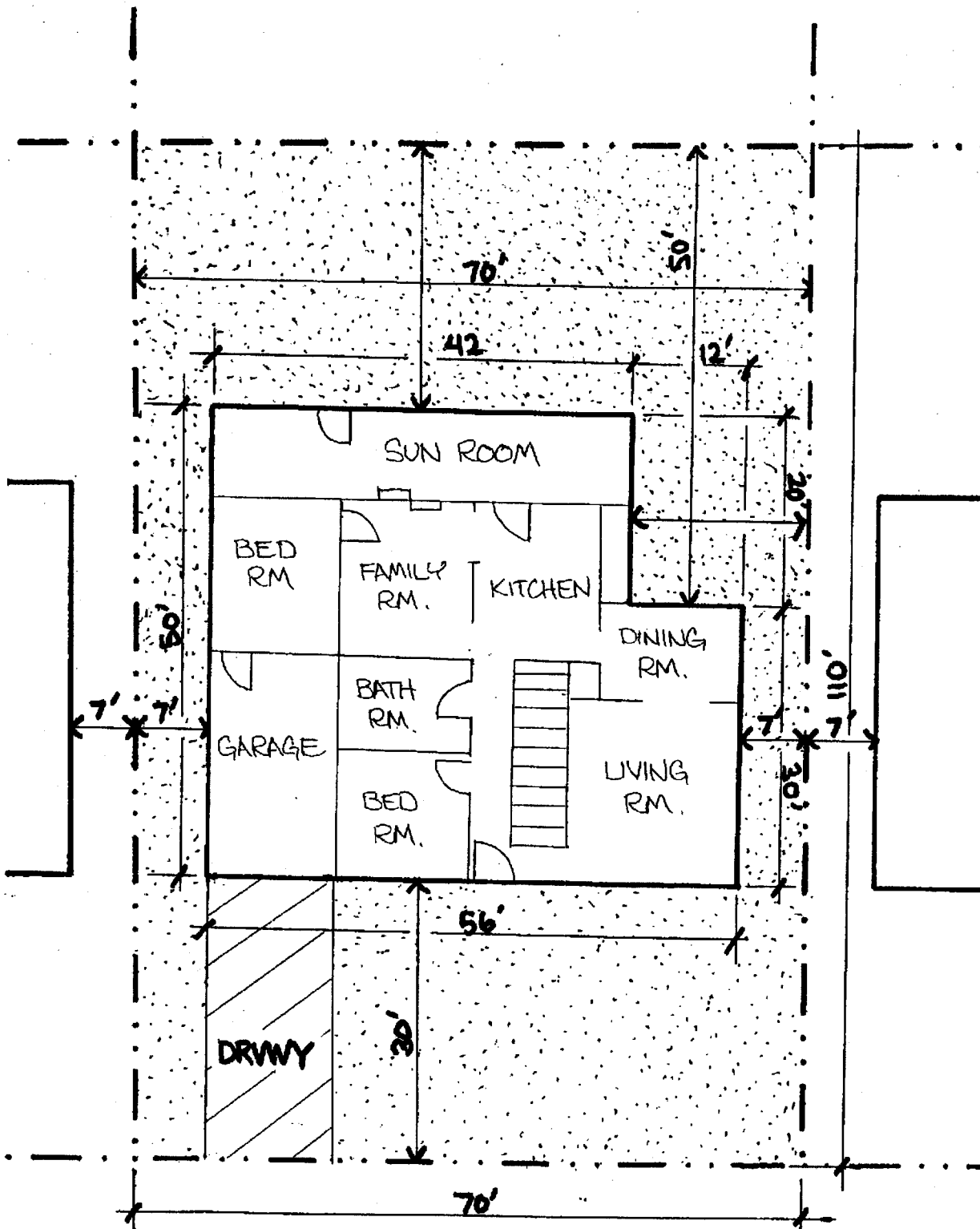
A handwritten signature in cursive script, appearing to read "Dr. Anna Thames", is written over a horizontal line.

SIGNATURE



1621 INDUS STREET
• SOUTH HOUSE •

SITE PLAN



LEGEND	
	SETBACKS
	DRIVEWAYS
	USABLE OUTDOOR

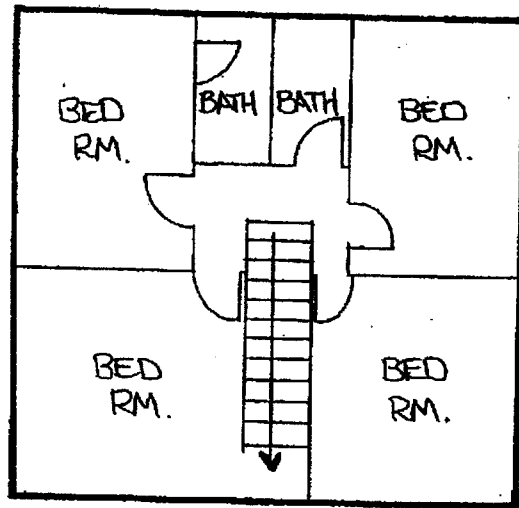
1621 INDUS STREET
 • SOUTH HOUSE •

1 ST. FLOOR PLAN

PROPERTY LINE

PROPERTY LINE

PROPERTY LINE



PROPERTY LINE

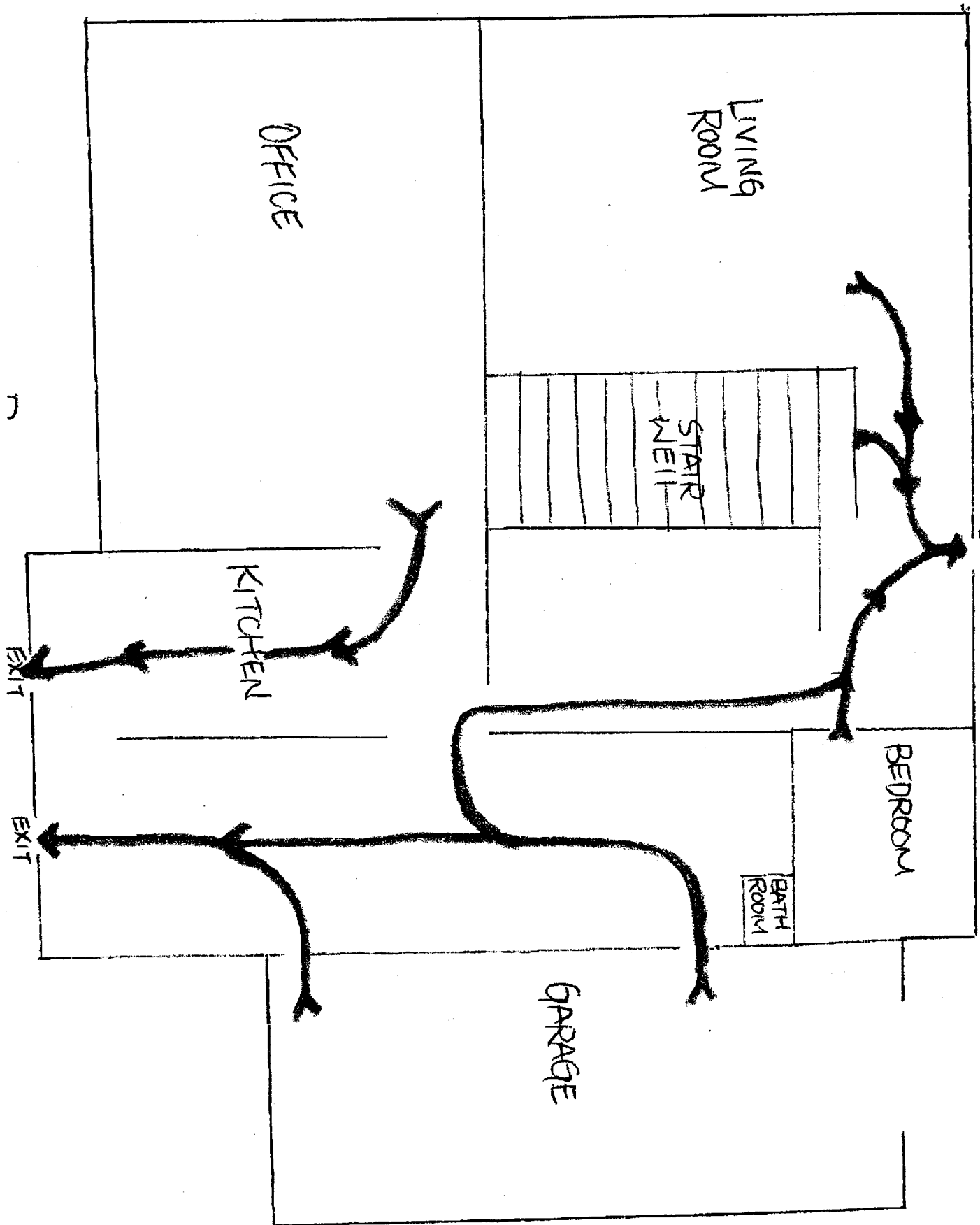
1621 INDUS STREET

.. SOUTH HOUSE ..

2^{ND.} FLOOR PLAN

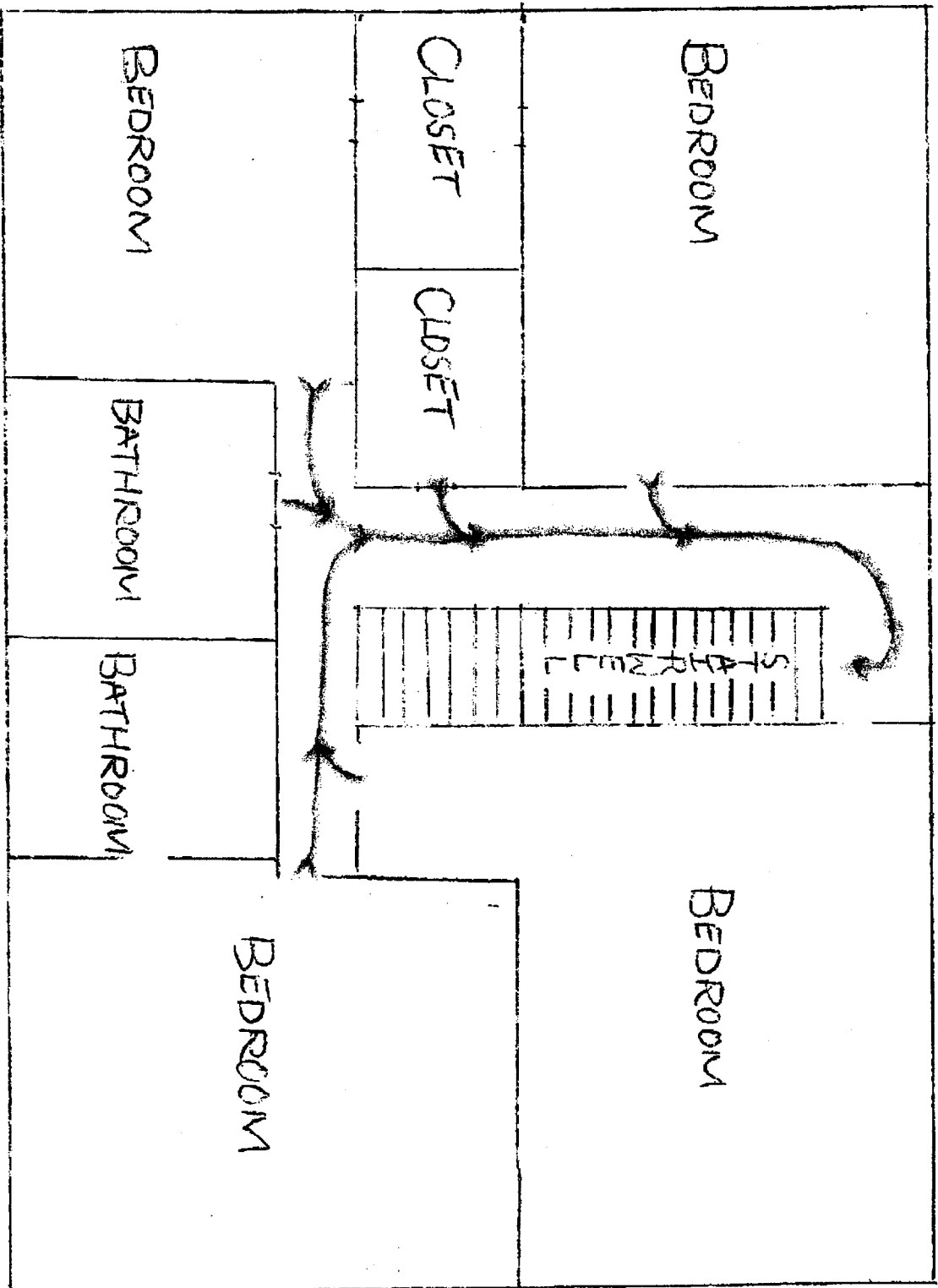
FRONT
GROUND FLOOR
EXIT

KEYSTONE
HOUSE



FRONT
TOP FLOOR

Keystone House



Back

☐ Orange County Adult Alcohol and Drug Sober Living Facilities Certification (required)

☐ Orange County Sober Living Network (recommended)

☐ Other (please describe) _____

L. SECONDHAND SMOKE LIMITATIONS

NBMC §20.91A.050.A directs that "no staff, clients, guests, or any other uses of the facility may smoke in an area from which the secondhand smoke may be detected on any parcel other than the parcel upon which the facility is located. Check and sign here to acknowledge this requirement and your use's adherence to it.

☒ I acknowledge that I will control secondhand smoke on my facility such that no secondhand smoke may be detected on any parcel other than the parcel upon which my facility is located.

Signature: _____

Date: _____

9. APPLICANT OBLIGATIONS

- A. The "owner of record" of the property or an authorized agent must sign this Application. Signing the application under Section 10 means that the applicant certifies, under penalty of perjury, that the information provided within the Application and its attachments is true and correct. Per NBMC §20.90.030.C, false statements are grounds for denial or revocation.
- B. The Applicant acknowledges that he or she must comply with all other Federal, State, and local laws and regulations relating to this use. The Applicant understands that a violation of Federal, State, and local laws and regulations is grounds for revocation of the Permit. The Applicant understands and acknowledges that it is against California law to provide treatment (as defined) in an unlicensed facility.
- C. If the City issues a Use Permit based on the information provided in this Application, the Applicant's signature below certifies his or her agreement to comply with the terms of the Use Permit. The Applicant understands and acknowledges that non-compliance with the terms of the Use Permit is grounds for revocation of the Permit.

Revocation of the Use Permit. NBMC §20.96.040.E provides that the City can revoke a Use Permit if:

- The permit was issued under erroneous information or misrepresentation; or
- The applicant made a false or misleading statement of material fact, or omitted a material fact; or
- The conditions of use or other regulations or laws have been violated; or
- There has been a discontinuance of use for 180 days or more.

10. AUTHORIZED SIGNATURE(S) OF APPLICANT

THE UNDERSIGNED ASSURES THAT THE INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT AND THAT THE APPLICANT HAS READ AND UNDERSTOOD HIS OR HER OBLIGATIONS UNDER ANY USE PERMIT ISSUED BASED ON THIS APPLICATION.

- A. If the applicant is a sole proprietor, the application shall be signed by the proprietor.
- B. If the applicant is a partnership, the application shall be signed by each partner.
- C. If the applicant is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or the individual legally responsible for representing the agency.

YELLOWSTONE BOARD RESOLUTION:

THE SIGNATURES BELOW REPRESENT AGREEENT AND ENDORSEMENT OF THE BOARD OF TRUSTEES OF YELLOWSTONE FOR THE FOLLOWING:

DR. A.M. THAMES IS THE CEO OF THE BOARD AND AGREES TO REPRESENT YELLOWSTONE IN ALL NEGOTIATIONS WITH THE CITY OF NEWPORT BEACH. SHE WILL SIGN ANY AND ALL FINAL AGREEMENTS.

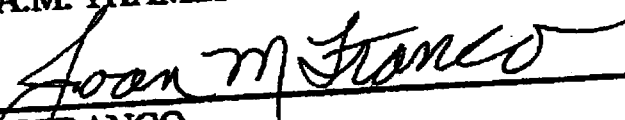
ATTORNEY ISAAC ZFATY, WILL PROVIDE LEGAL REPRESENTATION IN ALL MATTERS IN THE AGREEMENTS WITH THE CITY OF NEWPORT BEACH

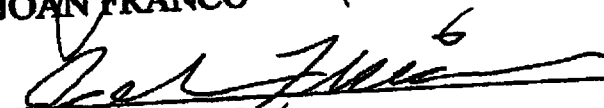
LEISHA MELLO, AS ADMINISTRATOR FOR YELLOWSTONE WILL ALSO BE AVAILABLE FOR DISCUSSIONS RELATED TO THE AGREEMENTS WITH THE CITY OF NEWPORT BEACH.

THESE AGREEMENTS AND ENDORSEMENTS ARE APPROVED BY THE BOARD OF TRUSTEES AS OF JULY 1, 2008.

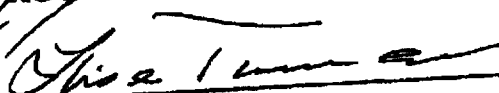
BOARD MEMBERS SIGNING:


DR. A.M. THAMES


JOAN FRANCO


JOHN ZEIDEMA


ROY WARD


LISA TUMAN

FIRE SAFETY INSPECTION REQUEST

See instructions on reverse.

STD. 880 (REV. 10-81)

AGENCY CONTACT'S NAME

TELEPHONE NUMBER

REQUEST DATE

PROGRAM

EVALUATOR'S NAME

REQUESTING AGENCY FACILITY NUMBER

REQUEST CODE

1A

CODES

1. ORIGINAL A. FIRE CLEARANCE
2. RENEWAL B. LIFE SAFETY
3. CAPACITY CHANGE
4. OWNERSHIP CHANGE
5. ADDRESS CHANGE
6. NAME CHANGE
7. OTHER

LICENSING
AGENCY
NAME AND
ADDRESS

Department of Alcohol & Drug Programs
Licensing and Certification Branch
1700 K Street
Sacramento, Ca. 958-14-4037

AMBULATORY		NONAMBULATORY		BEDRIDDEN		TOTAL CAPACITY
CAPACITY	PREVIOUS CAPACITY	CAPACITY	PREVIOUS CAPACITY	CAPACITY	PREVIOUS CAPACITY	
18						18
FACILITY NAME Women's Recovery of California, Yellowstone, Indus						LICENSE CATEGORY Alcohol/Drug Facility
STREET ADDRESS (Actual Location) 1621 Indus Street						NUMBER OF BUILDINGS
CITY Santa Ana, CA 92707						RESTRAINT
FACILITY CONTACT PERSON'S NAME De. A. M. (Honey) Thames						HOURS 24 hours
SPECIAL CONDITIONS						

TO BE COMPLETED BY INSPECTING AUTHORITY

FIRE
AUTHORITY
NAME AND
ADDRESS

Orange County Fire Authority
1 Fire Authority Way
Irvine, CA 92619

CLEARANCE/DENIAL CODE

CODES

- ① FIRE CLEARANCE GRANTED
2. FIRE CLEARANCE DENIED
 - A. EXITS
 - B. CONSTRUCTION
 - C. FIRE ALARM
 - D. SPRINKLERS
 - E. HOUSEKEEPING
 - F. SPECIAL HAZARD
 - G. OTHER

INSPECTOR'S NAME (Typed or Printed)

TELEPHONE NUMBER

CRRS NUMBER

OCCUPANCY CLASS

Mike Johnson

(949) 347-2240

30065

R6-2

INSPECTION DATE

INSPECTOR'S SIGNATURE

2/22/05

EXPLAIN DENIAL OR LIST SPECIAL CONDITIONS

This is an existing home. Some corrections need to be made. Clearance is granted on the condition that the attached violations are addressed within noted time.



CITY OF NEWPORT BEACH

**Supplemental Information
for
Reasonable Accommodation**

Planning Department
3300 Newport Boulevard
Newport Beach, California 92658-8915
(949) 644-3200

Application Number _____

To aid staff in determining that the necessary findings can be made in this particular case as set forth in Chapter 20.98 of the Municipal Code, please answer the following questions with regard to your request (Please attach on separate sheets, if necessary):

Please see attached sheet _____

Name of Applicant _____

If provider of housing, name of facility, including legal name of corporation _____

(Mailing Address of Applicant)

(City/State)

(Zip)

(Telephone)

(Fax number)

(E-Mail address)

(Subject Property Address)

Assessor's Parcel Number (APN)

1. Is this application being submitted by a person with a disability, that person's representative, or a developer or provider of housing for individuals with a disability?

2. Does the applicant, or individual(s) on whose behalf the application is being made, have physical or mental impairments that substantially limit one or more of such person's major life activities? If so, please state the impairment(s) and provide documentation of such impairment(s).

3. From which specific Zoning Code provisions, policies or practices are you seeking an exception or modification?

4. Please explain why the specific exception or modification requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence. Please provide documentation, if any, to support your explanation.

5. Please explain why the requested accommodation will affirmatively enhance the quality of life of the individual with a disability. Please provide documentation, if any, to support your explanation.

6. Please explain how the individual with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation? Please provide documentation, if any, to support your explanation.

7. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary to make your facility economically viable in light of the relevant market and market participants. Please provide documentation, if any, to support your explanation.

8. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary for your facility to provide individuals with a disability an equal opportunity to live in a residential setting taking into consideration the existing supply of facilities of a similar nature and operation in the community. Please provide documentation, if any, to support your explanation.

Application Number _____

9. Please add any other information that may be helpful to the applicant to enable the City to determine whether the findings set forth in Chapter 20.98 can be made (Use additional pages if necessary.) _____

1621 Indus Attachment

Name of applicant: Yellowstone, Woman's First Step House, Inc., 1621 Indus St., Santa Ana Heights, CA 92701; Phone: 888.941.9048; Fax: 949.646.5296; APN: 119-361-04.

1. This application is provided by a provider of housing for individuals with a disability.
2. The individuals are alcoholics.
3. Single family residence to multi-family residence.
4. The applicant provides the residents of the Property with housing where same is otherwise unavailable to them. Most residents are long-term residents who are able to live with their disability, and in a sober environment, as a result of the provision of the facility by the applicant. The success of sober living homes in assisting these disabled individuals throughout the United States is well documented. Similar success has been realized at the Property addressed herein. A sample of the literature on sober living homes was attached to the original application. Without the home addressed in this application, the individuals who live at this home would not have access to sober living homes, and would not be able to afford to live in such a home in Orange County. Yellowstone provides this home to satisfy the otherwise unaddressed need by these disabled individuals for an equal opportunity to use and enjoy a dwelling. There is no question that, with their current use, this property affirmatively enhances the lives of many individuals with disabilities. Importantly, the rent charged to these individuals simply covers Yellowstone's costs; no profit is realized. In fact, without charitable contributions, Yellowstone would operate at a loss. By no means is Yellowstone, or any individual involved with Yellowstone, a profiteer. Yellowstone simply makes available a sober living environment in an effort to help these disabled individuals, and with a view toward enhancing the community. To the extent that Yellowstone is forced to remove its operations from this property, it will suffer extreme economic hardship. Moreover, with any prospective closure of the property as a sober living home, the individuals with disabilities who live in the home will be without accommodation. Yellowstone is compliant with all of the requirements in the City of Newport Beach's Good Neighbor Principles, and is tenacious in ensuring that all residents at the Property strictly observe these requirements. Approval of this application would not alter the nature of the municipal code or impose any financial or administrative burden on the City. This property has been operating under these same general guidelines for years without imposing any burden upon the County or City. The residential character of the neighborhoods in which this property is located will not be altered in any way with the approval of this application. In fact, there is no non-residential use at the property. Moreover, there is no campus established through the grant of this application. Residents this property are not allowed at any of other property operated by Yellowston, and there are no functions that include all residents. Yellowstone has never been cited by any municipality at this property for any of the complaints set forth specifically in Ordinance 2008-5,

Page 4, Paragraph 13. No health, safety or physical damage issues are presented with granting of these applications.

5. See response to No. 4.
6. See response to No. 4.
7. See response to No. 4. The applicant is not a developer. The applicant has operated at the Property for years and currently can afford this property. Due to the economic decline, and specifically as it pertains to residential housing, the forced sale of this property would cause an extreme economic hardship.
8. See responses to No. 4 and 7.
9. The applicant is a long-standing tenant in the community, and has had a presence in Santa Ana Heights for years. The applicant prides itself in acting as a good neighbor. As noted above, the applicant has an extremely high success rate in assisting disabled individuals live and integrate into Orange County. The applicant affirmatively enhances the lives of its residents. Any abatement of this facility would be harmful to the community.

Exhibit No. 8
Applicant's Supportive
Documentation


DAVIS • Z F A T Y
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PLANNING DEPARTMENT

FEB 02 2009

CITY OF NEWPORT BEACH

January 29, 2009

Z175.1

VIA FIRST CLASS MAIL

Ms. Janet Brown
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: Request for Reasonable Accommodation: 1621 Indus Street

Dear Ms. Brown:

As you know, this firm is general counsel for Yellowstone Women's First Step House, Inc. ("Yellowstone"). I recently spoke with Cathy Walcott of the City Attorney's office. She informed me of a few ambiguities in our Request for Reasonable Accommodation Worksheet for the 1621 Indus property (the "Property"). The purpose of this letter is to clarify these ambiguities.

(Question 5) Impairments Substantially Limiting Major Life Activities: Do the clients have physical or mental impairments that substantially limit one or more of such person's major life activities? What are those impairments?

The residents of the Property are recovering from alcohol addiction. They manifest physical and mental symptoms which have prevented them from engaging in at least one of their major life activities.

Although the residents work, they are recovering from a physical dependence on alcohol. Mentally, the residents are recovering from the inability to make healthy choices like the average person in the general population regarding their consumption of alcohol. Their impairments affect their ability to think, concentrate, and interact with others as compared to the ability of the average person in the general population to do the same. Thus, their disability is substantially limiting.

Enclosed with this letter is a Declaration under penalty of perjury from the applicant, Honey Thames, manager of the Property, that every resident in the Property has physical or mental impairments that substantially limit one or more of the residents' major life activities. Cathy Walcott mentioned that this would be acceptable given that the privacy concerns of the residents limit our ability to provide medical records or signatures of the residents.

Ms. Janet Brown
January 29, 2009

(Question 10) Parking: Describe the on-site parking resources and the staff and visitor parking plans.

Parking on the Property is reserved for the manager and assistant manager, thus the maximum number of cars on the Property at any one time will be two. Residents are not permitted to park on the Property. Visitors are not permitted on the Property therefore there are no visitor parking issues.

(Question 11) Operation of Vehicles: Describe client's availability to drive and operate a vehicle while residing at facility.

The residents do not use cars. Instead, they rely on public transportation to and from the Property.

(Question 12) Transportation: Does the facility provide transportation services? If yes, please describe the frequency, duration, and schedule of services and where the vehicles are stored

Though the home generally does not provide transportation services, the home does provide some basic transportation to the nearby treatment facility and to St. John church. Both locations are within ten minutes of the home. There is a morning pickup at 8 a.m. and an evening drop off at 4 p.m. This is the only transportation provided. The vans that transport the residents are not parked on site. When not in use, the vans are kept in another city.

(Question 16) Interaction Within the Property: How do the clients interact with each other within the unit? Is there joint use of common areas? Do clients share household activities and responsibilities? Will delivery trucks be provided at the facility?

The Property provides the residents with a network of support to encourage recovery from the symptoms of alcoholism. The residents reside separately at the Property. There is a common area however each resident is responsible for their own meals, expenses, and chores. There is no individual treatment, group treatment, or group therapy sessions that occur on the Property. The sole purpose of each resident living on the Property is to live in a house with other sober individuals with similar disabilities. Also, there are no delivery vehicles going to and from the Property. Finally, although Yellowstone owns four such homes in the Newport Beach area, there is no interaction between the homes. In other words, residents of the Property do not meet with the residents of other Yellowstone properties for dinners or other gatherings. Each home has its own residents and the residents of one home never interact with residents of a different home.

Ms. Janet Brown
January 29, 2009

(Question 19) Necessity of the Requested Accommodation: Please explain why the requested accommodation is necessary.

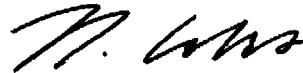
Yellowstone hereby requests that a Reasonable Accommodation be made to Ordinance 2008-5 such that Yellowstone is treated as a Single Housekeeping Unit as the term is defined in Section 20.03.030 of the Newport Beach Municipal Code.

The Reasonable Accommodation is necessary because the Property is not transient or institutional in nature such that it fits the definition of a non-licensed residential care facility. Instead, the Property more accurately fits the definition of a Single Housekeeping Unit as the term is defined in Section 20.03.030. Residents are the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit. Like a Single Housekeeping Unit, there is a common area and each resident is responsible for their own meals, expenses, and chores. There is no individual treatment, group treatment, or group therapy sessions that occur on the Property. The sole purpose of each resident living on the Property is to live in a house with other sober individuals with similar disabilities. Also, the makeup of the Property is determined by the residents of the unit rather than the property manager. In conformity with our request for a Reasonable Accommodation, we would like to request that we get an exemption from Section 20.91A. 050 of the Newport Beach Municipal Code which states that there shall be no more than two residents per bedroom plus one additional resident.

I hope that this clarifies any ambiguity with respect to our previous request for a Reasonable Accommodation. Please let me know if our responses need to be supplemented further and as always, feel free to contact me if you have any questions.

Very truly yours,

DAVIS ZFATY
a professional corporation



NICOLE COHRS

cc: Yellowstone (attn: Dr. Anna Marie Thames)

DECLARATION OF ANNA MARIE THAMES

I, Dr. Anna Marie Thames, hereby declare as follows:

1. The matters stated herein are known to me personally and if called upon to testify, I could and would competently testify thereto as follows.
2. All individuals residing in the property located at 1621 Indus in Newport Beach are recovering from alcohol addiction.
3. Although the residents are recovering, they manifest physical and mental symptoms of their addiction which substantially limit one or more of the residents major life activities

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of January 2009, at Newport Beach, California.


ANNA MARIE THAMES

1621 Indus


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RECEIVED BY
PLANNING DEPARTMENT

FEB 02 2009

January 29, 2009

CITY OF NEWPORT BEACH

VIA FIRST CLASS MAIL

Ms. Janet Brown
CITY OF NEWPORT BEACH
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: *Affidavits for Fee Waiver Reasonable Accommodation*

Dear Janet:

Enclosed are the signed Affidavits of Disability Related Financial Hardship. There is a separate Affidavit for each of the four Yellowstone properties. As we discussed, our responses to the questions relating to the income of the residents pre and post-disability are based on the average resident for each of the homes.

Please feel free to contact me if you have any questions.

Very truly yours,

DAVIS ZFATY



NICOLE COHRS

Enclosure

AFFIDAVIT OF DISABILITY-RELATED FINANCIAL HARDSHIP

1621 Indus, Newport Beach

I, Anna Marie Thames, declare:

1. I am an authorized representative of disabled individuals;
2. I am submitting information specific to the financial status of a group of disabled individuals who reside in a household;
3. I am submitting the financial information herein voluntarily because I have requested a reasonable accommodation from the City of Newport Beach, which I believe is necessary because of financial hardship to the disabled individuals I represent;
4. Severe financial constraints which arose as a direct result of the disabled individuals I represent prevent them from complying with one or more provision or provisions of the City of Newport Beach's Municipal Code, Council Policies or usual and customary procedures generally applicable to the type of dwelling in which disabled persons I represent reside or wish to reside;
5. Such provisions of the City of Newport Beach's Municipal Code, Council Policies or usual and customary procedures, if applied to the dwelling in which the disabled individuals I represent reside, will deprive disabled individuals of the opportunity to reside in the dwelling of his or her choice;
6. In order to afford the disabled individuals the opportunity to reside in the dwelling of his or her choice, the permanent or temporary waiver of a fee, tax, nuisance abatement, code enforcement action, repair, zoning, building construction or other requirement of the Newport Beach Municipal Code, Council Policy or customary procedure is necessary;
7. The requested waiving of such fee, tax, nuisance abatement, code enforcement action, repair, zoning, building construction or other requirement is necessary because of financial limitations which are the direct result of the disability of the individuals that I represent;

8. If the disabled individual on whose behalf a financial reasonable accommodation is requested was able to work prior to becoming disabled, please provide information on such individual's pre- and post disability income:

A. On the following dates, the disability of the persons I represent, rendered such persons severely limited in their ability to work or entirely unable to work:

The individuals residing in the home were all affected by their disability at different times. During addiction, residents are unable to work. In sober living, however, all residents must find a job.

B. Prior to the dates on which such disability rendered the disabled individuals I represent unable or severely limited in their ability to work, their annual household income from all sources was approximately \$50,000 (on average).

C. After the dates on which such disability rendered the disabled individuals I represent unable or severely limited in their ability to work, their annual income from all sources was approximately \$20,000 (on average). Typically, household income is cut approximately in half because of alcoholism. As a result of alcoholism, the residents of the home have been rendered financially disabled. In sober living, the residents must find a job, however, the jobs the residents seeks are near minimum wage (\$8.00 per hour).

9. If the disabled individuals on whose behalf a financial reasonable accommodation is requested were not employed prior to becoming disabled, please state why any financial limitations which render the disabled individuals unable to meet the financial requirements of complying with the Newport Beach Municipal Code are a direct result of such their disability.

All residents were employed in some manner prior to their addiction.

10. Please provide any additional information you feel would enable City staff and/or hearing officers to determine whether disability-related financial hardship requires an exception from the application of the City's Municipal Code, Council Policies, or usual and customary procedures in order to afford the disabled individuals an opportunity to reside in a dwelling.

The residents cannot afford their own places to live. Their income is based on near minimum wage hourly rates. Thus, if forced to live elsewhere they could not afford to pay rent, a security deposit for an apartment, food, or utilities. Yellowstone provides a fresh start for recovering alcoholics to begin their life with a clean slate. Our fees are low and donors in the community provide individual scholarships for residents who qualify.

Yellowstone is a non-profit organization. Yellowstone has no investors and no loans. The organization uses the income from residents to cover its costs and Yellowstone makes no profit from the residents. The organization is run by a group of volunteers who are committed to returning the residents back to the community clean and sober as tax paying citizens who can help other alcoholics. As a result, Yellowstone's small budget cannot accommodate the \$2,200 application fee. Yellowstone respectfully requests that the City make a reasonable accommodation in accordance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of January, 2009, in Newport Beach, California.


ANNA MARIE THAMES

COST ANALYSIS OF OUR HOMES IN SANTA ANA HEIGHTS

IN GENERAL, OUR WEEKLY FEES ARE BASED ON A SLIDING SCALE FROM \$50.00 TO \$160 PER WEEK

OUR MORTGAGES AVERAGE \$4500 PER MONTH

A MINIMUM OF 15 RESIDENTS IS NEEDED TO PAY ALL THE EXPENSES FOR EACH HOUSE, INCLUDING
LIGHTS, GAS, WATER AND TRASH.

RENTS: SLIDING SCALE: \$50.00 TO \$160.00 PER WEEK

AVERAGE: RESIDENTS: 16

AVERAGE RENT \$100

MONTHLY AVERAGE: \$6400 INCOME

EXPENSES: FOR EACH HOUSE

AVERAGE UTILITIES \$ 800 LIGHTS, GAS, WATER, PHONE

FOOD: \$ 900

MORTGAGES: AVERAGE \$4500

MONTHLY AVERAGE \$6200 EXPENSES

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CITY OF NEWPORT BEACH

Yellowstone

SOUTHERN CALIFORNIA DRUG AND ALCOHOL TREATMENT CENTER

Call Today (888) 941-9048 - After Hours (949) 678-9000

Thursday, February 12 - 2009

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WE CAN HELP!

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Yellowstone Recovery Financial Requirements

- **90 Days: \$7,500 Residential Treatment**
- **Sober Living: \$160 - \$180 per week**
- **Outpatient: Sliding Scale \$40 - \$80**

Some scholarships available after 30 days



Admission Requirements

Call for an appointment or telephone interview.

1-888-941-9048

Or Email Us At: honeythames@yahoo.com

Yellowstone offers a free, open program of care.

Services Include:

Court Liaison • 12 Step Recovery • Counseling
Art Therapy Life Skills Training • Job Placement Program
Sponsors Family Meetings • Sober Fellowship
Sober Softball • Sober Camping

Yellowstone

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Exhibit No. 9
Applicant's E-mail dated
January 28, 2009

Brown, Janet

From: Nicole Cohrs [nc@dzattorneys.com]
Sent: Wednesday, January 28, 2009 12:11 PM
To: Brown, Janet
Subject: RE: Yellowstone -- all hearings in one day

Thank goodness! I was worried about it since the deadline was yesterday. And yes, it is amazing when these things suddenly pop into my head at night.

Here are the answers to your questions:

1. The number of beds in each home is as follows:

1561 Indus = 12

1621 Indus = 18

Redlands = 17

Pegasus = 18

I apologize for the discrepancy.

2. The number of beds in each home exceeds the number permitted by the Code:

1561 Indus (Code = 11 max) Actual = 12

1621 Indus (Code = 13 max) Actual = 18

Redlands (Code = 13 max) Actual = 17

Pegasus (Code = 13 max) Actual = 18

As you can see, we plan to exceed the number specified by the Code in all four homes. The Code states that a Hearing Officer may set different occupancy limits based on **structure characteristics, traffic and parking impacts, and the health, safety, and welfare of the persons residing in the facility and neighborhood**. All four of the homes have fire clearance. Obtaining fire clearance takes into account the above-listed factors which are to be considered by the Hearing Officer in increasing the number of beds. According to the City Fire Dept., the homes all meet the standards for fire clearance. We think that this is more than sufficient. Let me know if you need more detail.

3. I spoke to Honey Thames and the architect this morning. I am waiting for a response from her as to when the revised plans will be sent to you. I know that she already contacted the architect about this last week.

I will let you know as soon as I hear from her.

Thanks.

Nicole Cohrs, Esq.
DAVIS ZFATY APC
Attorneys at Law
580 Broadway, Suite 301
Laguna Beach, CA 92651
(949) 376-2828
Email: nc@dzattorneys.com
Web: www.dzattorneys.com

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580 Broadway Avenue, Suite 301
Laguna Beach, CA 92651
949.376.2828, Fax 949.376.3875

From: Brown, Janet [mailto:JBrown@city.newport-beach.ca.us]
Sent: Wednesday, January 28, 2009 9:06 AM
To: Nicole Cohrs
Subject: RE: Yellowstone -- all hearings in one day
Importance: High

It arrived in yesterday's mail. Thank you. (Amazing what we think of at night, hm.)

I am meeting with the contract planners who are working on the staff reports this morning at 10:00 a.m., and I do have a few other questions for you.

1. In the January 21st letter, we requested clarification as to number of resident beds in each dwelling, as there was a discrepancy on the floor plans vs. the written summary on the plans. When may we expect this information?
2. If the number of beds exceeds the number allowed by Code, as outlined in the 1/21 letter, a justification statement must be submitted. Has that been prepared?
3. When might we expect revised site plans providing the additional information requested in the 1/21 letter?

The information requested in the January 21st letter is necessary for us to fully analyze the applications, and prepare the staff report. Given that we are running up against the deadline for obtaining a use permit, we need this information as soon as possible.

Thank you.

Janet Johnson Brown
Associate Planner
City of Newport Beach
(949) 644-3236
jbrown@city.newport-beach.ca.us

From: Nicole Cohrs [mailto:nc@dzattorneys.com]
Sent: Wednesday, January 28, 2009 8:46 AM
To: Brown, Janet
Subject: Yellowstone -- all hearings in one day

Hi Janet,

I was thinking about this last night...

I just wanted to make sure that you got my letter expressing that we want all 3 issues to be heard on February 12.

Did you get that letter? I sent it last week.

Nicole Cohrs, Esq.
DAVIS ZFATY APC
Attorneys at Law
580 Broadway, Suite 301
Laguna Beach, CA 92651
(949) 376-2828
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Web: www.dzattorneys.com

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Exhibit No. 10
Applicant's Additional
Correspondence dated
February 13, 2009

Wolcott, Cathy

From: Nicole Cohrs [nc@dzattorneys.com]
Sent: Thursday, February 12, 2009 1:55 PM
To: Wolcott, Cathy
Cc: Brown, Janet
Subject: RE: Reasonable accommodation #2 - necessity clarification

Yes Cathy, all of that is correct. Thank you.

I am concerned by my conversation with you this afternoon. If you know of any other inconsistencies please let me know. I don't want to present an unclear report. I want to make sure that Yellowstone's answers are clear. Please feel free to contact me if you have any questions at all. I assure you that I will get the appropriate responses for you ASAP. I am in the office until 3 today, at which point I will be heading to the hearing scheduled at 4pm. If you need to talk to me at any other time my cell is [REDACTED]

Thanks again.

Nicole Cohrs, Esq.
DAVIS ZFATY APC
Attorneys at Law
580 Broadway, Suite 301
Laguna Beach, CA 92651
(949) 376-2828
Email: nc@dzattorneys.com
Web: www.dzattorneys.com

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Laguna Beach, CA 92651
949.376.2828, Fax 949.376.3875

From: Wolcott, Cathy [mailto:CWolcott@city.newport-beach.ca.us]
Sent: Thursday, February 12, 2009 1:20 PM
To: Nicole Cohrs
Cc: Brown, Janet
Subject: Reasonable accommodation #2 - necessity clarification

Hi Nicole,

As we discussed on the phone this afternoon, I am writing to obtain further clarification of Yellowstone Recovery's request for reasonable accommodation. Specifically, Yellowstone has requested an exemption from the standards of Newport Beach Municipal Code (NBMC) Section 20.91A.050, which states that there shall be no more than two residents per bedroom plus one additional resident in residential care facilities granted a use permit under NBMC Section 20.91A.040. However, there has been no formal explanation of the necessity of this exemption. In order to complete staff's analysis, by phone I requested that Yellowstone furnish the City with their explanation of why this accommodation is necessary to afford a disabled individual or individuals the opportunity to use and enjoy the dwelling of their choice.

You supplied explanations for the necessity of this accommodation for current residents, and prospective residents.

1) Current residents at Yellowstone facilities in excess of numbers allowed under NBMC 20.91A.050 – You stated that current residents in excess of numbers specified in the NBMC's operating standards would be displaced if a use permit were granted for a lesser amount of residents. Because of financial constraints related to the disability of the residents, you stated they would be unable to afford rent in another dwelling and would have nowhere to live, and therefore an exemption from the occupancy limits of NBMC Section 20.91A.050 is necessary.

2) Prospective residents at Yellowstone facilities in excess of numbers allowed under NBMC 20.91A.050 – You stated that prospective residents of Yellowstone facilities have financial constraints related to their disability, and would be unable to afford a dwelling if the Yellowstone facility is unavailable to them because of the occupancy restrictions of NBMC Section 20.91A.050. Therefore, an exemption from the occupancy restrictions of NBMC Section 20.91A.050 is necessary to provide housing to these prospective residents as well.

In addition, you clarified two inconsistencies among the various Yellowstone submissions. You stated that in May, 2008, when the original Yellowstone use permit and reasonable accommodation applications were submitted, four cars were permitted at 1561 Indus. There has been a change of policy at Yellowstone since that date, and at this time no resident is permitted use personal vehicles, to have personal vehicles onsite, or park personal vehicles in the neighborhood (with the exception of the two resident managers per site, who are allowed vehicles which are parked onsite.)

You also stated, consistent with the applicant's previous submissions, that there are no meetings held onsite at any of the Yellowstone facilities in Newport Beach. All meetings are held at Yellowstone's Costa Mesa facility, and letters from Yellowstone alumnae that reference visiting Yellowstone are referring to the meetings at the Costa Mesa facility.

Please confirm the above, and feel free to provide further clarification if needed.

Thank you,

Catherine Wolcott

Deputy City Attorney

City of Newport Beach

3300 Newport Boulevard

Newport Beach, CA 92658-8915

cwolcott@city.newport-beach.ca.us

Phone (949)644-3131

Facsimile (949)644-3139

Brown, Janet

From: Nicole Cohrs [nc@dzattorneys.com]
Sent: Friday, February 13, 2009 9:40 AM
To: Brown, Janet; Wolcott, Cathy
Subject: Clarification Correspondence
Attachments: DOC001.PDF

Hello Cathy and Janet,

I was recently informed that the City is concerned about a few inconsistencies between Yellowstone's early submittals to the City (back in May 2008) and our more recently submittals.

The attached letter will hopefully clarify some of the City's concerns. A hard copy is being sent in the mail today, however I wanted you to have a PDF version so that you could include this information in your reports.

Regards,

Nicole Cohrs, Esq.
DAVIS ZFATY APC
Attorneys at Law
580 Broadway, Suite 301
Laguna Beach, CA 92651
(949) 376-2828
Email: nc@dzattorneys.com
Web: www.dzattorneys.com

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-----Original Message-----

From: xerox@dzattorneys.com [mailto:xerox@dzattorneys.com]
Sent: Friday, February 13, 2009 9:31 AM
To: Nicole Cohrs
Subject: Scan from a Xerox WorkCentre


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FEB 17 2009

February 13, 2009

CITY OF NEWPORT BEACH

VIA EMAIL AND FIRST CLASS MAIL

Ms. Cathy Wolcott
Ms. Janet Brown
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658-8915

Re: *Yellowstone Use Permit Applications and Reasonable Accommodation Requests*

Dear Ms. Wolcott and Ms. Brown:

It has recently come to my attention there may be discrepancies between materials Yellowstone submitted with respect to its use permit applications and requests for reasonable accommodation for each of the four Yellowstone properties. Although this firm and the representatives of Yellowstone have made our best efforts to be clear and consistent, the materials submitted to the City in May 2008 reflect some inaccurate information. The purpose of this correspondence is to clarify these inconsistencies.

Group Meetings

Neither group treatment meetings nor individual treatment meetings occur on any of the four Yellowstone properties. All treatment is performed off site in Costa Mesa. The only meetings that occur at each of the four homes are weekly house meetings with the residents to discuss potential new residents and other administrative matters.

Visitors

Visitation with family and friends occurs on Sundays at Yellowstone's Costa Mesa facility located at 154 East Bay Street.

Ms. Cathy Wolcott
Ms. Janet Brown
February 13, 2009
Page 2 of 2

Contractual Arrangements with Residents and Resident Selection

In May 2008, Yellowstone submitted a request for reasonable accommodation that each of the four homes be treated as a Single Housekeeping Unit. It was recently brought to my attention that Yellowstone's response to Question 16, regarding resident interaction, needs clarification.

Yellowstone does not have a contractual relationship with the residents of its properties. With respect to the residents of the four Yellowstone homes in Santa Ana Heights, Yellowstone's position is correctly stated in a letter to the City dated January 29, 2009: "the makeup of the Property is determined by the residents of the unit rather than the property manager." More specifically, Yellowstone's Board of Directors does not determine who resides in each of the four homes. New residents are introduced and approved by the current residents during house meetings or they are not accepted. Many of Yellowstone's residents transition to sober living directly from treatment. Other residents learn about Yellowstone from other recovery centers or by community referral.

Parking

In May 2008, when the original Yellowstone use permit and reasonable accommodation applications were submitted to the City, Yellowstone requested that four cars be permitted to park at the 1561 Indus property. There is adequate room for four cars to park at 1561 Indus, however only the two resident managers for the home park on site. With respect to the three other Yellowstone properties, it has consistently been Yellowstone's position that only the two resident managers of the homes are allowed to park vehicles on site.

I hope that this clarifies the ambiguities in our previous submissions to the City. As always, if you have any questions regarding this correspondence, please feel free to contact me.

Very truly yours,

DAVIS ZFATY
a professional corporation



NICOLE COHRS, ESQ.

Exhibit No. 11
Additional Letters of Opposition
Received After February 13, 2009

Brown, Janet

From: Jeff Dangi [Jeff.Dangi@advisys.com]
Sent: Thursday, February 19, 2009 10:23 AM
To: DKiff@city-newport-beach.ca.us; JBrown@city-newport-beach.ca.us
Subject: Yellowstone Homes (No more!)

Greetings Janet Brown and Dave Kiff,

I am a resident of the Santa Ana Heights area west of Irvine Ave, which was recently annexed into the city of Newport Beach. My wife and I (and 3 children) have lived in the area since 1995. We are active in the community and enjoy the bond and unity we have with other families who also live in this area. Aside from the noise we get from planes taking off out of John Wayne airport, I feel we have a great and safe environment for our family to live, grow and take part in. Becoming a part of Newport Beach has also affected us positively as we have received "here's what's up" newsletters from the city, additional police patrols, code enforcement, etc.

My concern right now deals with the number of permits that have been issued for the use of halfway houses (and alcohol/ drug rehabilitation homes) by Yellowstone Homes. While I do not necessarily have anything against these residents and believe that they should be afforded the same rights to a comfortable life I enjoy, I feel that these residents do not necessarily have the same level concern for the welfare and wellbeing of the neighborhood as do families who are permanent residents. Over the past several years, as homes have been sold, it seems like more and more are being purchased by Yellowstone Homes rather than to families because Yellowstone Homes is able to offer more money than families knowing that they will receive funding and assistance from the state. I believe that the number of these halfway houses has now adversely affected our neighborhood as we have seen a decrease in house upkeep and an increase in parked cars along our streets.

I am not sure how many Yellowstone Homes are in my neighborhood, but it seems like the ration of their homes to homes owned by families is out of skew. Please do not approve any more permits to Yellowstone Homes.

Thanks for your attention to this matter,

/ Jeff Dangi
20081 Kline Drive, Newport Beach

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Brown, Janet

From: George Robertson [g_robertson@roadrunner.com]
Sent: Thursday, February 19, 2009 8:12 AM
To: Brown, Janet
Cc: patrbtson@aol.com
Subject: Public comments re: Yellowstone First Step House, Inc.

Dear Ms. Brown,

Please enter these comments to the public record regarding the application of Yellowstone First Step House, Inc. to operate four unlicensed adult residential care facilities within the West Santa Ana Heights neighborhood. My primary concern are the inaccuracies contained in the city staff reports that I reviewed. However, please note that due to the lateness of the city's posting of these reports (Tuesday, February 17, 2009 after 4:30 pm) and the fact that two of the links to the reports did not work until sometime late Wednesday, February 18, 2009, I was only able to review two reports completely and one cursorily.

Besides the inconsistencies contained in reports, that city staff has pointed out, I have a few comments regarding the accuracy of the reports. However, the scope of the comments below are not complete as my review of the staff reports was hurried and incomplete due to the reasons cited above.

Initial comments are:

(1) Parks

- a. The staff report on 1561 Indus Street (and by extension all other reports) states that there are no public parks located within the neighborhood. This is in fact a wrong statement. There is a neighborhood park located at the terminus of Orchard Drive, that was in place well before Yellowstone began operations in this neighborhood. This park is located within about 750 feet of the proposed facility at 20172 Redlands Drive. I would ask that the city review its decisions on all of the applications using this information.

(2) House size and Number of bed rooms

- a. The staff reports states square footage of each house as one of the reasons to allow an exemption in the maximum number of residents allowed. However, the stated square footage, which I have to assume was provided by the applicant, were considerably over exaggerated. I have the original builder's materials on the "Sherwood Estates" development and, as built, house sizes were either 2,650 sq. ft. or 2,585 sq. ft. The implications is that for the houses at 1621 Indus Street and 1571 Pegasus Street, the application is off by almost 25%; I have to assume that this percentage also applies to the proposed house at 1621 Indus. . For the house located at 20172 Redlands Drive the excess square footage is almost 15%.
- b. None of these houses, as built were larger than five bedrooms, yet two of the applications state that they have six bedrooms. I know that the house located at 20172 Redlands had some internal modifications done, at the time without a county building permit, but this house as built only had four bedrooms.
- c. The staff reports contain a stipulation on having the city's Fire Marshall review, which I support. In addition I would ask that the city also send a building inspector to verify (a) square footage; (b) number of bedrooms; and (c) whether any structural modifications, such as the addition of new bedrooms, are legal additions.

(3) "Characteristics of Use/Treatment

- a. The report states that the applicant does not allow residents on any other Yellowstone property. However, this statement is negated by personal observations of residents from at least three of the four residences co-mingling at each other's residences. I have seen women from the Pegasus house walk up to Redlands, and on one occasion observed several women leave the Redlands house early in the morning before 7 a.m., ; implication is that they spent the night. I often see residences from the

Redlands house walk up to the house at 1621 Indus. Additionally on at least two occasions I have seen large groups walk up to the house on 1621 Indus mid-week, mid-morning. The assumption being made is that there are large group functions (treatments?) being held onsite.

(4) Transportation and Parking

- a. Despite all of the inconsistencies contained in the staff report table, my biggest concern are the assertions that (a) transportation is not provided; and (b) that residents to not allowed to have cars. My personnel observations are: (a) that Yellowstone operates two large capacity vans on a routine basis. Over the years I have seen these vans pick up and drop off residents at both the men's and women's residences, in particular 1561 Indus Street and 20172 Redlands Drive. These vans (one of which has "VANPOOL" stenciled on the windows) have lately been parked each night in the neighborhood, typically alongside 20172 Redlands Drive near the intersection of Redlands Drive and Pegasus Street. Additionally I have observed private vehicles pick-up and drop off multiple residents at 20172 Redlands. These facts on the ground seem to contradict statements made by the applicant
- b. Manager parking. I have never seen any cars parked inside the garage of any of the four residences. Two cars I commonly see parked in the driveway are at 1561. One of these leaves each day before 7 am. So I am not sure that this is a managers vehicle or a residents vehicle who is leaving for work.

(5) Smoking

- a. The staff report states that no complaints have been made regarding second hand smoke and that smoking is limited to the backyard patios. Again I have personally observed individuals (residents or guests I can't say) smoke in the front yards. Additionally, a walk along these houses will show cigarette butts in the gutters and driveways of these houses; I recently observed this at 1621 Indus on Wednesday, February 18, 2009 and at 20172 Redlands on Thursday, February 19, 2009.
- b. I was completely unaware until I read the staff report that there was a restriction on second hand smoke until I read the staff report. I would suggest that the lack of complaints cited in the staff report is an artifact of the neighbors not knowing that this was a legitimate issue that could be raised to the city's attention. I have personally detected second hand smoke outside the property, so I believe that the findings made regarding Section 20.91A.060A is wrong.

(6) Approval selection process

- a. After reading the three staff reports, I was not able to determine why one facility was selected for approval over another. A comparison table would have been informative. In fact, the house at 20172 Redlands, which city staff has recommended be approved, is probably one of the more problematic houses with the most issues, vanpools, private car use, smoking, noise, litter, excessive trash. How did this house get selected over another? Availability of street parking?

In closing I request that the city deny all of these application due to the inconsistencies and contradictions contained in the applications, as reflected in the staff report. I lieu of that decision, I request that, prior to any approvals being granted by the city, that staff verify the issues contained in #2 above, be more transparent on the decision process (#6), provide sufficient time for the public to review all relevant documents, and get more public input before any final decisions are made. Additionally, I suggest to city staff that if the applicant is unaware of the facts-on-the ground (e.g., vanpools, residents co-mingling, use of private cars) that contradict statements made by the applicant as reflected in the staff report, that there is a disconnect between the on-site residence managers and the applicant; another issue for the city to clarify and rectify prior to any approvals. Finally, for any approvals granted, I ask that the city add a condition that the applicant provide all of the neighbors with a common set of "house" rules that is updated as changes are made. Finally I ask that the city provide the neighbors a method of reporting violations of these rules and a description of the city's actions would be under such instances.

Thank you for your consideration of these comments.

Regards,
George and Patricia Robertson

Brown, Janet

From: barry walker [bwarch.biz@gmail.com]
Sent: Tuesday, February 17, 2009 1:51 PM
To: Brown, Janet
Subject: Yellowstone Sue Permits
Attachments: Yellowstone Use Permits.rtf

Janet -

Attached letter responding to the Use Permit Hearing notice

They did not have a meeting at the Redlands house last week and have not for about 3 weeks, but when they do, the meetings seem to start about 6:00 and breakup in about 90 mins. Not real sure because we did not specifically watch for them, but they have held meetings there that seemed to draw about a dozen cars.

Thanks
Barry

City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA.

BY
PLANNING DEPARTMENT

February 17, 2009

FEB 17 2009

Attn: Janet Brown

CITY OF NEWPORT BEACH

This letter is in response to the Use Permit Hearing notification for the Group Residential Use Permits that have been applied for by Yellowstone Women's First Step House, Inc. for 1561 Indus Street, 1621 Indus Street, 1571 Pegasus Street and 20172 Redlands Drive.

My primary objection to these use permit requests is the substantial increase in density that this represents for this neighborhood and the associated problems that come with a higher density usage than was originally planned for.

The use permits request permission to raise the density from the original design of a probable max of 6 per household to 18 (plus supervision?) per household. Although this request is for four houses, the neighborhood has an additional rehab house (and possibly two as a previous rehab house has recently changed hands and the new owner has not moved in yet), all within a 350' radius. This means that 6 houses out of 36 are involved with the rehab industry and that the possible population of the area increases from 216 to 282, a 30% increase in density. The reality is that this is an older neighborhood (most are empty nest at this point), and the average is probably more likely 2.5 - 3.0 people per household. That makes the number more like 108 residents and with the addition of the rehab houses, the population increases to 216, a 100% increase in the population density in this specific case.

The increase in density has many environmental effects on the neighborhood. When these homes were planned, the target household was for a family unit of 5-6 with 5 bedrooms and 3 baths (the typical floor plan, encompassing about 2400 square feet) and a two car garage.

The water supply and sanitary sewer were probably sized for the number of uses that 6 people would generate. As you can imagine, the systems will be over-used with a household of 18 people and we can anticipate system problems with an over-stressed older infrastructure.

Parking will become a worse problem with the addition of more cars since the houses only have 2 off-street parking spaces at most (the garages are filled with "stuff" and not used for parking). When the house at 20172 has meetings (previously every Tuesday at about 6:00 pm.) both sides of two streets were lined with cars, passage was more difficult.

Waste generation per house is substantially increased with several of the houses putting out 4 overflowing 90 gal. trash cans each week - with 18 people, I can only imagine the trash generation and disposal situation - 12 trash cans?

Smoking, though not regulated as an outside activity, still creates its own problems as we are constantly picking up cigarette butts from our yards, driveways and gutters.

Late night / early morning traffic as group home residents who do not drive are picked up and dropped off or just sitting in the car in the street as people talk - not a big deal with regular density, but with a doubling of the density, it just happens more often and becomes an irritant.

Lastly, when Yellowstone moved in, they did nothing to start a dialogue, like "here is the phone number of our customer service if there is problem we should address" which did nothing to get Yellowstone off to a good start and so we have no reason to believe they will be a good neighbor if these use permits are approved.

Sincerely,
Barry Walker
1571 Indus Street

February 16, 2009

RECEIVED BY
PLANNING DEPARTMENT

FEB 17 2009

Newport Beach Planning Department
Newport Beach City Hall
3300 Newport Blvd.
Newport Beach, Ca. 92658

CITY OF NEWPORT BEACH

Regarding: Yellowstone Women's First Step House Inc. application for Group Home Use permits to operate commercial business in a residential neighborhood.

Yellowstone Women's First Step House Inc. has been operating the above business for several years before West Santa Ana Heights was annexed into Newport Beach. To my knowledge these are unlicensed businesses and as such have changed the complexion and nature of our community.

Yellowstone wishes to increase the number of clients and staff at these facilities. Based on the figures given by Yellowstone, 12 clients at 1561 Indus Street, 18 clients each at 1621 Indus Street, 1571 Pegasus Street, and 20172 Redlands Drive this is a total of 66 paying customers at any given time. The application does not include live-on site staff, which I assume would be required to maintain the enterprise. Assuming staff would not share a room with clients the dorm style rooms would have to sleep 4 and each of the 3 bathrooms per property would have to accommodate between 5 and 6 individuals. With the rapid turnover this represents several hundred clients per year. Basically, these are transient hotels without the controls placed on other similar businesses. These homes were not designed or intended for this requested use.

If Yellowstone is granted the requested use permits and allowed to operate these businesses in this neighborhood, is the Planning Department willing to grant all other requests to operate business in our residential neighborhood? Newport Beach does not permit a homeowner to conduct weekly garage sale on their property because it is a business. Could another investment group purchase a home and set up a massage therapy parlor? I doubt it.

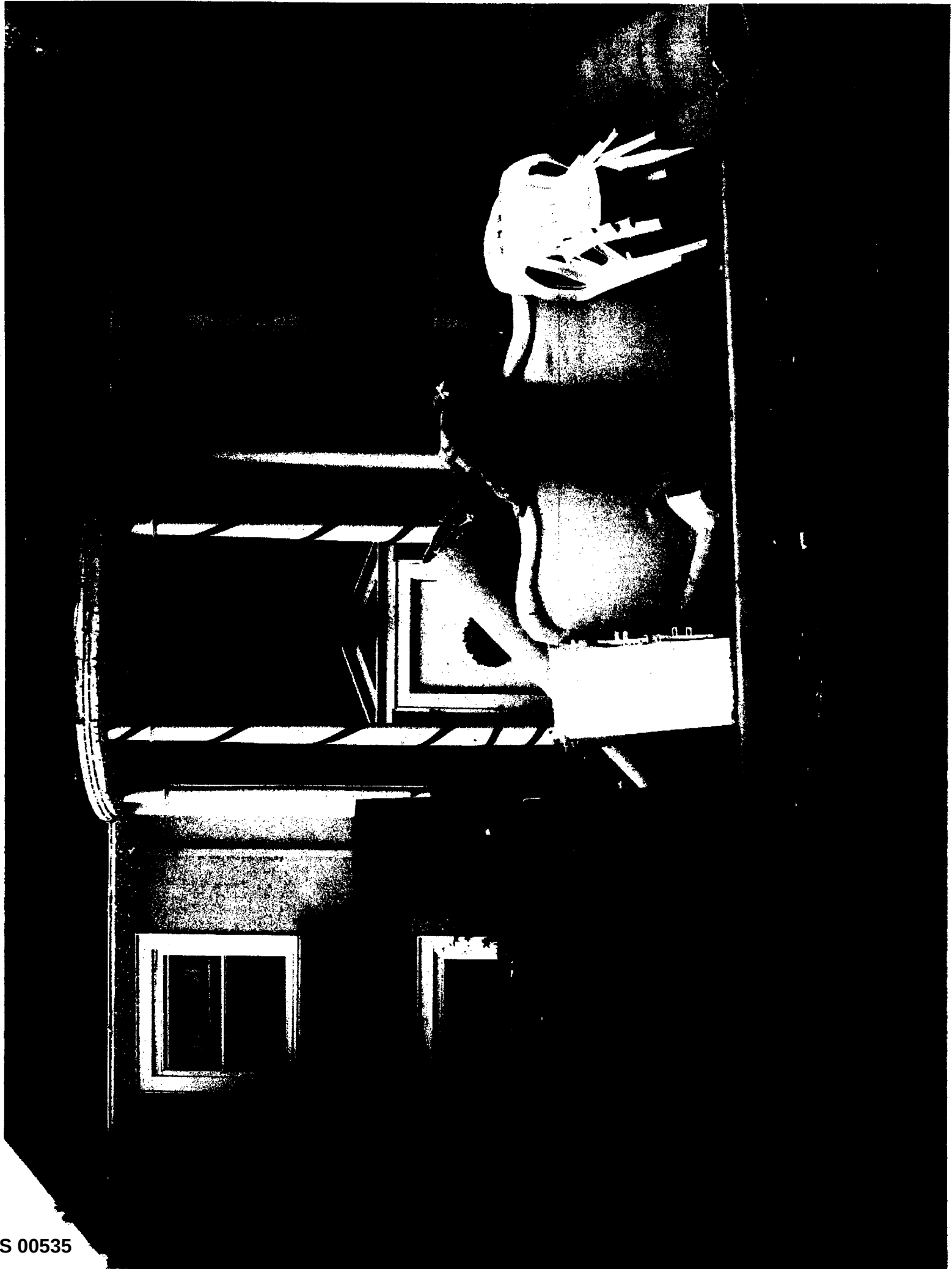
Zoning is intended to maintain balance and community structure. Commercial, industrial, and residential neighborhoods are all important to maintain a strong city. Disregarding the zoning plans of a community and combining the different uses will impact property values, destroy the nature of family neighborhoods, and set a precedence that could negatively impact all concerned.

For these reasons it is requested the applications related to these residences, to be operated as for profit businesses, be denied.

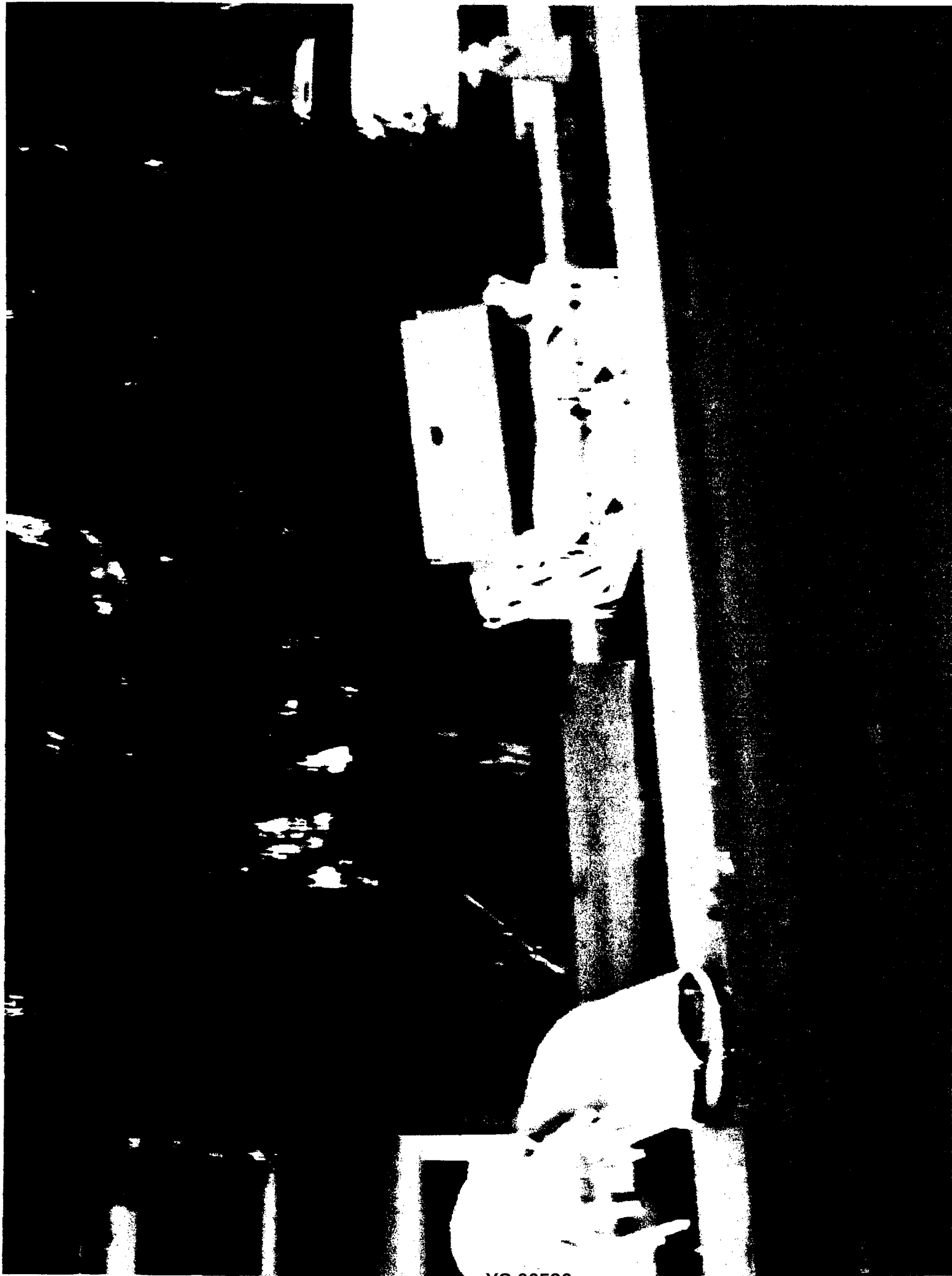
Respectfully Submitted,

Michael McDonough
Connie McDonough

Michael McDonough
Connie McDonough
1562 Pegasus Street (Newport Beach)
Santa Ana Heights, Ca. 92707

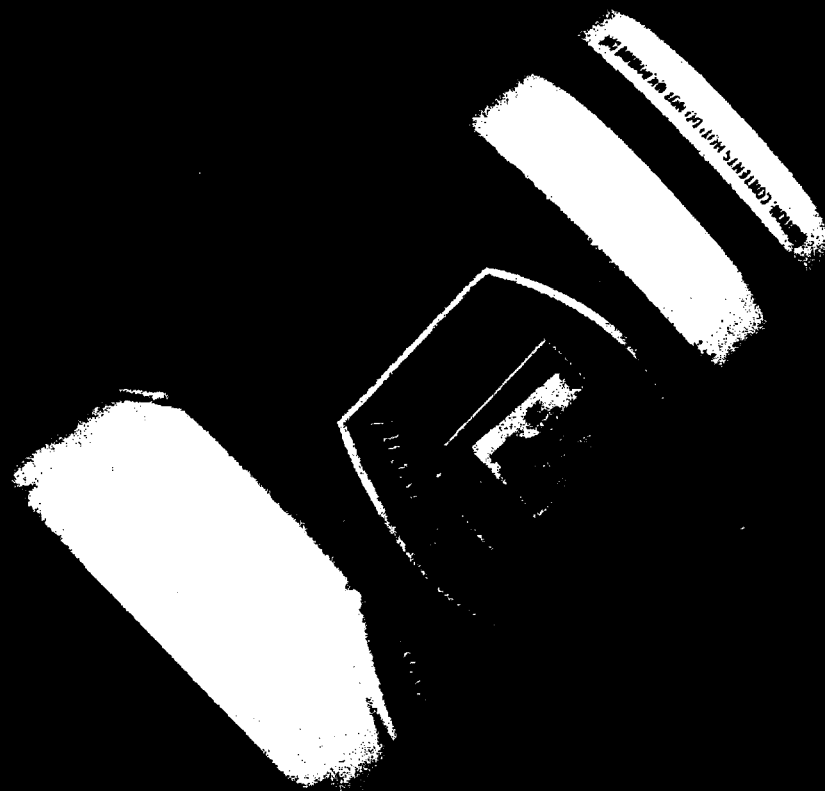


YS 00535



YS 00536

LAWN AT 1551 DELAWARE STREET. BETWEEN GROUP HOMES AT 1571 & 1501 DELAWARE.



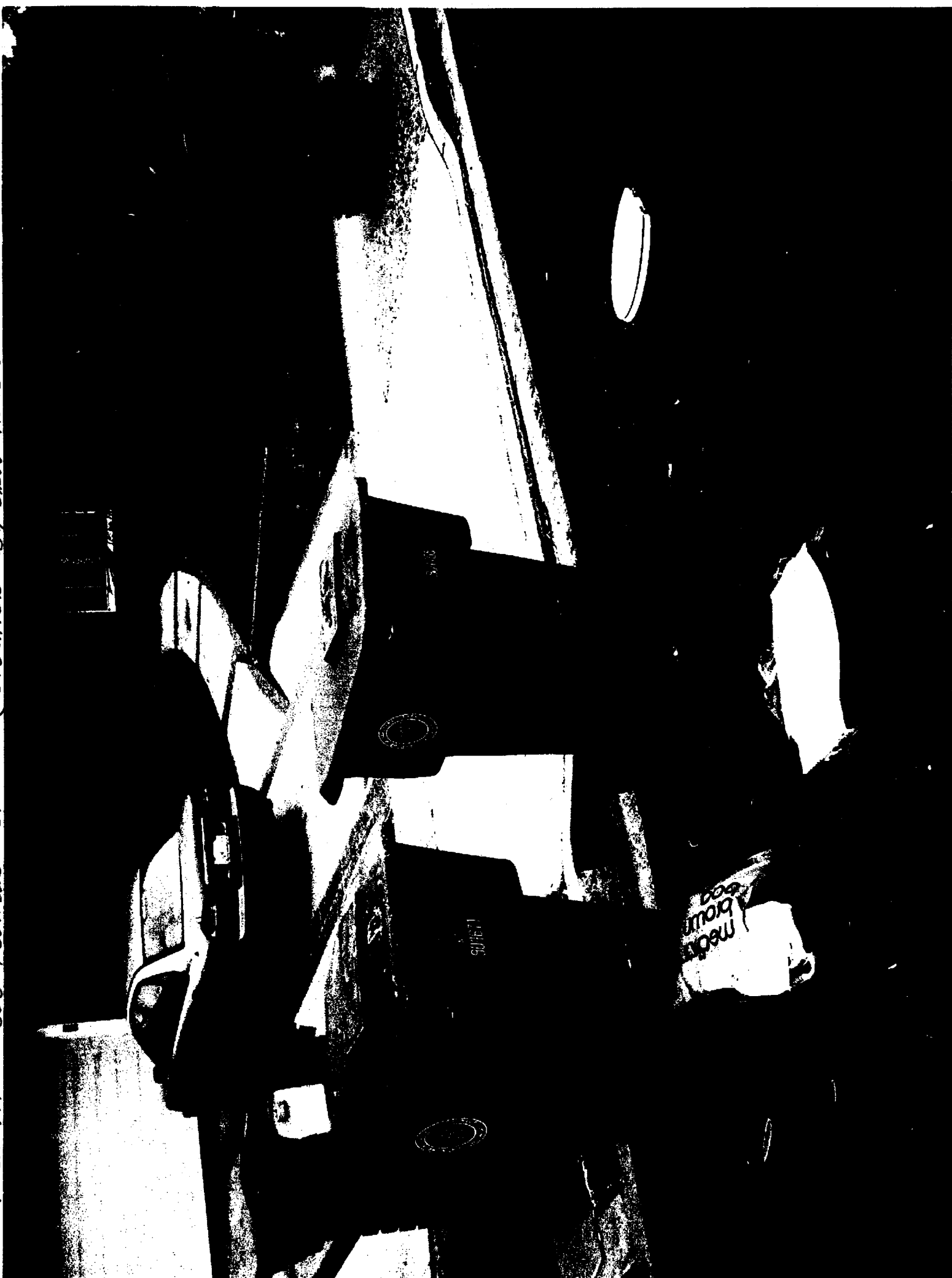
LAWN AT 1531 DEAN'S STREET - BETWEEN 1571 & 1501 GROUP HOMES

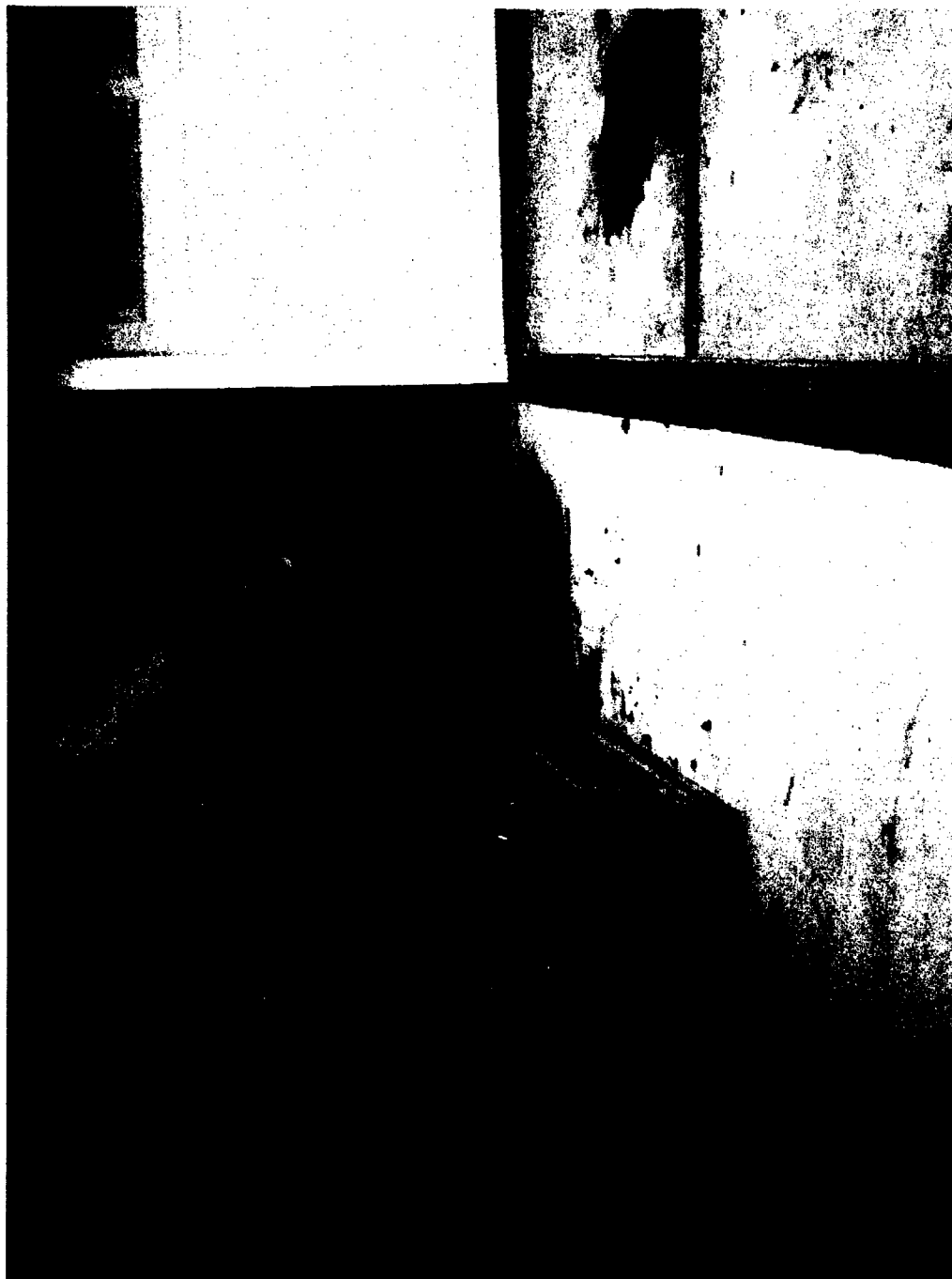




TYPICAL AMOUNT OF WEEKLY TRASH AT GROUP HOME 1501 PEGASUS ST.

TRASH AT 1500 PETERS ST. (OPERATED BY GROUP HOME AT 1501 PETERS ST.





541
YS 00541

TRASH & MATERIAL AT 1500 PETERS ST (OPERATED BY GROUP HOME AT 1501 PETERS ST.

TO: Janet Johnson Brown, Planner
City of Newport Beach CA

FROM: Judy Hoyer Walker
1571 Indus St
Santa Ana Heights, CA 92707

BY
PLANNING DEPARTMENT

FEB 17 2009

CITY OF NEWPORT BEACH

DATE: FEB. 17, 2009

SUBJECT: Comments on the City's Consideration of Special Use Permits for the
Yellowstone Women's First Step House Inc.

I am a property owner at the above listed address and have resided at this property for over 20 years.

The potential of ever increasing population density to my neighborhood is most disturbing. In the posted application for Use Permits by Yellowstone Women's First Step House Inc. I was overwhelmed by the proposed occupancy levels of these 4 properties. Three of the properties were listed as requesting occupancy for 16 "clients" and the fourth was listed for 12 "clients".

Many flags went up when I read this.

- 1) No mention is made of what additional "non-client" or supervisor personnel will also be residing in these dwellings. Personally I would not want to have these "clients" unsupervised. In my experience with these facilities thus far even with supervision the "client" behavior and activity is not within what I think or as residential, good neighbor, behavior. I would ask that the city have the Yellowstone Women's First Step House Inc. group provide specific staffing / supervisory information as part of this permit review. And that residence is informed of what those staffing proposals are.
- 2) Even considering the occupancy density *without* knowing what additional headcount staff/supervisory personnel may add, I am very concerned.

I will acknowledge that the dwellings in this neighborhood are large. Built in the early 60's they were intended for families (as stated in marketing materials from the original sale of the development). At five bedrooms one could see that a family unit of 6 would have been comfortable, and that the dwelling could potentially have had 10 individuals. But in reality the general large family unit in the 60's would have been in the 5 to 7 range.

You can do some mathematical weighting and estimate that the original neighborhood occupancy was 5.2 persons per dwelling. So if we look at the requested occupancy density we're looking at dwellings have 2.3 to 3.1 times the occupancy of a family neighborhood! And this is without staff/supervisor numbers being included. Given the fact that 40 years later the average Orange

County nuclear family is lower than 40 years ago any comparison we do to the weighted occupancy number from 1960's is even greater.

- 3) So now we're looking at a somewhat physically closed neighborhood (due to street layouts being closed to through traffic) we're looking at an effect of adding the equivalent of 8 additional houses!
 - a. 4 dwellings contributing an excess of 40+ individuals: 60 requested clients in 4 dwellings, less the expected occupancy of 21, based on weighted occupancy rate. 40 excess divided by the weighted occupancy of 5.2 is ~ 8 additional dwellings.
 - b. There just isn't physical room for 8 additional dwellings. And there is another factor that the proposed increased density to the neighborhood is not evenly distributed throughout the existing homes. There is a concentration to about half of the neighborhood. Is it reasonable that a burden such as this be so unevenly distributed?
- 4) Such very large increase on occupancy to individual properties gives me concern on many topics
 - a. **Infrastructure**.....specifically sewers and storm drains. The sewer and storm drain systems for this neighborhood were designed 40+ years ago. In my 20+ years of residency backups have been an issue. I suppose that I am overly sensitive due to the fact that my property is the lowest point for a portion of this development. We have experienced backups into our home due to the failure of the street system. Increasing occupancy density 3x is a frightening proposal. What has/will the city do to help mitigate the impact for an occupancy rate well over the imagined occupancy level at time of systems design?
 - b. **Traffic and parking**.....While the Yellowstone Women's First Step House Inc. group may tell the city that "clients" are not allowed to have vehicles during residency I would ask if they intend to make it a condition of employment for staff/supervisors to not have vehicles? Additionally I would ask if the city has reviewed what policies are in place now for "clients". During the months that the facility next to my home has been in operation I have had "clients" park in front of my property rather than in the empty driveway of the Yellowstone Women's First Step House Inc.>facility. When I asked if the vehicle could be moved from in front of my property to somewhere within the parameters of the property of the facility, I was told "It isn't that simple". So what are the guidelines that this group is giving that dissuades its client's from using the facilities that it owns? Why is burden being shifted to the neighborhood?

And parking is not the only concern. With so many residences the general level of vehicles coming and going is higher now than prior to the Yellowstone Women's First Step House Inc. purchasing the properties. I can specifically speak to the property next to me. There are vehicles coming and going, doing drop offs, or "visitor" standing or parking, and the

duration of this activity goes from very early in the morning (5 am) to very late at night (past 11pm and sometimes well past midnight). And then there are the weekly evening meetings that are held at some of these facilities. While occasionally residences of the neighborhood may have a gathering, party or club meeting, these are **not** routine. The parking impact to the surrounding street of the meeting house is significant.

- c. **Trash and refuse**.....I must question the city as to what would be considered reasonable for containment of refuse from one ~3000 sq. ft. dwelling that houses 16+ individuals? I haven't done the math as to how many trash receptacles will physically fit along the curb of these lots, but I invite the city to make such calculations. I would venture to say that the number would not be sufficient to manage the number of proposed "clients" and staff/supervisors.

While the sheer number of receptacles is only a physical issue on trash collection day, my concern arises from the condition of the receptacles between collections. To date the receptacles placed at the curb at the addresses covered by this application have been in overflowing conditions. Items and plastic bags are readily exposed to the exterior of the container. It is important to keep in mind the physical location of this neighborhood. The boundaries of this area on two sides have large open unpopulated space (two golf courses), and part of the area is bounded by a drainage channel. All of these areas are habitats to wildlife. Having uncontained refuse is an invitation to unwanted wildlife which is known to be attracted by rubbish, such as possums and raccoons. Even vector control directs full containment of refuse as a necessary deterrent to raccoon infestation. I ask that the city look hard at this component of allowing such dense occupancy of a dwelling, and ask that Yellowstone Women's First Step House Inc. provide detailed policies and procedures for dealing with this aspect of their facilities.

I have outlined those areas that can be spoken of in specific terms. My last area and one of the largest is how all of these factors compound together to change the character of what I purchased into.....a residential neighborhood. I purchased in the area because of the size of the property. And I fully expected to have families that were larger in number than if the dwellings were smaller. What is concerning to me is the change in the feel of the area. The "clients" of Yellowstone Women's First Step House Inc. are not in the property expecting to become a part of this community. They are temporary. Their attitude and behavior reflects this on an ongoing basis. Since Yellowstone Women's First Step House Inc. opened business in the property next to mine I now have more general debris in my yard; cellophane wrappers, plastic cup lids, cigarette butts. This is a change since the change of ownership. And it isn't just the difference of having a homeowner next door vs. a business. The former owner rented rooms, but she held her renters to strict rules and those included being respectful of the property and neighborhood. The property on my other boundary likewise is a

rental with young adult children who have normal active lives. They too respect the neighborhood and treat it as if they were owners.

I find it is the "small" things that give a good indication of how a neighbor respects the others they are sharing the space with. I am always amazed that the facility next to me feels it totally acceptable to place their trash cans, not in front of their property, but instead in front of the property next to them. While they may try and cover this with some statement that it is less maneuvering the trash truck needs to make, they seem to overlook the fact that they are *blocking a fire hydrant*. This is a safety issue for the residences of the street. Parking and standing vehicles across a neighbors drive. It's not an inconvenience to them just for the people who consider this as their home. When asked to do what is polite or common sense the first response I generally get is something to the effect that the action I am asking to change isn't bothering me! These temporary residents are giving proclamations as to what is and isn't bothersome to me. If it didn't bother me I wouldn't mention it. An individual who has a vested interest in selecting a neighborhood as a place of residence generally understands that their personal actions have an impact on others. This attitude and understanding has never been exhibited in any of my encounters with these facilities and "clients".

The constant coming and going is tiresome. It's additional foot traffic as well as vehicular traffic. It has become extremely difficult to "know" what is normal for our area and what isn't. All the people and vehicles coming and going at all hours is un-nerving..... are they part of the Yellowstone Women's First Step House Inc. group or are they individuals who are doing reconnaissance for potential crimes. The very secluded feel of the area is part of what is desirable, but it comes with a price of being more vigilant of what is normal or expected for the neighborhood. Likewise it is difficult to evaluate if the individual would be a potential "client" and expected to have access to the property. As example the facility next to me is reportedly a women's house, yet it isn't unusual for there to be several men wandering in and out of the facility. If I didn't have prior knowledge of the business being run in the building I would easily think that there was a potential brothel being run out of that address. I feel an added burden by sheer volume of all this activity to help insure that my family and property are safe.

In closing I would comment that I feel a change in the atmosphere of the neighborhood since Yellowstone Women's First Step House Inc. has purchased properties in our development. The feel of a residential neighborhood is diminished. Today there is a much stronger feel of an apartment complex or even a hotel/motel complex. I understand that the disabilities act provides protection from discrimination for these individuals. However as a property owner whose home this area is, I expect that the city will not transfer burden to me. I believe that facilities could be run in a residential neighborhood, but careful attention to detail is paramount. The facilities must be closely supervised 24/7.

Policies and procedures to ensure the temporary residents exhibit a demeanor that is respectful of the permanent residence should be strongly considered. Density of inhabitants should not be substantially different from the surrounding non-facility dwellings. Impact to infrastructure of the neighborhood has to be carefully studied.

While much of what I would like to see put in place falls to the Yellowstone Women's First Step House Inc. as proprietors of the business, I also feel that it is the responsibility of the city to include provisions for review, monitoring, and reporting, on a routine basis, those conditions and stipulations established and defined by any use permit that might be granted.

Thank you for the consideration of my concerns.

1592 Pegasus Street
Santa Ana Heights, CA 92707

February 14, 2009

Newport Beach Planning Department
City Hall
3300 Newport Blvd.
Newport Beach, CA 92658-8915

RECEIVED BY
PLANNING DEPARTMENT

FEB 17 2009

CITY OF NEWPORT BEACH

Re: UP2008-034, RA2009-004
UP 2008-035, RA 2009-005
UP 2008-036, RA2009-006
UP 2008-037, RA2009-007

Objections are hereby made to the above referenced requests for approval of use and continued use of certain residential properties as designated and requested in those same applications.

I am a resident of the community identified as Santa Ana Heights and a neighbor living adjacent to and in close proximity to the four single family residences that, if I understand correctly, are being used for commercial purposes inconsistent with current zoning and permitted uses and, furthermore, incompatible with the character of the neighborhood.

With respect to the assertion contained in the notice that the activities are categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities), objection is made on two grounds.

Firstly, the activities are not existing at the time of the lead agency's determination of the applicability of the categorical exemption in that the proposed activities will not "involve negligible or no expansion of the use existing at the time the exemption is granted." In the discussion of the application of section 13501 (CCR Title 14, Chapter 3, Article 19), it cannot be that the legislature intended to sanction unpermitted and unapproved uses as those uses for which a categorical exemption would apply.

The uses contemplated under the Act as being existing and for which the exemption would apply are those that are consistent with the existing zoning and other land use regulations in effect and applicable to the property.

The homes in the community are single-family dwellings, zoned for noncommercial uses. Without discussing what would constitute a "single family," the proposed uses, including providing residences for up to 18 transient adults, is hardly consistent with any definition of single family residence.

In that same vein, the use contemplated, without giving distinction to the nature of the occupancy, is plainly commercial and not residential. That is, the purpose of operating the facilities, from the perspective of the owner, is the accumulation of rental, whether from the individual residents or some other source or form. That makes the use commercial and not residential.

By way of example, if any resident of the community chose to lift up their garage door and sell antiques on the premises on more occasions than would be considered incidental, this City would assuredly require a business license and would likely object to the use to the extent such commercial activities were deemed incompatible with existing residential zoning.

The dwellings for which the exemptions and permits are being sought are not apartment complexes. They are not retail establishments. They are not hotels. Yet, what is proposed would create those very sorts of commercial establishments.

Secondly, the Class 1 exemption is applicable only to the extent there is no possibility that the activity will have a significant effect on the environment. (Section 15300)

In claiming an exemption, what the applicants overlook is the fact that there has never been an evaluation of the burden on the environment created by the very conditions they now seek to have approved.

To the extent the proposed use has not previously been evaluated under CEQA and approved, consideration has not been given to the burden on infrastructure and other aspects of the environment that would result from the dramatic increase in occupancy density proposed under the applications.

Admittedly without any census data to support the underlying assertion, it would not be unreasonable to assume that a "typical" residence of the size contained within the community for which the applications have been submitted (4-5 bedrooms, 2-3 baths) would be occupied by 3-6 people. The applicants propose a density 4 to 6 times that number, ranging from 12 individuals (UP2008-34) to as many as 18.

Such an increase in density will assuredly have a substantial impact on traffic, parking, noise, and use of emergency services including police and fire.

While it may be suggested that the residents will not impact parking because of the prohibition against residents having cars, residents of the community can assuredly speak to a contrary condition. It is frequently observed that cars are parked on adjoining streets and the occupants then walk to the residences. Moreover, there are frequent occasions when cars line most of the streets, even spilling over into the surrounding areas on Santa Ana. Without any means of enforcing these self-described and self-imposed conditions, it is not proper for the City to rely on the assertion that there are no parking or traffic impacts in considering the application.

Moreover, the City itself is in the best position to know of and, in consideration of County statistics applicable to the area pre-annexation, to evaluate the number of emergency service calls to the applicant residences as compared to the entirety of the remainder of the community.

This factor is of considerable concern inasmuch as the community was only recently annexed to Newport Beach. As such, the City has likely not undertaken to fully evaluate the required level of emergency services necessary to support the community, without regard to the proposed density of activity proposed under the applications. Adding at least four residences with as many as 18 individuals in three and 12 individuals in the fourth dwelling will dramatically increase the burden placed upon the City to support the community.

I wish to make clear, in submitting the foregoing objections, that I am not making a specific objection to any particular use or person. Rather, the objections are based on the fact, as acknowledged in the notice, that the proposed use is dramatically out of line with existing lawfully permitted and zoned uses for every other residence in the community.

Suggesting that the proposed uses will have no impact on the environment ignores the very reasons behind passage of the Environmental Quality Act and does a disservice both to this community and the City to whom community residents look for support.

Responsible land use planning takes into consideration the overall impacts of all development. Allowing uses that dramatically exceed zoned or otherwise permitted uses undermines the nature of planning. Claiming an exemption based on prior, unpermitted and unauthorized use merely encourages further disregard

Newport Beach Planning Department

February 14, 2009

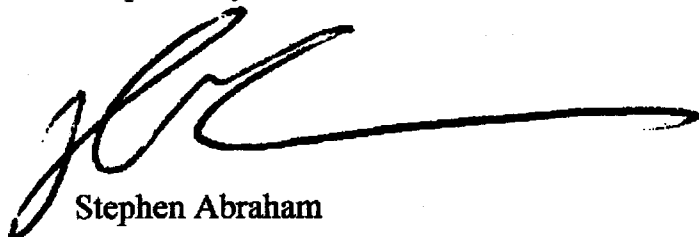
Page 4

for land use restrictions, all of which are intended not to preclude reasonable uses of property but to harmonize conflicting interests and avoid unsustainable conditions.

The proposed uses for the four residences invite the very sort of excessive uses and burdens for which CEQA review was designed.

On the basis of the foregoing, I submit that the applications should be denied in their present form and the applicants required to submit the projects to a full CEQA review prior to the resubmission of any application for the proposed uses.

Respectfully

A handwritten signature in black ink, appearing to be 'S. Abraham', with a long horizontal flourish extending to the right.

Stephen Abraham

JAMES C. HARVEY
DIANE E. HARVEY
1651 Indus Street
Newport Beach, CA 92707
Telephone (714) 979-7031
Email: harvey5@roadrunner.com

PLANNING DEPARTMENT BY

FEB 18 2009

CITY OF NEWPORT BEACH

February 18, 2009

Thomas W. Allen
Hearing Officer
CITY OF NEWPORT BEACH
3300 Newport Blvd.
Newport Beach, CA 92658

Re: Opposition to Applications of Yellowstone Women's First Step House, Inc.
for Use Permits (1561 Indus Street, 1621 Indus Street, 1571 Pegasus Street,
& 20172 Redlands Drive)

We cannot be present for the public hearing on February 20, 2009 but intend this letter to register our opposition to the granting of a Use Permit for any of the four (4) facilities currently operated by Yellowstone Women's First Step House, Inc. in the former West Santa Ana Heights. We ask that you either: (1) deny all four applications, or (2) impose strict conditions on Yellowstone's operations to conform to the City's Municipal Code.

We bought a home in this neighborhood in 1998 because it was family-oriented with many small children. In the years since then, we believe that the residential character of the neighborhood has been substantially altered by the presence of Yellowstone's facilities. Those facilities have grown from the original one (at 1571 Pegasus Street) to the present four (4), all concentrated within a very small geographic area.

We are concerned about noise, trash, traffic, and transitory persons in our neighborhood, all caused by the over concentration of Yellowstone's facilities. With two children in elementary school, we are particularly concerned by Yellowstone's facility for men at 20172 Redlands Drive, as our children have been approached by some of the transitory men living in that facility. We have no idea if the men living there are parolees, probationers, or registered sex offenders, and along with other families in the neighborhood we fear allowing our children to walk past that facility unescorted. That facility is also right across the street from the neighborhood school bus stop, where children congregate every morning.

We urge you to deny Yellowstone's applications because they cannot satisfy the requirements of NBMC §20.91A.060:

1. Yellowstone's use does not conform to all applicable provisions of NBMC §20.91A.050.

A. We believe that Yellowstone is violating NBMC §20.91A.050(C)(1) and State law by conducting unlicensed treatment services at 1621 Indus Street. On several occasions we have observed a line of men walk from the Yellowstone facility at 20172 Redlands Drive, enter the adjacent Yellowstone facility for women at 1621 Indus Street, and stay there for more than an hour. We believe that this indicates the facility is providing on-site services, for which a State license is required.

B. We believe that Yellowstone has far more than two residents per bedroom, in violation of NBMC §20.91A.050(C)(2). These are single-family homes with four or five bedrooms, and at least one of the bedrooms is quite small. Yellowstone may argue that each facility has more than five bedrooms, but if so that is based on conversion of living, family, or dining rooms into "bedrooms."

2. Yellowstone's use does not meet the standards of NBMC §20.91A.060.

A. The properties are not physically suited to accommodate the proposed use. NBMC §20.91A.060(C). 18 adults living in one single-family home (as Yellowstone proposes) is ridiculous and cannot be justified by anything other than a desire to maximize profits. One need only drive through our neighborhood on trash day to see the impact: while each family home has one or two cans out front, each Yellowstone facility has four, five, or sometimes six cans, all filled to overflowing with trash. No doubt each facility's use of electricity, water, and gas is also out of proportion for a single-family home.

B. The use is not compatible with the surrounding neighborhood. NBMC §20.91A.060(D). In particular, the residential character of the neighborhood has been changed by over concentration of such facilities. In generally limiting the use to one per block, NBMC §20.91A.060(D)(3) directs the Hearing Officer to apply average or median block lengths, which are listed as 711 feet and 617 feet, respectively. We submit that by those measures our neighborhood already has more than one use per block. Using GoogleEarth, we calculate that the distance between 1621 Indus Street and 1561 Indus Street is less than 350 feet (they are only four doors apart on the same street). The distance between 1621 Indus Street and 20172 Redlands Street is less than 400 feet.

C. Contrary to Yellowstone's past assertion that its residents do not park cars in our neighborhood, we have observed that many of their residents actually do park cars on our streets, especially along Pegasus Street adjacent to the 1571 Pegasus Street facility and on Redlands Drive adjacent to the 20172 Redlands Drive facility. In addition, a large passenger van associated with Yellowstone is often parked at night across the street from the 20172 Redlands Drive facility. We also observe numerous cars entering and leaving our neighborhood containing visitors to facility residents. These activities generate traffic out of proportion to the number of facilities. NBMC §20.91A.060(E).

3. If any use is permitted, strict conditions should be imposed.

If you determine, despite the opposition of the neighboring homeowners, that Yellowstone should be granted any form of approval, we urge you to impose Conditions of Approval similar to those imposed on other applicants such as Balboa Horizons and Ocean Recovery:

A. Due to over concentration in our neighborhood, at most only **two** of Yellowstone's applications should be granted. The other two facilities should be abated.

B. No more than two (2) clients should be allowed per bedroom, and "bedroom" should be limited to those rooms designed for that purpose, not converted living, dining, or family rooms.

C. No probationers, parolees, or registered sex offenders should be allowed to occupy any of the facilities at any time. We suggest that you impose a condition requiring Yellowstone to obtain from a resident, prior to placement, a signed statement that he or she has never been convicted of a sex offense against a minor.

D. No more than one automobile per facility may be parked on neighborhood streets, and no commercial vehicles or passenger vans may remain overnight.

4. Yellowstone's requests for reasonable accommodation should be denied.

We presume that Yellowstone's request for reasonable accommodations involves the number of occupants allowed in its facilities, and we assume that Yellowstone claims that all its residents are persons with a "disability". But Yellowstone's request has nothing to do with "enhancing the quality of life" of any disabled person (NBMC §20.98.025(C)(1)) or granting disabled persons "equal opportunity" (NBMC §20.98.025(C)(2)). Yellowstone simply wants to pack as many people as possible into each facility to generate maximum profits.

Yellowstone cannot satisfy the requirements of NBMC §20.98.025, and per subsection (B), all the requirements must be met. Granting Yellowstone's application would undermine the City's zoning program and would continue to detract from the residential character of our neighborhood.

Thank you for considering our objections and those of our neighbors.

Very Truly Yours,

James C. Harvey

Diane E. Harvey

cc: Dave Kiff, Assistant City Manager

2/11/09

To:

Janet Johnson Brown – Planner
3300 Newport Blvd.
Newport Beach, CA 92663

3Y
PLANNING COMMITMENT

FEB 18 2009

CITY OF NEWPORT BEACH

From:

Eric Rosenthal
1661 Indus Street
Newport Beach, CA 92660

I am a recent resident to the city of Newport Beach. I worked the hardest I could to full-fill my dream of living in the famous Newport Beach. The prestige, the safety, the family life, the residents and the culture are so alluring. There is no place like it on earth.

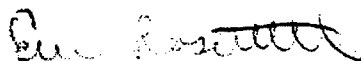
I have been employed at Fletcher Jones for almost 9 years now. I have a constant pulse on the city and some of its elite residents. This whole issue of Rehab housing in our city leaves such a sour taste in everyone's mouth. These rehab homes are filled with society's problem rejects, coming in and out in herds. These people don't need to be in the most prestigious city in the world to attempt their rehab. It's unnecessary, unwanted, undeserved and unwelcome. I simply do not understand why Newport Beach would want to allow herds of these people in its city.

The saddest part is I know people with kids who happen to be a couple doors down from one of these "rehab" homes. They have 3 children who never never get to play outside or in their front yard because their parents do not feel safe with the herds of people coming in and out all the times and hanging out in front yard smoking 24 hours a day, its simply ghetto.

I have taken great pride in my home as a Newport Beach homeowner. The owners and these rehab patients are business operators and clients, with little regard to the maintenance and appearance of their homes. Curb appeal is an important aspect of property values. Worst of all the pure mention of one of these rehab homes, especially in ones neighborhood, makes outsiders and residents cringe.

I am so 100% against these homes in our city and speaking for the other 6500 Fletcher Jones Clients I have worked with over the past 9 years, they all feel the same way.

Please call me with any questions.



Eric Rosenthal
949-718-3163
eroseenthal@fjmercedes.com

ROSENTHAL
1661 INDUS STREET
NEWPORT BEACH, CA 92660

YS 00554
554

Dave Kiff
Planning Department, City of Newport Beach
3300 Newport Boulevard
Newport Beach, Calif 92663

RECEIVED BY
PLANNING DEPARTMENT

FEB 19 2009

Ref: PA2008-105, PA-2008-106, PA2009-107 PA2008-108
4 Yellowstone Women's First Step House, Inc.

CITY OF NEWPORT BEACH

Dear Sir,

I formally protest about the applications for an increase of inmates in 1621 Indus, in particular. They congregate right under my bedroom and bathroom windows, to smoke and cackle on a patio which is 10 feet by 10.

The smoking is so strong it starts my chronic cough when I go in my passage way between the 2 houses.

This goes on at all times 8 in the morning, 11 at night, 3 in the morning.

When the county sold that house they "fixed" the fence so poorly that it has now collapsed. I have given my phone number to the woman who manages the place, asking that the owner contact me to do a proper fencing. No one has called me. They have piled cardboard, palm leaves, to keep the dog of the manager from wandering into my backyard. What will keep mentally disturbed people who are alcoholics and drug addicts from coming into my backyard and maybe drown themselves in the 2 feet of water of my pond when I am not at home? This owner is totally irresponsible and now you want to allow her to stick 3 people in all the rooms of the house?

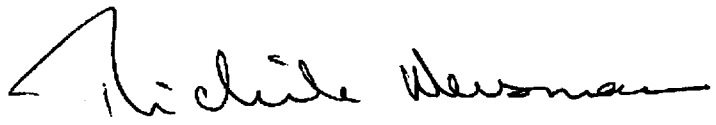
This house is a 5 bedroom house, that means the den will be converted into a bedroom too. Furthermore They gather into the back room for parties and conferences, or simply to wait for the bus, so I get all the other inmates, male and female from the neighborhood around 8 in the morning. Our street alone has 2 of these business locations and there are 2 more on Pegasus and Kline. Has our neighborhood been elected to be the dumping ground of all the drunks and addicts of Newport Beach?

And please don't pretend they are sober, or they would not be here in the first place.

What is proposed is by no means a reasonable accomodation for a single family residential neighborhood. It is just a way for the owner to make more money to turn our area into a ghetto for Newport Beach rejects.

The fence is riddled with termites is collapsing and I cannot close my gate. I have been quote 7500 dollars to build a simple wall. I believe it is the responsibility of the city to require from people who do not live in the neighborhood but get to have a business in a residential area, that they take some measures to minimize the impact on their neighbours, instead of continuously get exemptions from the basic rules and taxpayer money to boot. Your class of project is having a significant effect on me. This should be treated as a business and be removed from residential areas.

Michele Weismann
1631 Indus
949-6454064


February 9, 2009

**1571 PEGASUS: STAFF REPORT (w/ Exhibits 1-11)
FOR FEBRUARY 20, 2009 HEARING**

**CITY OF NEWPORT BEACH
HEARING OFFICER STAFF REPORT**

February 20, 2009
Agenda Item #3

SUBJECT: Yellowstone Women's First Step House, Inc. (PA2008-107)
1571 Pegasus Street

- Use Permit No. 2008-036
- Reasonable Accommodation No. 2009-06

APPLICANT: Yellowstone Women's First Step House, Inc.,
Isaac R. Zfaty, Attorney

CONTACT: Janet Johnson Brown, Associate Planner
(949) 644-3236, jbrown@city.newport-beach.ca.us

PROJECT SUMMARY

A use permit application to allow the continued operation of an existing unlicensed adult residential sober living facility with a total occupancy of 18. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. A reasonable accommodation application has also been submitted requesting:

1. The residents of the facility be treated as a single housekeeping unit as defined in Section 20.03.030 the Newport Beach Municipal Code (NBMC);
2. An exemption from the occupancy restrictions of NBMC Section 20.91A.050, which restricts occupancy to two residents per bedroom plus one additional resident; and
3. An exemption from NBMC Section 20.90.030 that states applications for discretionary approvals, including use permits, are accompanied by a fee as established by resolution of the City Council.

RECOMMENDATION

Staff recommends that the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

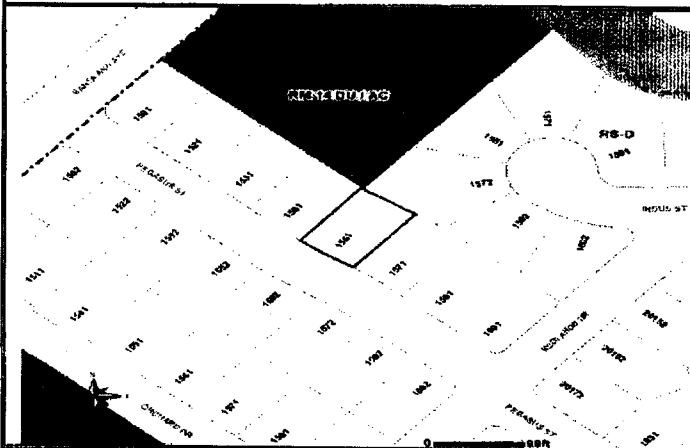
1. Deny the use permit application based on the findings discussed in this report, and provide direction to staff to prepare a resolution of denial with prejudice of Use Permit No. 2008-036.

2. Deny the request for reasonable accommodation for the residents of the facility to be treated as a single housekeeping unit subject to the findings discussed in this staff report.
3. If a use permit is granted for this facility, staff recommends that the requested accommodation for an exemption from the occupancy restrictions of NBMC Section 20.91A.050 be granted as to the current residents. As to future residents of this facility, staff recommends continuance to a date certain pending receipt of additional financial information.
4. Staff recommends a continuance to a date certain for the request for reasonable accommodation for an exemption of the application filing fee requirement pending receipt of additional financial information.

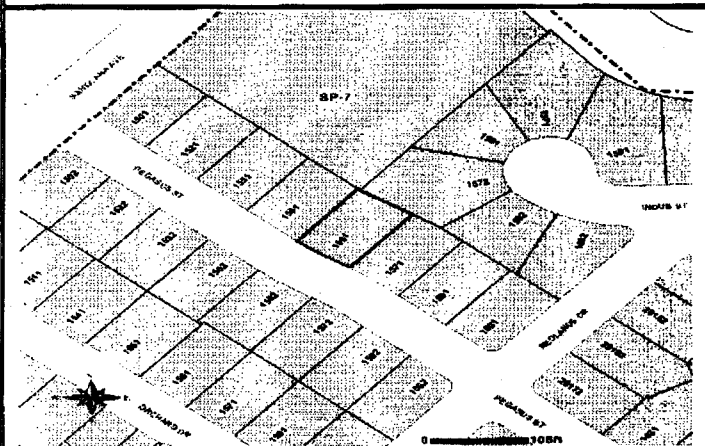
VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached	SP-7/Residential Single Family	Residential Care Facility
NORTH	Multiple Unit Residential	SP-7/Residential Multiple Family	Apartment Complex
SOUTH	Single-Unit Residential Detached	SP-7/Residential Single Family	Single-unit residential dwellings
EAST	Single-Unit Residential Detached	SP-7/Residential Single Family	Single-unit residential dwellings
WEST	Single-Unit Residential	SP-7/Residential Single	Single-unit residential dwellings

	Detached	Family	
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INTRODUCTION

Project Setting

The subject property is located in Santa Ana Heights southeast of the intersection of Santa Ana Avenue and Bristol Street. The property is developed with a two-story single-family residential structure originally constructed in 1961, and is located on Pegasus Street just east of Santa Ana Avenue. The neighborhood consists of single-family tract homes that were also constructed at approximately the same time as the subject dwelling. The subject property is one of four sober living houses in the immediate neighborhood operated by Yellowstone Women's First Step House, Inc.

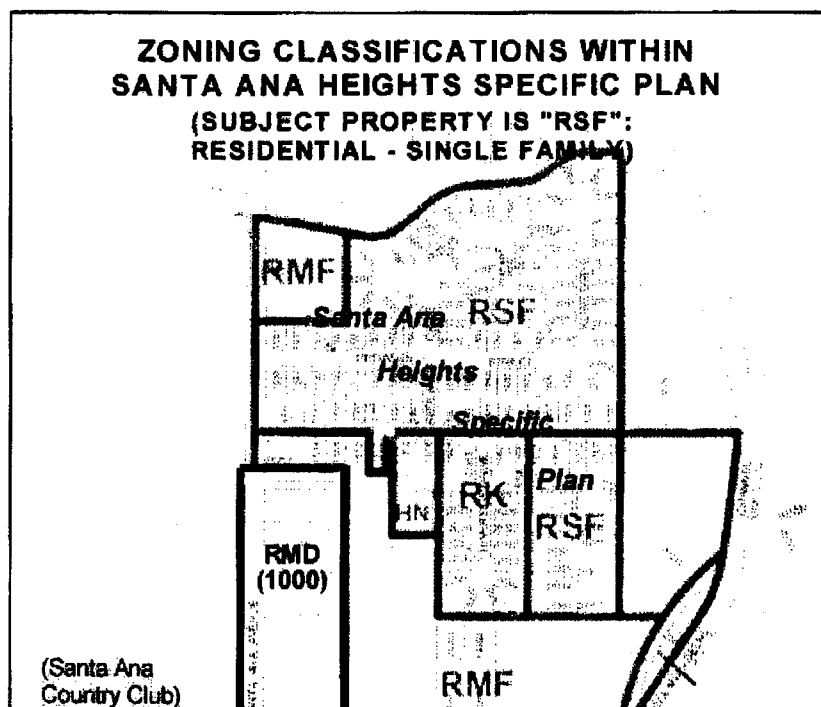
Zoning

The zoning designation for the property and surrounding area is "SP-7" (Specific Plan District No. 7: Santa Ana Heights). This Santa Ana Heights Specific Plan (SAHSP) is incorporated into the Zoning Code in its entirety (Ch. 20.44). Thus, in the zoning exhibit at the right, the Santa Ana Heights Specific Plan zoning designations are shown faded to denote that the zoning categories shown are not base Zoning Code categories but are instead unique to the Specific Plan.

The subject property is zoned Residential – Single Family (RSF) in the SAHSP. The principle land use allowed in this district is single family residential. The status of group homes as a permitted use under Ordinance 2008-05 is addressed later in this report.

Project Description

The subject application is a request for approval of a Group Residential Use Permit to allow the continued operation of an existing adult residential sober living facility for up to 18 females. The facility is currently operated by Yellowstone Women's First Step



House, Inc. as an "unlicensed 7 and more" facility. The applicant has also submitted an application for Reasonable Accommodation from the City's zoning and land use regulations, pursuant to the provisions of Section 20.98 of the NBMC. Specifically, the applicant requests that the residents of the facility be treated as a single housekeeping unit as that term is defined in NBMC Section 20.03.030; that the facility be allowed an occupancy per bedroom that is more than provided for in NBMC Section 20.91A050; and that the application fees be waived due to disability-related financial hardship. Pursuant to NBMC Section 20.98.015, if the project for which a request for reasonable accommodation is made required another discretionary permit, in this case a use permit, the applicant may request that the Hearing Officer hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. The applicant has made such a request, and the following report provides the analyses for a Group Residential Use Permit and Reasonable Accommodation.

BACKGROUND

Please see the staff report for 1561 Indus for additional background on this facility and the others operated by Yellowstone. This staff report for 1571 Pegasus includes only those issues and aspects of the application that are materially different from the 1561 Indus application.

DISCUSSION

Description of Project Operations

The Yellowstone facility located at 1571 Pegasus Street, is also known as "Pegasus House", and has been in operation since 2005 prior to annexation to the City. The property is owned in fee by Dr. Anna Marie Thames, CEO of Yellowstone. This residential care facility is sober living home for 18 women with past alcohol and drug dependence. This residential care facility operates in a two-story single-family dwelling containing six bedrooms, which are occupied as follows:

Current Uses at 1571 Pegasus Street			
	Bedrooms	Beds/ Room	Beds/ Unit
First Floor	2	2/1 room 3/1 room	5
Second Floor	4	4/2 rooms 3/1 rooms 2/1 room	13
Total Bedrooms = 6			

Total Beds = 18
Total Parking Spaces = 4 (2-car garage & 2 driveway spaces)

As indicated, staff has made numerous efforts to communicate with the applicant to provide them an opportunity to correct the applications, which are internally inconsistent and to process the applications in order to deem them complete.

The following matrix has been prepared to illustrate the project operations as represented in the applications initially submitted and in subsequent submittals (Exhibits 2 and 3):

Project Operation	Application and Description		
	Date of Submittal	Reasonable Accommodation	Use Permit
Facility Users and Staffing	5-20-08	• 18 persons including 2 staff members • Two staff members. No other staff or caretakers that visit on a daily or weekly basis	• 18 persons including 2 staff members • House manager and assistant manager
	1/28/09	E-mail from applicant's attorney provided clarification of 12 bed occupancy for this facility (Exhibit 9).	
Duration of Stay	5-20-08	Six months	180 days
		(Staff was informed verbally that typical stay is 6 months, but some clients have stayed for a year or more.)	
Characteristics of Use/Treatment	5-20-08	• Sober living home; no medical care or non-medical services provided • Residents at this property not allowed on any other properties & no function that includes all residents.	No alcohol and/or drug recovery or treatment services provided on-site.
	8-22-08	Residents at this property not allowed on any other Yellowstone properties & there are no functions that include all residents.	
	12-23-08	Residents prohibited from being in house between 8 a.m. and 3 p.m., and must return to house by 4 p.m.	

Project Operation		Application and Description	
	Date of Submittal	Reasonable Accommodation	Use Permit
Transportation and Parking	5-20-08	• Transportation not provided. • 2-car garage and driveway available for staff and visitor parking. • Residents do not have auto and rely on public transportation or carpooling. • Tenants' vehicles not allowed to be parked or utilized at property.	• Residents residing on-site not allowed to use personal vehicles, and/or keep on-site or nearby • Clients use bus, carpools, bikes • Staff vehicles parked in driveway.
	12-23-08	Per correspondence from attorney: • Room for 4 cars to park on site. Residents not permitted to park there; only house manager and assistant manager permitted to park on-site. • Basic transportation provided to treatment facility and St. John Church • Transport van kept in other city when not in use	
	1-29-09	Per correspondence from attorney: • Parking on-site reserved for manager and assistant manager, thus max. number of cars at any time is two. • Residents not permitted to park on property. • Visitors not permitted on property; therefore, no visitor parking issues. • Residents do not use cars. Instead, they rely on public transportation to and from property. • Home does not generally provide transportation services; some basic transport to treatment facility and St. John Church. Morning pick up at 8 a.m. and evening drop off at 4 p.m.	
License/Permit History (i.e. ADP, DSS) and/or Certification	5-20-08	• No license. • Voluntary certification by Orange County Sheriff's Dept., and Orange County Sober Living Coalition	• No license. • Orange County Sober Living Coalition
	12-23-08	Per correspondence from attorney: • No ADP license • Certified as a member of Orange County Sober Living Coalition • Date use as residential care facility began: 2005	
	1-7-09	Oxford House Certification submitted	

Project Operation	Application and Description		
	Date of Submittal	Reasonable Accommodation	Use Permit
Curfew and Quiet Hours	5-20-08		10 p.m. to 8 a.m. daily
Delivery Information	5-20-08	There are no delivery vehicles required as the property	Trash disposal 1 day/week, no other delivery services provided.
Smoking	5-20-08 8-22-08		Acknowledged requirement to control secondhand smoke. (Smoking not permitted in house; restricted to backyard)

Fire Marshal Review

The Group Residential Use Permit Application also requires the submittal of a fire clearance from the Newport Beach Fire Marshal. The applicant provided a copy of a Fire Safety Inspection Request that was submitted to Orange County Fire Authority (OCFA) prior to annexation to the City of Newport Beach with the August 22, 2008, supplemental submittal. However, the form was not signed by the OCFA, and further, the property is now under the authority of the Newport Beach Fire Marshal. On December 23, 2008, and again on January 29, 2009, the applicant submitted an analysis prepared by an architect that was submitted to the Fire Marshal. The Fire Marshal has requested clarification on a number of items (Exhibit 5), but to date a fire clearance has not been issued. If this use permit is granted, condition of approval will be included stating that the use must comply with the requirements of the California Building Code and obtain a fire clearance from the Newport Beach Fire Marshal.

Public Input

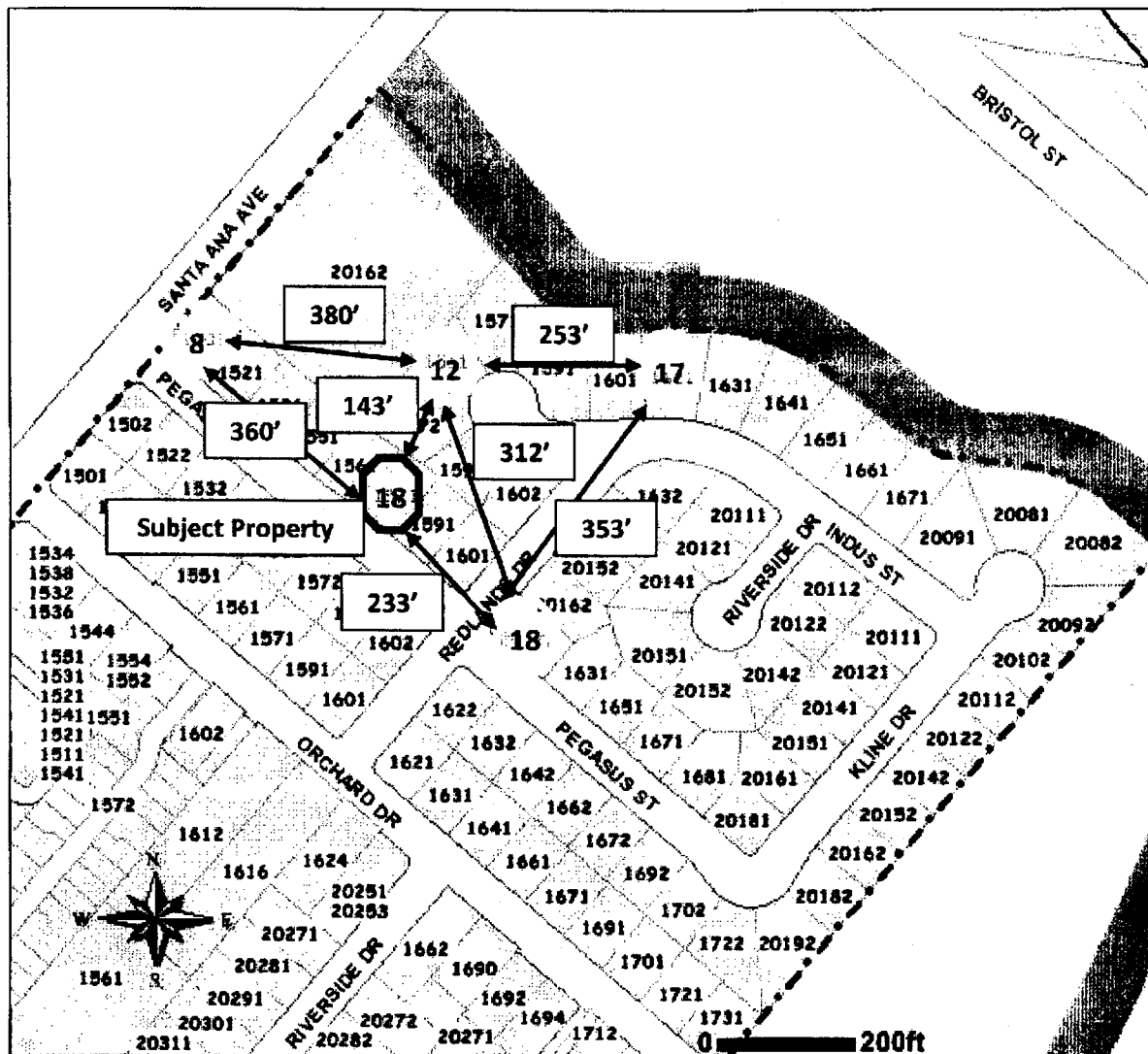
The same public input applies here as does the public input provided and described in the discussion for 1561 Indus. (Exhibits 6 and 11)

ANALYSIS

In addition to the statements in the 1561 Indus staff report, four critical areas are worthy of analysis here:

Concentration of Uses

About 73 group residential beds are in this neighborhood:



As noted earlier in this report, Yellowstone operates three other sober living facilities in the neighborhood (distances below measured in a straight line from the nearest property line):

- 1561 Indus Street (12 residents), about 143 feet away;
- 1621 Indus Street (17 residents), about 321 feet away;
- 20172 Redlands Drive (18 residents), about 233 feet away; and in addition
- 1501 Pegasus Street (8 female residents) is about 360 feet away and is operated by another provider (Lynn House).

In adopting Ordinance No. 2008-05 the City made a number of findings including Finding No. 16 which states that *"community residences should be scattered throughout residential districts rather than being concentrated on any single block or in any single neighborhood."* The ordinance defines a "block" as *"an area of land that is bounded on all sides by streets...or by streets and a cul-de-sac or by any other form of termination of the street."* In the case of the subject property, it is in a neighborhood that is not characterized by a typical grid street pattern; but instead has meandering streets and cul-de-sacs. The ordinance recognizes that there are instances when the lack of a straight-line grid pattern street will make it difficult to exactly define a block; and also recognizes that blocks throughout the City are not always uniform in size. In those instances, Code Section 20.91A.060.D.3 provides that the Hearing Officer may apply the American Planning Association (APA) standard of 617 feet (median) or 711 feet (average) in determining the block size and configuration.

Given the close proximity of this facility to the other similar uses located within the same neighborhood, it is critical to define "block" in this particular case. If the APA standard is used, and the median block length of 617 feet applied, the five houses would all fall within a single block area. Therefore, the subject property is located within a block and in close proximity to the other residential care facility uses with a combined total of 73 residents in the neighborhood. In staff's opinion, the presence of five residential care facilities in very close proximity to each other is an overconcentration, and two of the four Yellowstone homes should be closed.

Assembly Uses and Parking

Residential care facilities may conduct meetings on-site, such as Alcoholics Anonymous (AA) meetings, for the residents who live on-site only. However, the NBMC does not allow the hosting of AA or similar type meetings for individuals who do not reside in the facility. The facilities may be used for residential use by the residents only. Correspondence submitted by residents within the neighborhood states that there are meetings held at the subject facility that involves persons other than the residents and that there is an influx of vehicles using on-street parking during these times, leaving little or no parking for the residents of the neighborhood. The applicant has stated that no such meetings occur.

Staff is concerned about allegations from the neighbors regarding visitors during evening hour meetings and on weekends, and the impact on parking and additional traffic generated from these visitors to the surrounding neighborhood. If the use is approved, staff recommends conditions of approval that prohibits meetings on-site, restricts the allowance of vehicles to two staff members only, and requires staff parking on-site in the garage, reserving the driveway for visitor parking.

Traffic and Generated Trips

The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of a single family dwelling, the standard trip rate is based on 9.57 average daily trips per dwelling unit. Trip rates for residential care facilities (also classified as an "assisted living" use by ITE) are based on 2.74 average daily trips per each occupied bed. Staff recognizes that the use pattern of an assisted living or residential care facility is similar, but not identical to a sober living facility. However, the trip generation rates established by ITE for residential care facilities is the closest land use classification to a sober living home.

Based on the ITE standards, a single family dwelling would generate approximately 10 average daily trips (rounded up), whereas an 18-bed residential care facility would generate approximately 50 average daily trips.

Maximum Number of Residents

NBMC Section 20.91A.060.C.2 states that a maximum number of residents for any group home shall not exceed a standard of two residents per bedroom plus one additional resident. The subject property has six bedrooms, which results in the maximum number of residents allowed to be thirteen. As indicated on the application, the applicant requests a total occupancy of 18 resident beds.

Pursuant to NBMC Section 20.91A.060.C.2, the Hearing Officer has discretion to set occupancy limits based upon the evidence provided by the applicant that additional occupancy is appropriate at the site. In determining whether to set a different occupancy limit, the Hearing Officer *"shall consider the characteristics of the structure, whether there will be an impact on traffic and parking and whether the public health, safety, peace, comfort, or welfare of persons residing in the facility or adjacent to the facility will be impacted."*

In determining whether the findings can be made to allow an occupancy of 18 residents, staff considered evidence submitted by the applicant, as well as the size of the structure, parking, traffic generation, and impacts on adjacent and surrounding land uses. Based on the plans submitted, the total living area is 3,197 square feet, and there appears to be adequate room to allow two more occupants more than allowed per the code. Therefore, staff supports the increased occupancy to allow 15 residents, but opposes the request to allow 18 residents as requested by the applicant.

The applicant has stated that only the manager and assistant manager have vehicles, which are parked in the two-car garage or on the driveway, and residents are not permitted to have vehicles. Therefore, sufficient parking appears to be provided on-site. Traffic and parking impacts described by residents in the neighborhood may not be directly related to this specific facility. Staff believes the applicant has provided adequate documentation for the Hearing Officer to make the necessary findings to grant

an increase in occupancy to a maximum of 15 residents. If the use is approved, staff recommends a condition of approval that allows a maximum occupancy of 15 residents, restricts the allowance of vehicles to two staff members only, and requires staff parking on-site in the garage, reserving the driveway for visitor parking.

Required Findings

Pursuant to Ordinance No. 2008-05, the Hearing Officer shall make all of the 11 required findings per NBMC Sections 20.91.035 (A) and 20.91A.060 (see Findings Chart, Exhibit 1). The required findings, and discussion of each finding are as follows:

NBMC Section 20.91.035 (A) Findings 1 through 4:

- 1. Finding: That the proposed location of the use is in accord with the objectives of this code and purposes of the district in which the site is located.**

The use is only partially in accord with the objectives of this code and the purposes of the district in which the site is location, and therefore; this finding cannot be made for the following reasons:

The subject property is located within the Santa Ana Heights Specific Plan (SP-7) area and is designated for Residential Single-Family (RSF) uses. The proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provision of Chapter 20.91A of the NBMC. The proposed application for Use Permit 2008-034 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the SP-7/RSF District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The subject property's proximity to four other residential care facilities would result in an overconcentration of residential care facilities within the neighborhood. Therefore, this finding cannot be made.

- 2. Finding: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working or adjacent to the neighborhood of such; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

The location of the proposed use is not consistent with the General Plan. However, the use if approved with conditions, will be consistent with the purpose of the district in which the site is located. This finding cannot be made for the following reasons:

General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include a condition of approval regulating the use and operational characteristics related to parking, traffic, curfew hours, and on-site meetings. As stated, the facility is located in a neighborhood in which there are currently four other residential care facilities in close proximity, which constitutes an overconcentration of residential care facilities in the immediate vicinity. Therefore, staff believes that the continued use of this property as a residential care facility, if approved, would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing in the neighborhood, and this finding cannot be made.

3. **Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.**

As noted in Finding No. 2 above, the proposed use would not be consistent with the provisions of NBMC Section 20.91A.060.D in that the facility is located in a neighborhood in which there are currently four other residential care homes. Therefore, this finding cannot be made.

4. **Finding: If the use is proposed within a Residential District or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.**

One of the stated purposes of NBMC Section 20.91A.010.B is: *"To protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or over concentrated in any particular area so as to institutionalize that area."* As noted in Finding No. 2 above, the proposed use would not be consistent with this purpose in that the facility is located in a neighborhood in which there are currently four other residential care facilities. Therefore, this finding cannot be made.

NBMC Section 20.91A.060 Findings A through G:

A. Finding: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:

- a. No secondhand smoke can be detectable outside the property.**
- b. Operations must comply with state and local law, the submitted management plan, including any modifications required by this Use Permit.**
- c. A contact name and number be provided.**
- d. No services requiring a license can be provided if the facility does not have a license for those services.**
- e. There shall be no more than 2 persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**
- f. If certification from an entity other than ADP's license program is available, applicants must get that certification.**
- g. All individuals and entities involved in the facility's operation and ownership must be disclosed.**
- h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

The use, if approved subject to conditions included with the use permit, will conform to the standards set forth in Section 20.91A.050, and this finding cannot be made as follows:

- a. Smoking is permitted only in the rear yard and patio area. Given the size of the lot and the proximity of the surrounding residential uses, it is unlikely that secondhand smoke can be detected outside the property, and no complaints have been submitted by adjacent neighbors regarding secondhand smoke.**
- b. The facility has been in operation since 2005, and the applicant has submitted documentation that the facility has never been cited by a state or local agency as violating any of those agencies laws or regulations.**
- c. Contact names and telephone numbers have been provided within the application. Approval of a use permit for the facility would include a**

condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

- d. The residential care facility is used for housing purposes only and is not licensed for on-site treatment. All treatment services are provided at a site that is located approximately two and a half miles from the site in Costa Mesa, and transportation to the site is provided by van three days a week. Approval of a use permit for the facility would include a condition of approval limiting attendance of any type of meeting on-site to residents who reside on-site only.
- e. The unlicensed residential care facility has six bedrooms and there is a total occupancy of 18 residents. Therefore, the facility exceeds the standard of two persons per bedroom plus one additional resident by five, and does not comply with this operational standard. However, staff believes the applicant has provided adequate documentation for the Hearing Officer to make the necessary findings to grant an increase in occupancy to a maximum of 15 residents, with conditions of approval limited the occupancy to 15 residents, restricting the allowance of vehicles to staff members only, and requiring the staff to park on-site in the garage, reserving the driveway for visitor parking.
- f. The facility holds a voluntary certification with the Orange County Sober Living Coalition, and the Orange County Sheriff's Department, and proof of that certification has been provided by the applicant.
- g. The applicant has provided all names of those involved in the facility's operation within the application.
- h. There are no known violations or code violations for the facility or the individual operators and managers.

While the provisions of all except "e" can be met, Section 20.91A.050 requires that all of the standards must be met. Therefore, this finding cannot be made.

- B. Finding: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.**

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The project site has an enclosed two-car garage and a driveway is that 26 feet deep, providing a total four off-street parking spaces. The current capacity of 18 beds requires a total of six off-street parking spaces; therefore the property does not meet the NBMC requirements for off-street parking.

Van transportation to an off-site treatment facility and to a church is provided approximately three to four times a week, and residents utilize public transit for commuting to work (an OCTA bus stop is located on Santa Ana Avenue within walking distance).

With respect to traffic generation, the facility itself does not present an adverse impact to the neighborhood. However, staff is concerned about the comments from the area residents regarding the traffic and parking impacts from family and other visitors to the site during evening hours and on weekends, which results in cars parked throughout the vicinity. As noted above, the property site does not provide the number of off-street parking spaces required by the NBMC and is two spaces deficient. Staff notes that four other group homes exist within close proximity to the subject facility.

In summary, the facility does not provide sufficient off-street parking for management and residents, and the traffic and parking impacts on the surrounding neighborhood cannot be mitigated to an insignificant level due to the site's off-street parking deficiency, and due to the presence of other group care homes in close proximity to the subject property. Therefore, this finding cannot be made.

C. Finding: The property and existing structures are physically suited to accommodate the use.

The subject property is approximately 7,500 square feet in area and the structure consists of approximately 3,197 square feet of living area with a total of six bedrooms. While the size of the structure appears adequate to accommodate the use as a residential care facility with 18 beds, as noted above, the property does not conform with the NBMC parking standards in that six off-street parking spaces are required, and only four spaces are provided. Therefore, this finding cannot be made.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. As discussed above, the property has not received a "fire clearance" from the Newport Beach Fire Marshal. Therefore, if the Hearing Officer approves the application, staff recommends that a condition of approval be included that provides that the use is approved subject to the approval by the Fire Marshal.

D. Finding: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an over concentration of residential care uses in the vicinity of the proposed use. In making his finding or sustaining such a finding, the Hearing Officer and/or City Council shall consider, as appropriate, the following factors:

- a. **The proximity of the site location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;**
- b. **The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivisions Area presented to the Newport Beach Planning Commission on September 20, 2007, and on file with the Director of Planning; and**
- c. **Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1, 422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the Hearing Officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Office shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.**

The project site is located within an established single-family residential neighborhood consisting of one and two story tract homes. There are no public or private schools, or public parks located within close proximity to the site. The closest elementary school is Kaiser Elementary School, which is located approximately two miles to the south, and Brentwood Park located approximately one and a half miles to the south. Facilities licensed to sell or serve alcohol located within three blocks of the project site include a 7-11 Store and a Mexican restaurant on the southeast corner of Santa Ana Avenue, and an AM/PM Service Station and Market on the northeast corner of Santa Ana Avenue. Those facilities are located within the City of Costa Mesa, approximately 1,200 feet walking distance or more from the subject property.

The subject property is located in a neighborhood that is not characterized by standard physical characteristics such as a typical street grid pattern; but instead has meandering streets and cul-de-sacs. The ordinance recognizes that there are instances when the lack of a straight-line grid pattern street will make it difficult to exactly define a block; and also recognizes that blocks through out the City are not always inform in size. In those instances, Code Section 20.91A.060.D.3 provides that the Hearing Officer may apply the American Planning Association (APA) standard of 617 feet (median) or 711 feet (average) in determining the block size and configuration.

Given the close proximity of this facility to the other four houses located within the same neighborhood, it is critical to define "block" in this particular case. If the APA standard is used, and the median block length of 617 feet applied, the five houses would all fall within a single block area. Therefore, the subject property is located within a block and in close proximity to four other residential care facility uses with a combined total of 73 residents. In staff's opinion, the presence of five residential care facilities in very close proximity to each other is an overconcentration and the use of the subject property as a residential care facility results in an overall adverse impact on the neighborhood and will not be compatible with the character of the surrounding neighborhood. Therefore, this finding cannot be made.

- E. Finding: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.**

Other than the resident manager and assistant manager, residents of the facility do not have automobiles and utilize public transit from an OCTA bus stop located on Santa Ana Avenue. Vans are used to take residents to a treatment facility and to church approximately three to four times a week. It is staff's opinion that the traffic generated just from these van trips is not excessive. Therefore, this finding can be made.

- F. Finding: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

Deliveries to the residences are typical of the normal use of property for residential purposes. Shopping is done by management staff and delivered to the house during normal daytime or early evening hours. Therefore, staff believes that this finding can be made.

- G. Finding: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

The facility utilizes the regularly-scheduled Costa Mesa Sanitary District residential refuse collection services provided throughout the neighborhood. Neighborhood complaints about excessive trash need to be evaluated further – in the event that the once-a-week trash service does not adequately serve this facility, staff suggests a condition allowing the City's Planning Director to require the facility to secure and maintain commercial bin service. With this condition, this finding can be made.

Analysis Summary

As indicated at the beginning of this report, staff recommends denial of this Use Permit application for the following reasons:

1. Inability to make all of the findings required by the NBMC Sections 20.91.035 (A) and 20.91A.060.
2. The proposed use is not consistent with the purposes of NBMC Section 20.91A as set forth in Section 20.91A.010, and the requirements of Section 20.91.020.
3. There are inconsistencies and/or factual misrepresentations in the application documentation.

This recommendation is based on analysis of the proposed project's submitted documentation, review of the property setting, apparent documentation contradictions and/or misrepresentations, and staff's conclusion that the required findings from NBMC Section 20.91.035 (A) Findings Nos. 1, 2, 3 and 4 cannot be made, that the required findings from NBMC Section 20.91A.060 Findings A, B, C and D cannot be made.

If, after reviewing this report, and hearing testimony from the applicant, the Hearing Officer agrees with staff's recommendation for denial, staff requests the Hearing Officer's direction to prepare a resolution for denial for adoption at a time and date set by the Hearing Officer.

APPLICATION FOR REASONABLE ACCOMMODATION

BACKGROUND

On May 20, 2008, the applicant submitted an Application for Reasonable Accommodation (Exhibit 2) that discussed the need for accommodation, but did not seek exemption from any specific City rule, policy or practice.

On August 22, 2008, the applicant submitted an Application for Reasonable Accommodation that requested an exemption "from single family to multi-family residence." (Exhibit 7) The applicant also indicated the need for an accommodation from the required use permit fee due to financial hardship. Upon request for clarification

and additional information from staff, the applicant's attorney submitted a supplemental request for accommodation from specific provisions of the Newport Beach Municipal Code ("NBMC") on January 29, 2009. (Exhibit 8) The three specific accommodations requested are:

1. That the 18 residents of the Yellowstone facility at 1571 Pegasus Street be treated as a single housekeeping unit, as the term is defined in NBMC Section 20.03.030 of the Newport Beach Municipal Code;
2. An exemption from the occupancy restrictions of NBMC Section 20.91A.050, which requires that use permits granted to residential care facilities restrict facility occupancy to no more than two residents per bedroom plus one additional resident;
3. An exemption from the City's requirement that all use permit applicants pay a use permit application fee to permit cost recovery by the City. (NBMC Chapter 3.36 and NBMC Section 20.90.030)

NBMC Section 20.98.015 provides that if the request for a Reasonable Accommodation requires another discretionary permit, the applicant may request a simultaneous hearing. In this case, the use of the property as a residential care facility does require a use permit, and the applicant has requested simultaneous hearing of both the use permit application and the various requests for reasonable accommodation.

DISCUSSION

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibit housing discrimination based on a resident's disability. Under the FHAA, it is discriminatory for government entities to refuse to make reasonable accommodations from rules, policies, and practices when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling (42 U.S.C. § 3604(f)(3)(B)).

Cases interpreting the FHAA have held that a government agency has an affirmative duty to grant a requested reasonable accommodation if: (1) the request is made by or on behalf of a disabled individual or individuals, (2) the accommodation is necessary to afford the disabled applicant an equal opportunity to use and enjoy a dwelling, and (3) the request is reasonable.

Cities may find an accommodation request unreasonable if granting the request would: (1) result in a fundamental alteration in the nature of a City program (often described as undermining "the basic purpose which the requirement seeks to achieve"), or (2) would impose undue financial or administrative burdens on the city (See *U.S. v. Village of Marshall*, 787 F.Supp. 872, 878 (W.D. Wisc. 1991)).

Whether a requested accommodation is reasonable and necessary must be determined on a case-by-case basis. *Because the applicant has requested three very different*

types of reasonable accommodation, staff will present a separate analysis of each specific accommodation request.

Reasonable Accommodation Analysis No. 1 – Request to be Treated as a Single Housekeeping Unit

In the January 29, 2009 letter clarifying applicant's request for reasonable accommodation, the applicant requested its facility be treated as a Single Housekeeping Unit, as that term is defined in NBMC Section 20.03.030. The applicant said the accommodation requested is necessary because the facility "is not transient or institutional in nature such that it fits the definition of a non-licensed residential care facility." The applicant stated:

"[T]he Property more accurately fits the definition of a Single Housekeeping Unit as the term is defined in Section 20.03.030. Residents are the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit. Like a Single Housekeeping Unit, there is a common area and each resident is responsible for their own meals, expenses and chores . . . The sole purpose of each resident living on the Property is to live in a house with other sober individuals with similar disabilities. Also, the makeup of the Property is determined by the residents of the unit rather than the property manager."

Ordinance No. 2008-05 codified the procedures for requesting, reviewing and granting, conditionally granting, or denying all requests for reasonable accommodation in the City of Newport Beach. The Hearing Officer is designed to approve, conditionally approve, or deny all applications for a reasonable accommodation. The ordinance also established required findings and factors the Hearing Officer may consider when making those findings.

Pursuant to Section 20.98.025(B) of the NBMC, the written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval.

1. *Finding: That the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.*

This finding can be made. The applicant submitted a statement signed under penalty of perjury that every resident of the facility is in recovery from alcohol addiction. Federal regulations and case law have defined recovery from alcoholism and drug addiction as a disability, because it is a physical or mental condition that substantially impairs one or more major daily life activities.

2. *Finding: That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.*

This finding cannot be made. Staff does not question the need for sober living homes, nor the fact that persons with a disability must have the opportunity to use and enjoy a dwelling. However, the exemption requested by the applicant is unnecessarily broad to achieve the goal of providing disabled housing. As staff informed the applicant's counsel, a request to be considered a Single Housekeeping Unit is essentially a request to be exempted from *all* of the provisions of Ordinance 2008-05 which place *any* sort of reasonable regulation on the operations of residential care facilities. This is not necessary, because there are many more narrowly tailored accommodations that could enable facility residents to enjoy the housing of their choice without depriving the surrounding neighborhood of reasonable conditions that mitigate the adverse secondary impacts that emanate from this facility.

Applicant's counsel asserts in his January 29, 2009 letter that being treated as a Single Housekeeping Unit is necessary "because the Property is not transient or institutional in nature such that it fits the definition of a non-licensed residential care facility."¹ Even if the facility were not transient or institutional in nature, and did not clearly fit the definition of a sober living home, or unlicensed residential care facility, an exemption from the provisions of 2008-05 is not necessary to afford its residents the opportunity to live in and enjoy a dwelling.

However, the applicant raised the issue of how the facility should be characterized in its necessity argument, and asserted the facility more closely resembles a Single Housekeeping Unit than any other type of residential use. Staff has analyzed the facility's appropriate use classification based on the applicant's submitted materials.

Staff has determined the nature of applicant's facility operations, as reported in the original application for reasonable accommodation submitted in May 2008, most closely resembles a boarding house use. But for the fact residents are recovering alcoholics, the facility would be classified as a prohibited Group Residential use, or a Boarding or Rooming House as that term is defined in NBMC 20.05.030. (Residential Use Classifications) ("A residence or dwelling unit, or part thereof, wherein a room or rooms are rented under two or more separate written or oral rental agreements, leases or subleases or combination thereof . . .")

On the May 2008 application for reasonable accommodation, the applicant states, "The residents at the property reside separately at the property and interact within the property. There is individual use of common areas. The residents are responsible for

¹ The residents are recovering alcoholics living together in order to maintain their sobriety. Therefore, the facility closely fits the profile of a sober living home, or unlicensed recovery facility, contrary to applicant's counsel's assertions. Whether the facility is transient or institutional in nature does not enter that analysis, although staff believes there is a strong argument that the existence of the three additional facilities owned and operated as sober living homes by the applicant within 100 to 300 feet of each other does create a quasi-institutional environment.

their own meals, expenses and chores. *Each individual resides at the property subject to a separate contractual arrangement with the applicant.* (Italics added)

In a follow-up conversation with staff, applicant's CEO, Dr. Anna Thames stated that the facility has no written leases with any of the residents. Rental agreements with residents are verbal. Again, the description of operations is much closer to the NBMC's definition of a boarding house or group residential use than a single housekeeping unit, as the NBMC's definition of Single Housekeeping Unit requires dwellings rented to bona fide Single Housekeeping Units to be occupied under a single written lease.

The self-reported pattern of facility operations and resident interaction in no way resembles the NBMC definition of a Single Housekeeping Unit. NBMC Section 20.03.030 (Definitions) defines as Single Housekeeping Unit as:

"The functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager."

Applicant's resident clients may be an interactive group of persons jointly occupying a single dwelling unit who share common areas, but the applicant's own submittals indicate there is no joint responsibility for meals or expenses, no single written lease (or any written leases at all), and the makeup of the household is determined by the applicant rather than the residents.

Staff is troubled by the contradictory information submitted regarding whether the facility operator or the residents determine the household makeup. Given that both the May 20, 2008 reasonable accommodation application and the applicant's CEO stated that the applicant determines the household makeup, applicant's counsel's assertion in the January 29, 2009 letter that "the makeup of the Property is determined by the residents of the unit rather than the property manager" is difficult to accept. The remainder of the applicant's presentation regarding classification as a "Single Housekeeping Unit" suffers from the inconsistency in the information it submitted to the City.

After the inconsistency was pointed out to applicant's counsel by staff, counsel submitted additional correspondence dated February 13, 2009, (Exhibit 10) addressing the discrepancy which staff believes still exists.

NBMC Section 20.98.025(C) allows the City to consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

If the requested accommodation is granted, any number of the applicant's current and potential clients will be able to live in a home in a single-family zone with other recovering alcoholics. This is a situation that can affirmatively enhance the quality of life of a person in recovery from addiction, unless overcrowding of the facility or institutionalization of the neighborhood interferes with the residents' re-integration into society. The applicant's sliding scale of rental rates offers a sober living environment to residents who might not otherwise be able to afford to live in a single-family home in this area.

B. *Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

As stated above, the exemption requested by the applicant is broader than necessary to achieve the goal of enabling disabled individuals an equal opportunity to enjoy the housing type of their choice. City staff discussed more narrowly tailored exemptions that could enable disabled individuals to reside at the applicant's facility, but the applicant has chosen to retain this request.

C. *In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

The applicant does not state why being treated as a Single Housekeeping Unit is necessary to make its facilities viable in light of the current market for the type of services it provides. In relation to Reasonable Accommodation Request #2, the applicant states that each facility requires 15 residents in order to be financially viable, and provides a general summary of average income and expenses for all four facilities. In light of the analysis performed in full in Reasonable Accommodation Request #2, Finding 2, Section C below, the evidence does not lead to the conclusion that being treated as a Single Housekeeping Unit is necessary to make applicant's facilities financially viable.

D. *In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

In 2007, City staff estimated that there were more than 315 sober living beds in the city (these are exclusive of the up to 213 ADP-licensed treatment beds). These numbers were compiled before applicant's facilities, with a total of 58 sober living and eight staff beds, were added to the city's supply. Operators of many sober living facilities within the city have reported decreased census and vacant beds, which could provide potential Yellowstone clients with an equal opportunity to live in a sober living environment

without granting the accommodation. Further, a recent agreement with Sober Living by the Sea, Inc., authorized SLBTS to provide up to 204 beds citywide. However, many of these alternate sober living beds are probably not offered on a sliding fee scale based on ability to pay. The evidence does not support the applicant's contention that treating residents of its facility as a Single Housekeeping Unit will change the availability of the existing supply of facilities of a similar nature, or afford them a substantially greater access to an equal opportunity to live in a residential setting.

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the city, or (2) results in a fundamental alteration in the nature of a city program, often described as undermining "the basic purpose which the requirement seeks to achieve."

3. *Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.*

This finding can be made. Treating the facility as a Single Housekeeping Unit would not impose a currently identifiable undue financial or administrative burden on the City. However, staff makes this finding with caution, because the applicant is requesting similar accommodations at each of its facilities. If this reasonable accommodation request were granted for all four Yellowstone facilities, the applicant would be able to house a number of residents far in excess of the 66 individuals currently residing in the four homes. Currently unidentifiable financial or administrative burdens could arise as a result.

4. *Finding: That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.*

This finding cannot be made. The purpose of the NBMC's definition of Single Housekeeping Unit is to allow staff to determine whether groups of related or unrelated individuals are living together in a dwelling as a single housekeeping unit. This definition is necessary because of the persistent attempts by landlords to establish illegal boarding houses in dwellings within the City.

Groups living as a single housekeeping unit can live together in any residential zone in Newport Beach. Groups not living as a single housekeeping unit are prohibited from establishing residences in any of the City's residential zones. There is, however, an important exception to the total prohibition of groups not living as a single housekeeping unit -- groups not living as a single housekeeping unit in residential care facilities of any size.

Essentially, all residential care facilities in the City have *already* received a reasonable accommodation from the NBMC's restrictions on groups not living as a single housekeeping unit. The NBMC provides many opportunities for new facilities to establish, and has provisions for existing facilities to continue in their current locations with appropriate impact mitigation. Licensed facilities housing six or fewer residents can establish in any residential zone of the City.

Although the residents of residential care facilities receive preferential treatment because of their disabled status, the NBMC's Zoning Code also applies regulations to unlicensed and larger (more than seven residents) licensed facilities. These regulations are in place to ensure that the fundamental purposes of the Zoning Code can be achieved, and so the adverse secondary impacts higher density residential care facilities have on the surrounding neighborhood can be mitigated.

If the facility is treated as a Single Housekeeping Unit, it is entirely exempt from any of the reasonable controls the City might place on it. The City would be unable to make any reasonable effort to reduce the adverse secondary impacts such as noise, overcrowding, and unruly behavior by residents of applicant's facility to the detriment of neighbors, in addition to finding solutions to the applicant's disproportionate consumption of available on-street parking, and the overconcentration of facilities within a single block to the point of creating a quasi-institutional environment in this neighborhood. It is highly likely that most other similar facilities within the City would request a similar exemption, thus nullifying the Ordinance's effect entirely.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

A. *Whether the requested accommodation would fundamentally alter the character of the neighborhood.*

Staff acknowledges that a petition stating, "Yellowstone is a good neighbor" was presented to the City, signed by four residents of Pegasus Street (where one of the other facilities of applicant is located). However, these signatures of support were countered by letters, emails and phone calls from neighbors of the facilities that reported increasing negative secondary impacts on the neighborhood as more of the applicant's facilities established there in recent years. The impacts reported include:

- Litter in the neighborhood which complainants attribute to the applicant's facilities, including cigarette butts, soda cans, and beer cans and bottles;
- Family and other visitors to the facilities;
- Facility residents traveling in groups between one facility and the others;
- Meetings held regularly at one or more of the applicant's facilities, with outside attendees;
- Excessive use of on-street parking by facility residents and their guests; and
- Decline in property values in the neighborhood.

Due to a number of factors, including general fluctuations in the real estate market, staff is reluctant to speculate that any decline in property values is a direct result of the operation of applicant's facilities. Accordingly, this consideration was not factored into Staff's analysis.

A number of the neighbors' allegations appear credible, and directly contradict applicant's representations to the City. Specifically, the applicant stated in its submittals that:

- There are no outside visitors allowed at the facility;
- Residents are not permitted to have cars while they reside at the facility and rely on public transportation, carpools with the resident managers to get to the full-time jobs which the applicant states all residents have, and facility vans to get to treatment facilities and church (although the May 20, 2008 use permit application stated that this facility then allowed up to four resident vehicles onsite);
- No interaction between the four facilities operated in close proximity by the applicant is permitted.

Based on the misstatements and inconsistencies of the information supplied by the applicant in its use permit and reasonable accommodation applications, Staff views these representations about restrictions on visitors, cars and facility interaction with skepticism.

In particular, staff does not find the applicant's statement about its "no visitors" policy to be credible, because one of the letters of support (Exhibit 6) submitted by a former Yellowstone resident said, "I come to Yellowstone every week and am still a part of this place still to this day . . . 6 years later. I hope it is here for other girls to come back and work with the newcomers the way I have been given the chance too." Another former resident wrote, "Yellowstone is the place that I will continue to come back to and visit the new girls who are struggling the way I did." (Note: applicant's attorney states that these letters refer to meetings at another Yellowstone facility in Costa Mesa.)

The applicant's possible misstatements of easily verifiable facts (such as policies about no meetings, no visitors, and no inter-facility interaction), and early written and oral representations that two of the facilities held ADP licenses (which they never had), causes staff concern about the overall responsibility of the operator, and its ability to successfully manage both its residents and the negative impacts its facilities have on the surrounding neighborhood.

B. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.

Parking - The applicant stated in its original reasonable accommodation application for this property (May 20, 2008) that facility residents were not permitted to have personal vehicles at the property. The use permit application stated that four residents have

personal vehicles they park onsite. Later correspondence and conversations with the applicant's attorneys indicated that no resident vehicles would be permitted onsite, and that only the two resident staff members would be permitted vehicles.

The enclosed garage spaces and driveway parking spaces allow for the staff vehicles to be accommodated without impacting neighborhood parking. However, the weekly meetings and weekend visitors reported by neighbors and former residents of the facilities disproportionately consume available neighborhood parking. Four other facilities are located in the same neighborhood in close proximity to this site. The cumulative impact of having more than one facility operating within a very restricted distance results in increased traffic and parking demands.

Traffic and Generated Trips

The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of a single family dwelling, the standard trip rate is based on 9.57 average daily trips per dwelling. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed. Based on these standards, an 18-bed residential care facility is estimated to generate approximately 49.32 average daily trips. Applying this formula, it appears that the facility will generate average daily trips substantially in excess of surrounding single family dwellings.

If the facility's bed count is reduced to the 13 beds permitted under the use permit operating standards of NBMC Chapter 20.91A.050, the facility could generate approximately 35.62 average daily trips.

5. *Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.*

This finding can be made. A request for reasonable accommodation may be denied if granting it would pose "a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others." See 42 U.S.C. § 3604(f)(9). This is a very limited exception and can only be used when, based on the specific facts of a situation, a requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons.

SUMMARY – REASONABLE ACCOMMODATION REQUEST #1

In summary, with regard to the applicant's request to provide reasonable accommodation that treats the facility as a Single Housekeeping Unit, Findings 2 and 4 cannot be made. In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for Reasonable Accommodation. Therefore, staff recommends that the Hearing Officer

deny the Reasonable Accommodation request for the residents of the subject property to be treated as a Single Housekeeping Unit.

Reasonable Accommodation Analysis No. 2 – Request to be Exempted From Occupancy Standards of NBMC Section 20.91A.050.

In the January 29, 2009 letter from applicant's counsel's clarifying and supplementing applicant's request for reasonable accommodation, the applicant requested that the facility receive an exemption from the occupancy standards of NBMC Section 20.91A.050. NBMC Section 20.91A.050(C)(2) requires that use permits granted to residential care facilities restrict facility occupancy to no more than two residents per bedroom plus one additional resident.

All of applicant's facilities currently have residents in excess of the number that would be permitted under the use permit standards. One facility (1561 Indus) has 12 residents in five bedrooms; the other three (1621 Indus, 20172 Redlands, and 1571 Pegasus) have 18 residents in six bedrooms. Under the operating standards of NBMC Section 20.91A.050(C)(2), a use permit issued to 1571 Pegasus would be limited to no more than 13 residents (six bedrooms x two residents per bedroom plus one = 13). The applicant requests an exemption from this requirement that will allow each facility to continue at its current occupancy level of 18.

The applicant's counsel did not indicate in the January 29, 2009 letter why the accommodation requested is necessary, but clarified the assertion of necessity via telephone and email to staff on February 12, 2009.

Applicant's counsel asserts that, as to current residents of 1571 Pegasus, the accommodation is necessary because if a use permit were granted restricting occupancy to 13, current residents would be displaced. Because of financial constraints on the displaced resident's earning capability that result from the resident's disability, the applicant's counsel states that the displaced resident would have no other place to reside in a sober environment.

As to prospective residents of 1571 Pegasus, the applicant's counsel states that the accommodation is necessary because the prospective residents of 1571 Pegasus also have financial constraints caused by their disability, and would be unable to afford to rent a dwelling if the additional bed(s) at 1571 Pegasus were unavailable to them because of the occupancy restrictions of NBMC Section 20.91A.050(C)(2).

Ordinance No. 2008-05 codified the procedures for requesting, reviewing and granting, conditionally granting, or denying all requests for reasonable accommodation in the City of Newport Beach. The Hearing Officer is designed to approve, conditionally approve, or deny all applications for a reasonable accommodation. The ordinance also established required findings, and factors the Hearing Officer may consider when making those findings.

Pursuant to Section 20.98.025(B) of the NBMC, the written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval.

1. *Finding: That the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.*

This finding can be made. The applicant has submitted a statement signed under penalty of perjury that every resident of the facility is in recovery from alcohol addiction. Federal regulations and case law have defined recovery from alcoholism and drug addiction as a disability, because it is a physical or mental condition that substantially impairs one or more major daily life activities.

2. *Finding: That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.*

As to current residents of 1571 Pegasus: This finding can be made. If a use permit is issued for this facility without the requested accommodation, five current residents of 1571 Pegasus would have to be removed from the facility in order comply with the terms of the use permit. The applicant reported in its application that the average length of stay for residents of this facility is six months; the applicant later verbally informed staff that residents stay six months to one year, sometimes longer. Granting the requested accommodation would allow that individual to remain in the dwelling for the remainder of her temporary stay, providing that individual with the opportunity to continue to live in her current dwelling for the necessary limited period of time.

As to prospective residents of 1571 Pegasus: This finding cannot be made. Applicant states that it charges monthly fees on a sliding scale based on ability to pay, and that the applicant's recovery services are needed services for many persons in recovery from alcoholism. Applicant has submitted an Affidavit of Disability-Related Hardship, signed under penalty of perjury, on behalf of the facility's residents. The affidavit states that before becoming disabled, Yellowstone residents earned an average of \$50,000 per year, and that in recovery the residents are earning an average of \$20,000 per year. It is plausible that persons in early recovery from addiction tend to have lower incomes than they had before addiction temporarily reduced their employment opportunities. This will necessitate shared living arrangements in one form or another. Adding beds, in the case of 1571 Pegasus, could afford an additional disabled individual the opportunity to use and enjoy a dwelling.

The analysis does not stop at the financial needs of the potential residents, however. Were that the case, the City might be obligated to authorize an unlimited number of residents at the applicant's facilities at greatly reduced rents; the population of recovering alcoholics with financial limitations is vast. Even the Ninth Circuit has noted that mandating lower rents for disabled individuals would probably not be considered a

reasonable request. (See *Giebeler v. M&B Associates*, 343 F.3d 1143, 1154 (9th Cir. 2003))

NBMC Section 20.98.025(C) permits the City to consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

Staff does not question the need for sober living homes, nor the fact that persons with a disability must have the opportunity to use and enjoy a dwelling. If the requested accommodation is granted, a slightly higher number of the applicant's current and potential clients will be able to live in a home in a single- family neighborhood with other recovering alcoholics. This is a situation that can affirmatively enhance the quality of life of a person in recovery from addiction, unless overcrowding of the facility or institutionalization of the neighborhood interferes with the residents' re-integration into society. The applicant's sliding scale of rental rates offers a sober living environment to residents who might not otherwise be able to afford to live in a single- family home in this area.

B. *Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

As to current residents of 1571 Pegasus: If the use permit is granted and the accommodation is denied, five residents will be displaced from their temporary home.

As to prospective residents of 1571 Pegasus: The applicant has not submitted information on whether the facility at 1571 Pegasus is currently operating at full census, or whether it has a waiting list of potential residents. However, if all of the applicant's Yellowstone facilities are running at full census with a waiting list of potential residents who cannot afford to reside in a sober environment in any of the vacant beds in other facilities within the city, then denying the accommodation could deny prospective residents the opportunity to live in a sober living environment.

C. *In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

The applicant states that each facility requires 15 residents in order to be financially viable, and provides a general summary of average income and expenses for all four facilities. In some federal cases in which a sober living or other group home made a similar statement in support of its request for an accommodation allowing additional residents, courts found that the accommodation should be granted. However, the courts generally consider more detailed, verified financial information to reach that

conclusion. (See *Oxford House-Evergreen v. City of Plainfield*, 769 F.Supp. 1329 (1991))

The applicant has not submitted financial information specific to each facility, but it has supplied an average cost analysis for its four facilities overall. The analysis was not signed under penalty of perjury, and although staff requested it, the applicant did not submit specific evidence such as mortgage statements or utility bills by the date of this report. If a residential recovery home is adding residents for its own financial advantage rather than to accommodate the financial limitations of the residents, the City is not obligated to grant the requested accommodation.

D. *In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

In 2007, City staff estimated that there were more than 315 sober living beds in the city (these are exclusive of the up to 213 ADP-licensed treatment beds). These numbers were compiled before applicant's facilities, with a total of 58 sober living and eight staff beds, were added to the city's supply. Operators of many sober living facilities within the city have reported decreased census and vacant beds, which could provide potential Yellowstone clients with an equal opportunity to live in a sober living environment without granting the accommodation. Further, a recent agreement with Sober Living by the Sea, Inc., authorized SLBTS to provide up to 204 beds citywide. However, many of these alternate sober living beds are probably not offered on a sliding fee scale based on ability to pay. The evidence does not support the applicant's contention that treating residents of its facility as a Single Housekeeping Unit will change the availability of the existing supply of facilities of a similar nature, or afford them a substantially greater access to an equal opportunity to live in a residential setting.

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the city, or (2) results in a fundamental alteration in the nature of a city program, often described as "undermining the basic purpose which the requirement seeks to achieve."

3. *Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.*

As to current residents of 1571 Pegasus: This finding can be made. Allowing five additional beds on a temporary basis at the facility would not impose an undue financial or administrative burden on the City. Applicant states that the average length of stay for individual residents is 6 months. It creates little burden on the City to allow five of the current residents of 1571 Pegasus to complete their stay at the facility. Upon her departure, the facility's bed count will be within the range contemplated by the operating

standards of the NBMC. The primary administrative burden on the City would be ensuring compliance.

As to prospective residents of 1571 Pegasus: This finding can be made. Allowing five extra beds at this facility would not create a currently identifiable undue financial or administrative burden on the City. However, staff makes this finding with caution, because applicant is requesting similar accommodations at each of its facilities. If all use permits and reasonable accommodation requests are granted, this would create a total of 16 residents in excess of the highest number permitted for the four facilities by the operating standards of the NBMC.

4. *Finding: That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.*

As to current residents: This finding can be made. Allowing five additional beds on a temporary basis at the facility would not result in a fundamental alteration in the nature of the City's zoning program. Applicant states that the average length of stay for individual residents is 6 months to one year. It does not fundamentally undermine the nature of the City's zoning program to allow one of the current residents of 1561 Indus to complete her stay at the facility. Upon her departure, the facility's bed count will be within the range contemplated by the zoning program.

As to prospective residents: This finding cannot be made. Permanently allowing five additional beds in excess of the highest number allowed under the operational standards of the NBMC could undermine the basic purpose which the requirement seeks to achieve. The basic purpose of the bed count limits is to draw a line at a reasonable density for a business providing residential recovery services within a residential neighborhood. Five additional beds can undermine the fundamental purpose of the zoning program, unless Yellowstone's program impacts are eliminated or substantially reduced at other facilities.

Appellant may argue that five extra beds does not undermine the basic purpose the bed count restriction seeks to achieve, but the line must be drawn somewhere. The City Council found that that line was two residents per bedroom plus one additional resident. These regulations are in place to ensure that the fundamental purposes of the Zoning Code can be achieved, and so that secondary impacts of the higher density residential care facilities on the surrounding neighborhood can be mitigated.

Staff is also concerned that if use permits are granted at each facility, and each facility receives the reasonable accommodation requested here, the extra 16 individuals could trigger an overconcentration that contributes even further to the change in the character of the neighborhood. The residents living in five recovery facilities located between 100 and 400 feet from each other are likely to create a quasi-institutional environment within the neighborhood. This will not benefit either the surrounding neighborhood or the

recovering individuals attempting to reintegrate into the lifestyle found in a residential neighborhood.

In a joint statement on the Fair Housing Act, the Department of Justice and the Department of Housing and Urban Development have recognized it would adversely affect persons with disabilities and would be inconsistent with the object of integrating persons with disabilities into the community if a neighborhood came to be composed largely of group homes. They agree that it is appropriate to be concerned about the setting for a residential care facility, and that a consideration of overconcentration may be considered in this context.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

A. Whether the requested accommodation would fundamentally alter the character of the neighborhood.

Staff acknowledges a petition stating "Yellowstone is a good neighbor" was presented to the City, signed by four residents of Pegasus Street (where one of the other facilities of applicant is located). However, the petition was countered by letters, emails and phone calls from the facilities' neighbors reporting increasing negative secondary impacts on the neighborhood as the applicant established more facilities in recent years. The letters of support, the letters of complaint, and the applicant's submissions do not indicate which Yellowstone facility the impacts are reported (or denied) for. Therefore, staff will analyze the reported impacts as if they apply to each facility equally. The impacts reported include:

- Litter in the neighborhood which complainants attribute to the applicant's facilities, including cigarette butts, soda cans, and beer cans and bottles;
- Family and other visitors to the facilities;
- Facility residents traveling in groups between one facility and the others;
- Meetings held regularly at one or more of the applicant's facilities, with outside attendees;
- Excessive use of on-street parking by facility residents and their guests; and
- Decline in property values in the neighborhood.

Due to a number of factors, including general fluctuations in the real estate market, staff is reluctant to speculate whether any decline in property values is a direct result of the operation of applicant's facilities. This consideration was not included in staff's analysis.

However, a number of the neighbors' allegations appear credible, and directly contradict representations made to the City by the applicants. Specifically, the applicant has stated in its reasonable accommodation applications and supplemental communications that:

- There are no outside visitors allowed at the facility;
- Residents are not permitted to have cars while they reside at the facility and rely on public transportation, carpools with the resident managers to get to the full-time jobs which the applicant states all residents have, and facility vans to get to treatment facilities and church (although the May 20, 2008 use permit application stated that this facility then allowed up to four resident vehicles onsite); and
- No interaction between the four facilities operated in close proximity by the applicant is permitted.

Based on the other misstatements and inconsistencies in the information supplied by the applicant in its use permit and reasonable accommodation applications, staff is inclined to view the applicant's representations about restrictions on visitors, cars and facility interaction with skepticism.

In particular, staff is not sure the applicant's statement about its "no visitors" policy is credible, because neighbors report visitors are common, and because one of the letters of support submitted by a former Yellowstone resident said, "I come to Yellowstone every week and am still a part of this place still to this day . . . 6 years later. I hope it is here for other girls to come back and work with the newcomers the way I have been given the chance too." Another former resident wrote, "Yellowstone is the place that I will continue to come back to and visit the new girls who are struggling the way I did." (Exhibit 6) (Note: applicant's attorney states that these letters refer to meetings at another Yellowstone facility in Costa Mesa.)

The applicant's possible misstatements of easily verifiable facts (such as policies about no meetings, no visitors, and no inter-facility interaction), and early written and oral representations that two of the facilities held ADP licenses (which they never had), causes staff concern about the overall responsibility of the operator, and its ability to successfully manage both its residents and the negative impacts its facilities have on the surrounding neighborhood.

Allowing facilities that are not well run to operate with a high concentration of residents can lead to a further alteration in the character of the neighborhood. If a use permit in this location is granted, it may be necessary to scale back rather than expand the population of the facility, and increase supervision and enforcement of existing house rule to mitigate the impact of the facility on the surrounding neighborhood.

Applicant's counsel has been informed of the inconsistencies in the applicant's submitted materials, and will submit additional information addressing the inconsistencies. On February 12, 2009, applicant's counsel informed staff by telephone that:

- Meetings referenced in Yellowstone alumni letters of support occur only at Yellowstone's Costa Mesa facility, and there are no meetings held at the Newport Beach facilities.

- There has been a change in policy since the original application for reasonable accommodation was submitted in May 2008. Personal vehicles are no longer allowed at 1751 Pegasus. Only the two resident managers may have vehicles in the neighborhood, which must be parked onsite.

Letters from facility neighbors indicate this may not be the case. Public testimony at the hearing will allow the hearing officer and staff a clearer picture of the actual situation.

B. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.

Parking - The applicant stated in its original reasonable accommodation application for this property (May 20, 2008) that facility residents were permitted to have four personal vehicles at the property. The use permit application stated that no residents except the two resident managers have personal vehicles which they park onsite. Later correspondence and conversations with the applicant's attorneys indicated that facility policy has changed, and that now no resident vehicles are permitted onsite at any facility, and that only the two resident staff members would be permitted vehicles. If residents are not allowed personal vehicles in the neighborhood, then there should not be a substantial increase in insufficient parking as a result.

However, the weekly meetings and weekend visitors reported by neighbors and former residents of the facilities do appear to impact neighborhood parking to an excessive degree. (Letters from the public say that meetings occur, but do not indicate which of the facilities hold meetings.)

Three other facilities operated by the applicant are located in the same neighborhood at a distance that varies from 100 to 300 feet from each other. If requested reasonable accommodations are granted for all four of applicant's facilities, 16 facility residents in excess of the operating standards would be allowed. The operating standards already limit the overall population at the four facilities to 50. The cumulative impact of having 16 extra residents in more than one facility operating within a very restricted distance could result in increased traffic and parking demands.

Traffic and Generated Trips - The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of a single family dwelling, the standard trip rate is based on 9.57 average daily trips per dwelling. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed. Based on these standards, an 18-bed residential care facility would generate approximately 49.32 average daily trips. A 13-bed facility would generate 35.62 average daily trips, arguably an appreciable difference in traffic generation.

5. *Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.*

This finding can be made. A request for reasonable accommodation may be denied if granting it would pose "a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others." See 42 U.S.C. § 3604(f)(9). This is a very limited exception and can only be used when, based on the specific facts of a situation, a requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons.

SUMMARY – REASONABLE ACCOMMODATION REQUEST #2

The applicant has requested that the facility at 1571 Pegasus continue to have five beds in excess of that allowed by the operating standards specified in the NBMC operating standards for the duration of the stay of the five extra residents. In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for Reasonable Accommodation.

Current Residents: All five findings were made as to the current residents of 1571 Pegasus. Staff recommends that if a use permit is granted for this facility, the Hearing Officer also grant the requested accommodation as to the current residents only.

Prospective Residents: Findings 1, 3 and 5 can be made with respect to the additional prospective residents at this facility. However, Findings 2 and 4 cannot be made. All five findings must be made in order for the Hearing Officer to grant the use permit. If a use permit is granted for this facility, staff recommends that the Hearing Officer deny this accommodation request.

Reasonable Accommodation Analysis #3 – Request to be Exempted From the City's Use Permit Application Fee Requirement.

The applicant has stated that, as a non-profit organization that relies on contributions from the community to keep it from operating at a loss, paying the use permit application fee deposit presents a financial hardship. Staff offered a payment plan to enable the applicant to pay the application fee within a reasonable period of time. In lieu of the payment plan, the applicant has requested an exemption from the \$2,200 use permit application deposit required to process the use permit application submitted for this facility.

NBMC Chapter 3.36 sets forth the fee schedule for municipal services, and mandates 100% cost recovery for services when the fee schedule does not set forth a lower rate of recovery. Use permits processing is not one of the services that are generally provided at a rate below 100% cost recovery NBMC Section 20.90.030 states that applications for discretionary approvals, including use permits, shall be accompanied by a fee as established by resolution of the City Council.

Federal courts have periodically reviewed whether the financial limitations of disabled individuals must be considered when analyzing reasonable accommodation requests, with inconsistent results. The Ninth Circuit has indicated that some disability-related financial constraints must be considered when the request is reasonable. As with all reasonable accommodations, the analysis of whether a requested accommodation from financial policies is reasonable must be determined on a case-by-case basis.

The applicant has submitted a signed Affidavit of Disability-Related Financial Hardship that gives general information on the pre- and post-disability average income range of typical facility residents. The applicant has also submitted an unverified statement of the average income and expenses related to the four facility properties, discussed above in Reasonable Accommodation Request #2, Finding Two (C).

SUMMARY – REASONABLE ACCOMMODATION REQUEST #3

Although staff requested further verifiable financial information from the applicant, this information had not been received at the time this report was prepared. Therefore, staff is unable to perform an accurate analysis of the actual financial needs of the applicant at this time. Staff recommends that the Hearing Officer continue this portion of the applicant's reasonable accommodation requests to a date certain, to allow the applicant time to submit and staff to analyze verifiable financial information.

RECOMMENDATION

Staff recommends that the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

1. Deny the use permit application based on the findings discussed in this report, and provide direction to staff to prepare a resolution of denial with prejudice of Use Permit No. 2008-034.
2. Deny the request for reasonable accommodation for the residents of the facility to be treated as a single housekeeping unit subject to the findings discussed in this staff report.
3. If a use permit is granted for this facility, staff recommends that the requested accommodation for an exemption from the occupancy restrictions of NBMC Section 20.91A.050 be granted as to the current residents. As to future residents of this facility, staff recommends continuance to a date certain pending receipt of additional financial information.
4. Staff recommends a continuance to a date certain for the request for reasonable accommodation for an exemption of the application filing fee requirement pending receipt of additional financial information.

Environmental Review

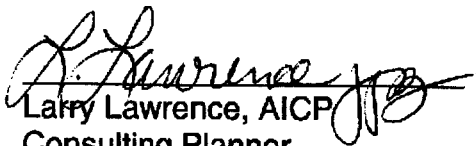
This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

Prepared by:

Submitted by:


Larry Lawrence, AICP
Consulting Planner


Dave Kiff
Assistant City Manager

EXHIBITS

1. Findings Chart
2. Initial Application Submittal dated May 20, 2008
3. Notices of Incomplete Application dated June 19, 2008, November 7, 2008, and January 14, 2009, including subsequent submittals
4. Site Plan/Floor Plans
5. Fire Marshal Correspondence and Code Analysis Submittal
6. Letters in Support (submitted by Applicant) and Letters in Opposition
7. Application for Reasonable Accommodation dated August 22, 2008
8. Applicant's Supportive Documentation submitted for Reasonable Accommodation
9. Applicant's E-mail dated January 28, 2009
10. Applicant's Additional Correspondence dated February 13, 2009
11. Additional Letters of Opposition Received After February 13, 2009

SUBJECT PROPERTY: 1571 PEGASUS STREET (YELLOWSTONE FIRST STEP HOUSE)
PART 1 – FINDINGS REQUIRED TO APPROVE THIS GROUP RESIDENTIAL USE PERMIT

NBMC Code Section	What the Finding Says, Generally	Is this Finding met without Conditions?	Do Conditions Allow this Finding?
§20.91A.035 – A.1.	The use's location is in accord with the objectives of the code and the purposes of the district. Finding encompasses (1) whether the application is appropriate in this District, and (2) whether or not it will result in overconcentration.	1 – Yes, as an existing facility, this facility operator is entitled to apply for and receive a Use Permit. 2 – No. Approving this facility will result in neighborhood overconcentration.	No – overconcentration would be approved.
§20.91.035 – A.2.	That the use and proposed conditions will allow the use to be consistent with the General Plan and not be detrimental to public health, safety, peace, morals, comfort, or welfare of persons residing in or adjacent to the neighborhood of the use, and won't be detrimental to the properties or improvements in the vicinity or to the general welfare of the City.	No.	No – overconcentration would be approved.
§20.91.035 – A.3.	That the proposed use complies with the provisions of the code.	No.	No – overconcentration would be approved.
§20.91.035 – A.4.	That the proposed use complies with Chapter 20.91A	No.	No – overconcentration would be approved.
§20.91A.060 – A	That the use conforms to Section 20.91A.050 relating to operations and management standards (smoking, licensure, residents per bedroom, etc.)	No.	Yes – conditions include standards (smoke control, management of medical waste, etc. more).
§20.91A.060 – B	Project includes sufficient on-site parking, traffic mitigated to a level of insignificance.	No.	No – location/proximity of other limited parking in cut-de-sac do make.
§20.91A.060 – C	Property and structures physically suited to accommodate the use.	No.	Yes, with a reduction in beds to a 1 space to 2 bed ratio. 2 – 1.
§20.91A.060 – D	Use will be compatible with the character of the neighborhood and won't create an overconcentration of residential care uses.	No.	No – overconcentration would be approved.
§20.91A.060 – E	Buses and vans won't generate traffic substantially greater than that normally generated by residential activities in the surrounding area.	Yes, provided that residents are not allowed vehicles.	Condition to be added limiting having personal vehicles, more.
§20.91A.060 – F	Delivery of goods is made within compatible hours and won't	Yes, provided that delivery hours are	Condition to be added requiring

520.91A.060 - G	adversely impact the neighborhood.	adhered to	limitations.
	Trash collection - commercial if necessary and done within hours that do not adversely impact the neighborhood.	No.	Yes - Condition • Require use of a commercial directed at a later date by

PART 2 – FINDINGS REQUIRED TO APPROVE REASONABLE ACCOMMODATION REQUESTS

Request Information & NBMC Code Sections	General Explanation of Required Finding	Can the finding be made?	Staff recommendation
Request #1 – Residents treated as a Single Housekeeping Unit (NBMC 520.03.030)	Is the accommodation requested by or on behalf of disabled individuals?	Yes	
Section 20.98.025(B) – Finding #2	Is the accommodation requested necessary to provide one or more disabled individuals with an opportunity for housing?	No	
	Will the accommodation enhance the quality of life of one or more disabled persons?	Generally, yes.	
	If the accommodation is not granted, will persons with disabilities be denied a housing opportunity?	Not supported by evidence provided.	
	Is the accommodation necessary in light of economic conditions?	Not supported by evidence provided.	
Section 20.98.025(B) – Finding #3	Without this accommodation, is the existing supply of residential care facilities sufficient to provide housing?	Not supported by evidence provided.	
	That the accommodation will not impose an undue financial or administrative burden on the City.	Yes.	
Section 20.98.025(B) – Finding #4	That the accommodation will not result in a fundamental alteration in the nature of the City's zoning Program.	No.	
	Will the accommodation fundamentally	Yes, possibly.	Inconsistence

	alter the character of the neighborhood?		not allow us to alter.
Section 20.98.025(B) – Finding #5	Will the accommodation cause an increase in traffic or result in incident parking? That the requested accommodation will not result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.	Yes.	
Request #2 – Exemption from requirement of 2 persons/bedroom + 1 (NBM 6-S20.91A.05-0)			If the hearing for this proper the RA request continuing a d applies to pro
Section 20.98.025(B) – Finding #1	Is the accommodation requested by or on behalf of disabled individuals?	Yes	
Section 20.98.025(B) – Finding #2	Is the accommodation requested necessary to provide one or more disabled individuals with an opportunity for housing? Will the accommodation enhance the quality of life of one or more disabled persons? If the accommodation is not granted, will persons with disabilities be denied a housing opportunity? Is the accommodation necessary in light of economic conditions? Without this accommodation, is the existing supply of residential care facilities sufficient to provide housing?	Yes, as to current residents of 1571 Pegasus. No as to prospective residents of 1571 Pegasus. Yes Yes, for current residents. Staff does not have enough information to make a conclusion on prospective residents. Not supported by evidence provided. Not supported by evidence provided.	Staff seeks info in regards to prospective re
Section 20.98.025(B) – Finding #3	That the accommodation will not impose an undue financial or administrative burden on the City.	Yes, for both current and prospective residents.	
Section 20.98.025(B) – Finding #4	That the accommodation will not result in a fundamental alteration in the nature of the	Yes, for current residents. No for prospective residents.	

City's zoning program			
Will the accommodation fundamentally alter the character of the neighborhood?	Yes, possibly.	Inconsistency not allow us to alter.	
Will the accommodation cause an increase in traffic or result in insufficient parking?	This depends on the outcome of other accommodation requests.	A cumulative increase in homes could result in insufficient parking.	
Section 20.98.025(B) - Finding #5		Yes.	
Request #3 - Exemption from Use Permit application fee to cover cost of reviewing application (ABMC \$20,500,000 and Chapter 3.35)		Not enough data	Staff record enable

#

EXHIBIT 2

INITIAL APPLICATION SUBMITTAL