

of the County of Orange. The subject property was located in the Santa Ana Heights Specific Plan area and zoned Residential-Single Family (RSF).

According to information submitted to the City by the applicant, the use of the single family dwelling located at 1621 Indus Street as a sober living facility use was established in 2003. When the use changed from that of a single family dwelling to a sober living facility, it was subject to any land use regulations the County of Orange placed on such uses at that time.<sup>1</sup> County of Orange Planning Department and Code Enforcement staff informed the City that a sober living use would have been classified as either a community care facility or a congregate care facility.

Applicable Land Use Regulations:

The Santa Ana Heights Specific Plan was adopted by the County in October 1986 and was last revised by the County in 2001. Portions of the Specific Plan are attached as Attachment 1. The property located at 1621 Indus Street was zoned RSF. Principal uses permitted in the RSF district under the Specific Plan are as follows:

1. Single family detached dwellings or single family mobile homes
2. **Community care facilities serving six (6) or fewer persons and large family day care homes.**
3. Parks, playgrounds, and athletic fields.
4. Riding and hiking trails.

A number of additional principal uses not relevant to this analysis, such as communication transmitting facilities, fire and police stations, and churches, were permitted with a use permit or site development permit. Temporary uses and accessory uses were also allowed, some of which required a use permit. All other uses were prohibited.

In addition, the Specific Plan provided, "The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150: Any other use which the Planning Commission finds consistent with the purpose and intent of this district."

At the time property located 1621 Indus Street was established as a sober living facility, the County of Orange's Zoning Code definition of community care facility was *"Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes."*

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<sup>1</sup> A change of occupancy for purposes of the California Building Code (CBC) also occurred when the use changed, and to operate legally the structure was required to conform with any CBC requirements for the occupancy type created.

A congregate care facility was defined as: *"A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility. Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above."*

Definitions from the May 2002 version of the County of Orange Zoning Code (in effect in 2003) are attached as Attachment 2.

Section 7-9-141 of the County's 2002 comprehensive Zoning Code further discussed requirements for community care facilities. That section provided:

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling or purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

The closest classification provided in County regulations for the unlicensed facility located at 1621 Indus Street appears to be a community care facility. Therefore, if the operators established and maintained the facility with a bed count of six or fewer, it was a permitted use and thus legally established at that occupancy level at that location. If the operator obtained a use permit from the County Planning Commission for seven to 12 residents under the provision of the Specific Plan "other uses which the Planning Commission finds consistent with the purpose and intent of this district," it would also have been a lawfully established use.

The applicant has never indicated to the City that the facility was a community care facility housing six or fewer clients at any time. There is no evidence in records provided by the County on the number of people residing at the facility. There are also no County records of a use permit being issued for this address, although County Planning employees conducted a thorough search of their records at the request of City staff. Even if a use permit had been applied for, it is unlikely the County would have granted a use permit for the 18 beds as currently requested by the applicant because the County Zoning Code granted the Planning Commission the authority to approve use permits for up to 12 beds for community care facilities. The County of Orange Planning

Commission did not have the authority to a grant use permits for a community care facility housing more than 12 beds.

County records do show that on March 29, 2005, a temporary use permit was issued to 1621 Indus Street for Yellowstone Women's Recovery of California to hold meetings at the site. The temporary use permit was "issued for a period of time not to exceed 10 consecutive days and not to happen more that 4 times within the calendar year. This will allow for a total of 40 meetings." [sic] The "present use" on the permit was classified as a single family dwelling with garage.

There is, however, documentation from the County (Attachments 3 and 4) that indicates that two other Yellowstone facilities located 20172 Redlands Drive and 1571 Pegasus Street were likely operating as community care facilities for more than 12 residents (see separate staff reports) without the approval of a use permit granted by the County of Orange Planning Commission. Therefore, Finding A of NBMC Section 20.91A.060 cannot be made with regard to the development and operational standard that "no owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law," based on the following finding:

All four Yellowstone facilities located in Newport Beach were established when the properties were within the jurisdiction of the County of Orange. County zoning regulations provided that community care facilities housing more than six residents and less than 12 residents were permitted subject to the approval of a use permit granted by the Planning Commission. Per documentation provided by the applicant, the Yellowstone facilities located at 20172 Redlands Drive and 1571 Pegasus Street were established in 2005 (although County records indicate that the Pegasus facility may have been established in 2003), and appeared to be operating as community care facilities for more than 12 residents. There is no record of any use permit issued by the County for a community care facility operated by the applicant at any of the four facility locations. This demonstrates a pattern and practice by the applicant of operating community care facilities in violation of local laws in effect at the time the Yellowstone facilities were established. Therefore, this development and operational standard cannot be met and NBMC Section 20.91A.060 Finding A cannot be made.

In addition, staff believes there is some doubt whether the Yellowstone facilities are even qualified to apply for and receive a use permit under NBMC Section 20.62.030 (Determination of Nonconformity). Subsection B of NBMC Section 20.62.030 provides that a use that was lawfully established under the laws in place at the time, but that no longer conforms to the use regulations or required conditions for the district in which is was located because of annexation to the City, shall be deemed to be a nonconforming use. However, *"a use shall not be considered to have been lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including to not limited to permits and licenses required by any federal, state, or local government agency*" (italics added). Pursuant to NBMC Section 20.91A.020, persons whose use of their property in a residential district was rendered

nonconforming by the adoption of Ordinance No. 2008-05 are qualified to seek a use permit to continue the use in its current location. There is no similar provision for illegal uses. Staff believes the facility located at 1621 Indus Street could be more accurately characterized as an illegal use than a nonconforming use as described by NBMC Section 20.62.030 (B).

### **Use Permit No. 2008-035 Analysis Summary**

In conclusion, staff recommends denial of Use Permit No. 2008-035 for the following reasons:

1. The inability to make all of the findings required by the NBMC Section 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, applicant testimony, apparent documentation contradictions and/or misrepresentations, new information regarding the establishment of two of the Yellowstone facilities, and staff's conclusion that not all of the required findings from NBMC Section 20.91.035 (A) and NBMC Section 20.91A.060 can be made.

If, after reviewing this report, and hearing any further testimony from the applicant, the Hearing Officer agrees with staff's recommendation for denial, staff requests the Hearing Officer's direction to prepare resolution for denial with prejudice of Use Permit No. 2008-035.

### **APPLICATIONS FOR REASONABLE ACCOMMODATION**

#### **BACKGROUND**

The background of the applicant's requests for reasonable accommodation is summarized in the February 20, 2009 staff report, attached to this report for reference (Attachment 5). The specific accommodations requested by the applicant are:

1. That the residents of the Yellowstone facility at 1621 Indus 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; and
3. An exemption from the City's requirement that all use permit applicants pay a use permit application deposit fee to permit cost recovery by the City. (NBMC Chapter 3.36 and NBMC Section 20.90.030)

## **DISCUSSION**

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits 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 provided a separate analysis of each specific accommodation request in the February 20 staff report, and will continue to follow that format.*

### **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 that its facility be treated as a Single Housekeeping Unit, as that term is defined in NBMC Section 20.03.030. Staff fully analyzed this request in the February 20 staff report and recommended denial of the request. The denial recommendation was based on the grounds that the accommodation requested was broader than necessary to afford disabled individuals an opportunity to reside in the housing of their choice, and that the request was not reasonable because it would

fundamentally alter the nature of this portion of the zoning program, and undermine its basic purpose. For a more in-depth analysis and findings, please see the February 20, 2009, staff report.

### **SUMMARY**

With regard to the applicant's request to provide reasonable accommodation that treats the facility as a Single Housekeeping Unit, two of the five required findings 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.

At the February 20 hearing, staff had recommended that a use permit be granted for this facility. Because of new information gathered as a result of testimony by the applicant at the February 20 hearing, staff now recommends that the use permit for this facility be denied. If there is no use permit granted for this facility, an exemption from the occupancy restrictions the use permit would have imposed does not need to be analyzed.

In the event the Hearing Officer decides to grant a use permit to this facility, however, staff makes the following analysis and findings.

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 Street) has 12 residents in five bedrooms; another facility has 17 beds in six bedrooms (20172 Redlands Drive), and the other two (1621 Indus Street, and 1571 Pegasus Street) have 18 residents in six bedrooms. Under the operating standards of NBMC Section 20.91A.050(C)(2), a use permit issued for this facility would be limited to no more than 13 residents. The applicant requests an exemption from this requirement that will allow the facility to continue at its current occupancy level.

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

As to prospective residents of the facility, the applicant's counsel states that the accommodation is necessary because the prospective residents of this facility also have financial constraints caused by their disability, and would be unable to afford to rent a dwelling if the additional beds at this facility 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 designated 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:*

This finding can be made. If a use permit is issued for this facility without the requested accommodation, five current residents of this facility 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 those individuals to remain in the dwelling for the remainder of their temporary stay, providing them with the opportunity to continue to live in their current dwelling for the necessary limited period of time.

*As to prospective residents:*

This finding cannot be made. Applicant states that it charges monthly fees on a sliding scale based on ability to pay, and that this is a needed service 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 five beds to this facility could afford five additional disabled individuals 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 *Giebel 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 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:* If the use permit is granted and the accommodation is denied, five residents will be displaced from their temporary home.

*As to prospective residents:* The applicant has not submitted information on whether this facility is currently occupied at full capacity, or whether there is a waiting list of potential residents.

- 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 repeatedly, the applicant did not submit specific evidence such as mortgage statements or utility bill by the date this report was prepared. Therefore, staff has performed a financial needs analysis based on the information supplied by the applicant, and other information publicly available on the applicant's website.

The applicant states that in general, its weekly fees are based on a sliding scale from \$50 to \$160 per week, with an average rent of \$100 per resident per week. With 16 residents (the number of resident clients; facility managers do not appear to pay rent) the applicant reports the average monthly income from each house is \$6,400.

The average monthly expense for each house is reported by the applicant to be around \$6,200, with an average mortgage of \$4,500/month, \$800/month for utilities (electricity, gas, trash service, water and phone) and \$900/month for food (the May 20, 2008 reasonable accommodation application states that residents are responsible for their own meals; the \$900 may represent basic supplies.) Applicant reports an average monthly expense of \$6,200, leaving only a \$200

monthly profit. Applicant has stated that it relies on contributions from the community to keep it from operating at a loss.

The applicant's statement was not supported by requested documentation (bills, etc. requested by staff), and was not signed under penalty of perjury. Yellowstone's own website indicates that income and expense calculations may be inaccurate. The website's "Our Fees" page (dated 2008) states that fees for sober living are \$160 - \$180 per week. Using the applicant's own reporting formula, this represents an average of \$170 per resident per week. With 16 paying residents (resident staff may not be paying rent), this would result in an average monthly income per house of \$10,880. If the reported average expense of \$6,200 is accurate, each facility housing 16 residents generates a monthly profit of \$4,680. (\$56,160 per year for each house of the three with 16 residents; or an estimated \$168,480 total for the three facilities located at 1621 Indus Street, 1571 Pegasus Street, and 20172 Redlands Drive.)

For the facilities currently housing 16 paying residents, if the resident count were reduced to 11 paying residents (of the maximum 13 occupants permitted under the operating standards, two are Yellowstone staff), the monthly income would be \$7,480. Without knowledge of the actual mortgage and utility costs, staff cannot say whether this facility would actually operate at a monthly profit of approximately \$1,280, or approximately \$15,360 per year (\$46,080 total for three facilities currently housing 16 residents each), but this profit range seems sufficient for a non-profit that raises funds from the community to keep from operating at a loss. Therefore, staff does not agree with the applicant's contention that it needs 15 residents at each facility to be financially viable. The facilities do not appear to need residents in excess of the number allowed under the operational standards to be financially viable under the business model the applicant has described.

Several of the homes are owned by the applicant's CEO and/or her husband and leased to the applicant. The average monthly mortgage for each house that the CEO has reported appears to be more than covered by the fees which residents pay to the applicant. Additionally, extended operation of the homes with 15 or 16 residents at the rental rate reported on Yellowstone's website appears to result in the CEO's eventual full ownership of several homes and a significant annual profit for the applicant.

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 approximately 315 sober living beds in the city. (This estimate does not include the up to 213 ADP-licensed residential beds in the City.) 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 by annexation. 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. However, many of these alternate sober living beds are probably not offered on a sliding fee scale based on ability to pay.

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:*

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 this facility to complete their stay at the facility. Upon their 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:*

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 the applicant is requesting similar accommodations at additional facilities.

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 six months to one year. It does not fundamentally undermine the nature of the City's zoning program to allow five of the current residents of this facility to complete their stay. Upon their departure, the facility's bed count would 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. The City Council adopted these regulations 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 for which staff recommended approval at the February 20 hearing, and each facility receives the reasonable accommodation requested here, the extra 10 individuals could trigger an overconcentration that contributes even further to the change in the character of the neighborhood. This could create a quasi-institutional environment within the neighborhood that 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 that it would adversely affect persons with disabilities and 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 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 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 the applicant is located) However, the petition was countered by letters, emails and phone calls from neighbors that reported increasing negative secondary impacts on the neighborhood as the applicant established more facilities there 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
- 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 a 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 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 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." (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 their impact 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 negative impacts its facilities have 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 alumnae 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 1561 Indus Street. Only the two resident managers may have vehicles in the neighborhood, which must be parked on-site.

Letters and public testimony from facility neighbors indicate this may not be the case.

*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 non-staff facility residents were not permitted to have personal vehicles at the property. The use permit application also stated that no residents except the two resident managers have personal vehicles which they park onsite. 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 and testimony from the public say that meetings occur and that parking is impacted, but do not indicate which of the facilities hold meetings.

**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.

## **RECOMMENDATION**

The applicant has requested that this facility 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 can be made as to the current residents of this facility. 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 as to prospective residents.

If the Hearing Officer denies the use permit at this facility, staff recommends that this reasonable accommodation request be denied as unnecessary; the occupancy restrictions are tied to the use permit operating conditions.

If the Hearing Officer decides to grant the use permit which staff recommended at the February 20 hearing, staff recommends that the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach, and members of the public. At the conclusion of the hearing, if the Hearing Officer plans to approve a use permit with conditions of approval, staff recommends that the Hearing Officer grant the reasonable accommodation request as to current residents only, and deny the reasonable accommodation request as to prospective residents.

### **Reasonable Accommodation Analysis No. 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 permit 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 No. 2, Finding 2 (C).

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.

However, based on the general summary of average expenses for each facility submitted by the applicant for the February 20 hearing, and the weekly client fee range which the applicant posts on its website, staff's analysis indicates that the applicant should have been able to meet the use permit fee obligation.

The average monthly expense for each house is reported by the applicant to be around \$6,200, with an average mortgage of \$4,500/month, \$800/month for utilities (electricity, gas, trash service, water and phone) and \$900/month for food (the May 20, 2008 reasonable accommodation application states that residents are responsible for their own meals; the \$900 may represent basic supplies.) Applicant reports an average monthly expense of \$6,200, leaving only a \$200 monthly profit. Applicant has stated that it relies on contributions from the community to keep it from operating at a loss.

The applicant states that in general, its weekly fees are based on a sliding scale from \$50 to \$160 per week, with an average rent of \$100 per resident per week. With 16 residents (the number of resident clients; facility managers do not appear to pay rent) the applicant reports the average monthly income from each house is \$6,400.

The applicant's statement was not supported by requested documentation (bills, etc. requested by staff), and was not signed under penalty of perjury. Yellowstone's own website indicates that income and expense calculations may be inaccurate. The website's "Our Fees" page (dated 2008) states that fees for sober living are \$160 - \$180 per week. Using the applicant's own reporting formula, this represents an average of \$170 per resident per week. With 16 paying residents (resident staff may not be paying

rent), this would result in an average monthly income per house of \$10,880. If the reported average expense of \$6,200 is accurate, each facility housing 16 residents generates a monthly profit of \$4,680. (\$56,160 per year for each house of the three with 16 residents; or an estimated \$168,480 total for the three facilities at 1621 Indus Street, 1571 Pegasus Street and 20172 Redlands Drive.)

### **RECOMMENDATION:**

For the foregoing reasons, staff recommends that Reasonable Accommodation Request No. 3 be denied.

### **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 Public Hearing was published in the *Daily Pilot*, mailed to property owners and occupants within 300 feet of the project site and posted at the project site a minimum ten (10) days in advance of this Public Hearing consistent with the Newport Beach Municipal Code. In addition, the item appeared on the agenda for this Public Hearing, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

  
Janet Johnson Brown  
Associate Planner

  
Dave Kiff  
Assistant City Manager

### **Attachments:**

1. County of Orange Santa Ana Heights Specific Plan
2. County of Orange Zoning Code Definitions
3. County of Orange Records regarding 20172 Redlands Drive
4. County of Orange Records regarding 1571 Pegasus Street
5. February 20, 2009 Staff Report
6. Correspondence Received After February 20, 2009

***Attachment No. 1***  
*County of Orange*  
*Santa Ana Heights Specific Plan*

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**  
*Seventh Amendment*

**PREPARED BY:**

**Environmental & Project Planning Services Division**

**County of Orange**

**Planning & Development Services Department**  
**Tom Mathews, Director**

Adopted October 1986  
1<sup>st</sup> Revised March 1988  
2<sup>nd</sup> Revised December 1989  
3<sup>rd</sup> Revised May 1991  
4<sup>th</sup> Revised August 1996  
5<sup>th</sup> Revised November 1999  
6<sup>th</sup> Revised September 2000  
7<sup>th</sup> Revised January 2001

# SANTA ANA HEIGHTS SPECIFIC PLAN

## 4. RSF "Residential Single Family" District

### a. Purpose and Intent

The RSF District is established to provide for the development and maintenance of medium density single family detached residential neighborhoods. Only those uses are permitted that are complementary to and can exist in harmony with such a residential neighborhood.

### b. Principal Uses Permitted

(1) The following principal uses are permitted:

- (a) Single family detached dwellings or single family mobile homes per Zoning Code section 7-9-149.5 (one per building site).
- (b) Community care facilities serving six (6) or fewer persons and large family day care homes.
- (c) Parks, playgrounds, and athletic fields (noncommercial).
- (d) Riding and hiking trails.

(2) The following principal uses are permitted subject to the approval of a site development permit per Zoning Code section 7-9-150:

- (a) Communication transmitting, reception, or relay facilities.
- (b) Public/private utility buildings and structures.

(3) The following principal uses are permitted subject to the approval of a use permit by the Zoning Administrator per Zoning Code Section 7-9-150:

- (a) Fire and police stations.
- (b) Churches, temples and other places of worship.

(4) The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150:

- (a) Any other use which the Planning Commission finds consistent with the purpose and intent of this district.

### c. Temporary Uses Permitted

The following temporary uses only, per Zoning Code section 7-9-136:

- (1) Continued use of an existing building during construction of a new building.
- (2) Mobile home residence during construction.

### d. Accessory Uses Permitted

Accessory uses and structures are permitted when customarily associated with and subordinate to a principal permitted use on the same building site per Zoning Code section 7-9-137, to include:

- (1) Garages and carports.
- (2) Swimming pools.
- (3) Fences and walls.

# SANTA ANA HEIGHTS SPECIFIC PLAN

- (4) Patio covers.
- (5) Signs per Zoning Code section 7-9-111.  
  
Six (6) square feet of sign area maximum unless otherwise provided for by an approved site development permit or use permit.
- (6) Home occupations per Zoning Code section 7-9-146.6.  
  
Noncommercial keeping of pets and animals weighing less than three hundred (300) pounds and not prohibited in section (e), subject to the following standard. Pens, cages, and other structures specifically for the keeping of animals other than in the residence, shall be located at least twenty-five (25) feet from any residential window located on an adjoining building site. Exceptions to the above may be provided for by a use permit approved by the County Zoning Administrator.
- (8) Second living unit, attached or detached, in conformance with Zoning Code Section 7-9-146.5, subject to approval of a use permit.
- (9) Any other accessory use or structure which the Director, PDSID finds consistent with the purpose and intent of this district.

use permit approved by the County Zoning Administrator.

Any nonconforming use of any property within this zone for the maintenance of pets and animals other than those enumerated in this section shall be terminated within one year of the enactment of this section. In any case in which a building in excess of 600 square feet has been erected pursuant to a validly issued permit for maintenance of pets and animals the amortization period of continuation of such use shall be extended for four additional years.

## e. Prohibited Uses

The following uses are specifically prohibited:

- (1) All uses not permitted by section b through d above.
- (2) The storage of vehicles, equipment, or products related to a commercial activity not permitted in this district.
- (3) The keeping of animals for any commercial purpose unless provided for by an approved use permit.
- (4) Apiaries.

- (7) Non commercial keeping of horses on land immediately adjacent to the Recreation Equestrian District (REQ) provided that no horse shall be permitted on a building site containing less than ten thousand (10,000) square feet of land area and pens, cages, and other structures specifically for the keeping of horse shall be located at least fifty (50) feet from and residential window located on an adjoining building site. One (1) or two (2) adult horses are permitted on a building site containing between ten thousand (10,000) and fifteen thousand (15,000) square feet of land area. One (1) additional adult horse may be kept for each additional ten thousand (10,000) square feet, with a maximum of six (6) horses on any one building site. The offspring of such animals shall be considered adults when eight (8) months old. Exceptions to the above may be provided for by a

## Land Use District Regulations

IV-14

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**

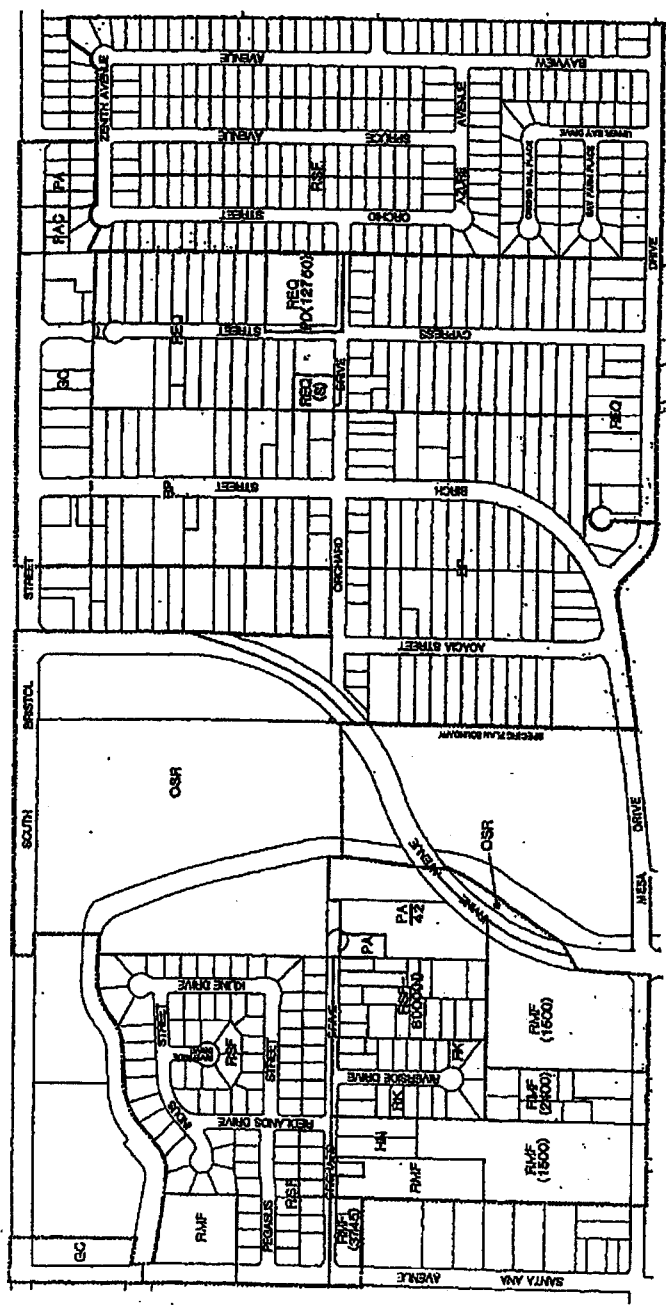
**f. Site Development Standards**

- (1) Building site area. Seven thousand and two hundred (7,200) square feet minimum except as otherwise identified on the Land Use District map.
- (2) Building height. Thirty-five (35) feet maximum. Roof-mounted mechanical equipment shall not be visible from any existing dwelling unit located three hundred (300) feet or less from the subject building site.
- (3) Building setbacks.
  - (a) Front setback. Twenty (20) feet minimum.
  - (b) Side setback. Five (5) feet minimum.
  - (c) Rear setback. Twenty-five (25) feet minimum.
- (4) Off-street parking. Per Zoning Code section 7-9-145.
- (5) Lighting. All lighting shall be designed and located so that direct light rays are confined to the premises.

**IV-15**

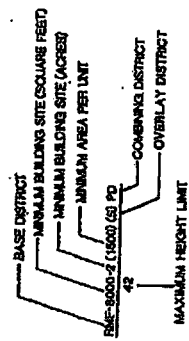
**Land Use District Regulations**

BK 2 PAGE 30



- Seventh Amendment**
- OSR
  - REG
  - RK
  - RSE
  - RMF
  - RNF
- Zone Change ZC 00-05**
- GC
  - BP
  - PA
  - PAS
  - PD
  - CB
  - CU
- General Commercial**
- BP
  - PA
  - PAS
  - PD
  - CB
  - CU
- Professional and Administrative Office**
- BP
  - PA
  - PAS
  - PD
  - CB
  - CU
- Planned Development**
- BP
  - PA
  - PAS
  - PD
  - CB
  - CU
- Commercial Stable**
- BP
  - PA
  - PAS
  - PD
  - CB
  - CU
- Commercial Nursery**
- BP
  - PA
  - PAS
  - PD
  - CB
  - CU

# **LAND USE DISTRICT MAP** **SANTA ANA HEIGHTS SPECIFIC PLAN**



ACCEPTED AND RECORDED IN THE  
 PLANNING AND DEVELOPMENT SERVICES  
 DEPARTMENT  
 DATE: April 20, 2001  
 THE J. W. L. REE EXHIBIT  
 NUMBER: 2001-04-20-01  
 BOOK: 2 PAGE: 31  
 DIST. CLARKVILLE  
 COUNTY CLERK - RECORDER  
 [Signature]

WE HEREBY CERTIFY THAT THIS  
 LAND USE DISTRICT MAP  
 WAS APPROVED BY THE ORANGE  
 COUNTY PLANNING COMMISSION IN December, 2000  
 AND ADOPTED BY ORDINANCE NO. 02-01  
 BY THE ORANGE COUNTY BOARD OF SUPERVISORS  
 ON January 23, 2001

[Signature]  
 BY THOMAS E. MATTHEWS  
 DIRECTOR OF PLANNING  
 AND DEVELOPMENT SERVICES  
 DEPARTMENT

***Attachment No. 2***  
***County of Orange***  
***Zoning Code Definitions***

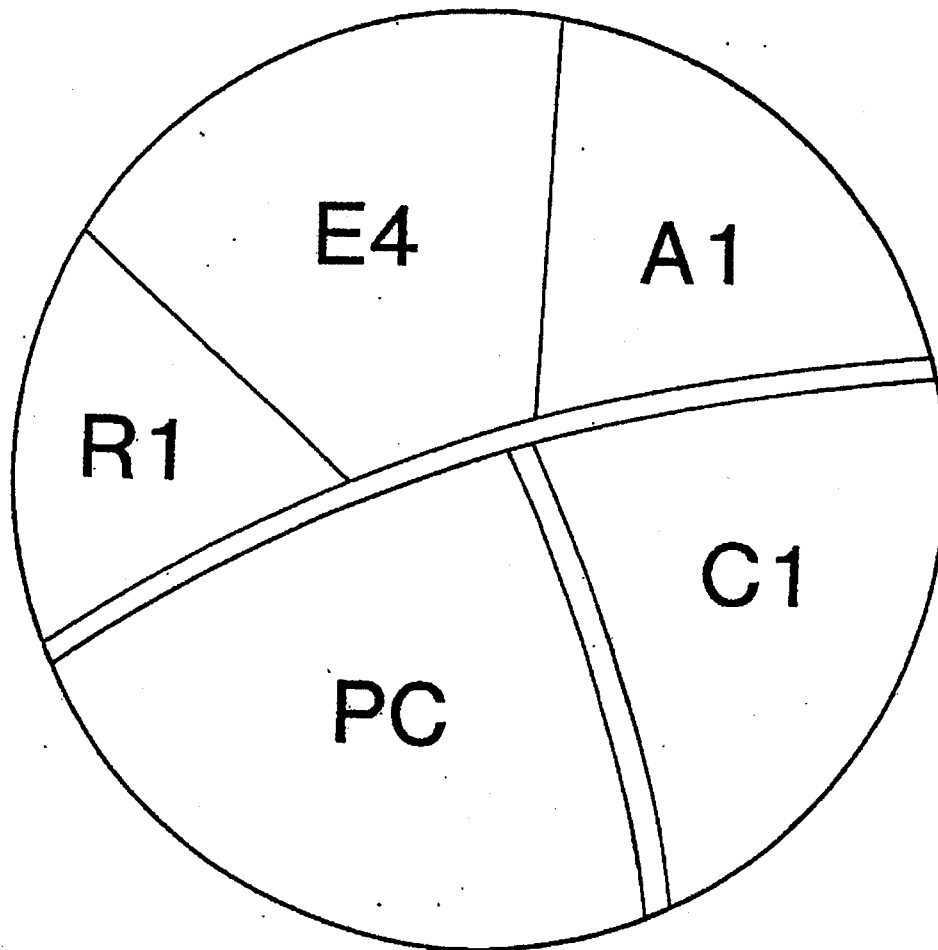


RECEIVED BY  
PLANNING DEPARTMENT  
CITY OF NEWPORT BEACH

MAR 11 2003

AM PM  
7,8,9,10,11,12,1,2,3,4,5,6

# COUNTY OF ORANGE ZONING CODE



Planning and Development Services Department  
May, 2002 Edition

Community care facility: Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes.

Community facility: A noncommercial use established primarily for the benefit or enjoyment of the population of the community in which it is located.

Condominium: An estate consisting of an undivided interest in common in a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an office or store or multifamily dwelling. A condominium may include, in addition, a separate interest in other portions of such real property.

Congregate care facility: A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility.

Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above.

Convalescent home: A facility licensed by the State Department of Health Services which provides bed and ambulatory care for more than six (6) patients with postoperative convalescent, chronically ill or dietary problems and persons unable to care for themselves; including persons undergoing psychiatric care and treatment both as inpatients and outpatients but not including persons with contagious diseases or afflictions. Also known as nursing home, convalescent hospital, rest home, or home for the aged.

Conversion project: An apartment house, multiple or group dwelling existing, under construction or for which building permits have been issued, which is proposed for conversion to a residential condominium, community apartment, residential stock cooperative or planned development; or an existing mobilehome park which is proposed to be converted to a mobilehome condominium project, a mobilehome stock cooperative project, a mobilehome planned development or a conventional mobilehome subdivision.

#### **Sec. 7-9-25. Definitions. (D)**

Day (care) nursery: A.k.a. child day care facility and day care center. Any facility operated by a person, corporation or association used primarily for the provision of nonmedical daytime care, training, or education of more than six (6) children under eighteen (18) years of age at any location other than their normal place of residence, excluding any children normally residing on the premises.

Detached buildings and structures: Two (2) or more buildings or structures that are each structurally independent and freestanding and not connected by walls, roofs, floors, decks, supports, trellises, architectural features or any other structure, fixture or device that exceeds thirty (30) inches in height above the finished grade.

**Sec. 7-9-141. Community Care Facilities.**

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling for purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.1. Reserved.**

**Sec. 7-9-141.2. Child care facilities/day care nurseries.**

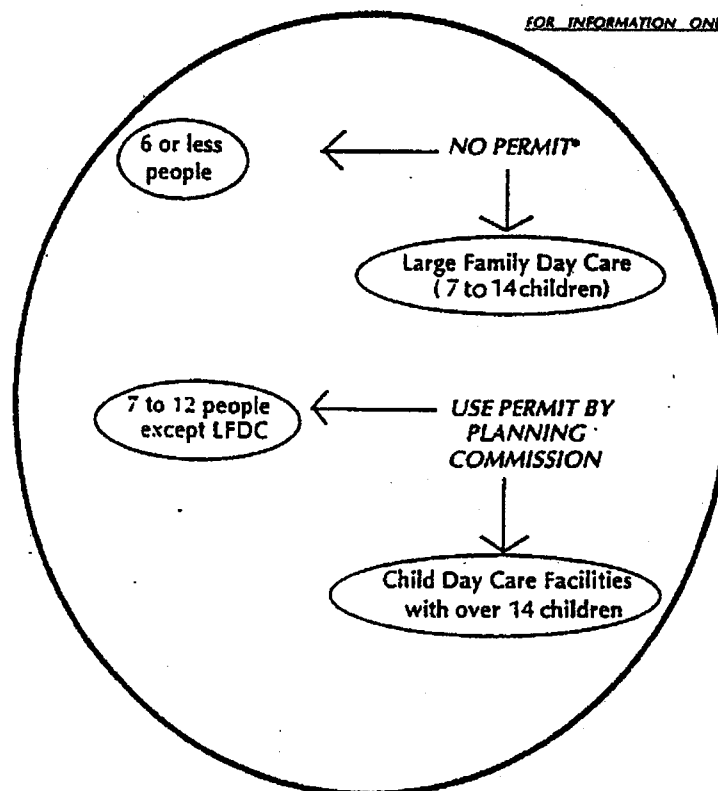
Child day care facilities/day care nurseries serving more than fourteen (14) persons may be permitted in any district, planned community or specific plan area (except in designated airport accident potential zones) where this use is not otherwise identified as a permitted use, subject to the approval of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.3. Reserved.**

**COMMUNITY CARE FACILITIES**

Sec. 7 - 9 - 141 - 141.2

FOR INFORMATION ONLY



*\*NOTE: No permit beyond that required for a single-family dwelling.*

**Sec. 7-9-142. Congregate Care Facilities.**

- (a) A congregate care facility serving six (6) or fewer persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single-family dwelling for purposes of zoning and land use regulations.
- (b) A congregate care facility serving seven (7) to twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission pursuant to section 7-9-150. A congregate care facility shall;
  - (1) Demonstrate compatibility with adjacent development;
  - (2) Provide adequate on site parking for residents and staff;
  - (3) Provide adequate screening of the facility by landscaping and/or fencing; and,
  - (4) Limit signage and lighting.
- (c) A congregate care facility serving more than twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for either multifamily residential or hotels subject to the approval of a use permit by the Planning Commission pursuant to section 7-9-150.
- (d) Equivalent dwelling unit counts for congregate care facilities shall be determined by the following table. The consequent unit counts are to be subtracted from the total number of allowed dwelling units for a planned community or specific plan area, and will also determine consistency with area per dwelling unit zoning limitations.

| Configuration                  | Dwelling Unit Counts |
|--------------------------------|----------------------|
| 2 or more bedrooms in the unit | 1 dwelling           |
| 1 bedroom in the unit          | .5 dwelling          |
| 0 bedroom in the unit          | .25 dwelling         |
| Medical care rooms             | 0 dwelling           |

Density bonuses may be granted to congregate care facilities in residentially-zoned areas in the same manner that they may be granted to standard residential projects per the Housing Element.

***Attachment No. 3***  
***County of Orange***  
***Records Regarding 20172 Redlands Drive***

## Activity Report for Permit Number SI050059

## ACCOUNT

Created: 09/13/2005

Status: CLOSED

Status Updated: 05/06/2008

Status Updated By: Ramon Kimpo

Permit Description: SI for sober living certification, refer to CE050237, certification to be on an annual basis

## APPLICANT/FRP

Yellowstone Women's Recovery of California

1571 Pegasus

Santa Ana, CA 92627

Phone: 949-646-4494

## SITE

Tract: 4307 36 TR Lot(s): null

20172 REDLANDS DR NEWPORT  
BEACH

| Post Date  | Type    | Work Description                                                                                                                | Work Date  | Name                                       | Hours         | Title (Hourly Rate)                  | Amount         | Balance       |
|------------|---------|---------------------------------------------------------------------------------------------------------------------------------|------------|--------------------------------------------|---------------|--------------------------------------|----------------|---------------|
| 09/13/2005 | Deposit | Initial Deposit                                                                                                                 |            | Yellowstone Women's Recovery of            |               |                                      | \$450.00       | \$450.00      |
| 09/13/2005 | Charge  | Permit Issuance Charge                                                                                                          |            | Cooke Earl                                 |               |                                      | \$15.00        | \$435.00      |
| 09/20/2005 | Charge  | 965. Supervisor admin timecharge                                                                                                | 09/20/2005 | Mike Powell                                | 0.0952        | Building Inspector IV (\$143.25)     | \$13.84        | \$421.36      |
| 09/20/2005 | Charge  | 965. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                                                 | 09/20/2005 | Don Parker                                 | 1.0000        | Building Inspector IV (\$143.25)     | \$143.25       | \$278.11      |
| 09/20/2005 | Charge  | 965. Travel timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                              | 09/20/2005 | Don Parker                                 | 0.1333        | Building Inspector IV (\$143.25)     | \$19.10        | \$259.01      |
| 09/20/2005 | Charge  | 965. Admin timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                               | 09/20/2005 | Don Parker                                 | 0.1500        | Building Inspector IV (\$143.25)     | \$21.49        | \$237.52      |
| 11/14/2005 | Charge  | Initiate SI                                                                                                                     | 09/13/2005 | John Powers                                | 0.4667        | Staff Specialist (\$105.95)          | \$49.45        | \$188.07      |
| 04/29/2008 | Charge  | ADMIN. Admin timecharge. Reviews of open permit. This inspection was completed and approved on 9/20/05. Please final and close. | 04/29/2008 | Don Parker                                 | 0.2500        | Building Inspector IV (\$154.66)     | \$38.67        | \$149.40      |
| 04/29/2008 | Charge  | PE. Admin timecharge. Close out SI Sober Living Permit                                                                          | 04/29/2008 | Allan Metz                                 | 0.7333        | Administrative Manager II (\$201.26) | \$147.58       | \$1.82        |
| 05/06/2008 | Refund  | Automatic Refund Transfer: Request for check forwarded to A/C on 05/06/08                                                       |            | Yellowstone Women's Recovery of California |               |                                      | \$1.82         | \$0.00        |
|            |         |                                                                                                                                 |            | <b>Total Hours</b>                         | <b>2.8285</b> |                                      | <b>Balance</b> | <b>\$0.00</b> |

|                    |                 |
|--------------------|-----------------|
| <b>Deposits</b>    | <b>\$450.00</b> |
| <b>Charges</b>     | <b>\$448.18</b> |
| <b>Refunds</b>     | <b>\$1.82</b>   |
| <b>Adjustments</b> | <b>\$0.00</b>   |
| <b>Balance</b>     | <b>\$0.00</b>   |

Notes

O.T. - Overtime

E.O.T. - Extraordinary Overtime

E.O.T.\* - Extraordinary Overtime (Flat Fee Permit)

***Attachment No. 4***  
***County of Orange***  
***Records Regarding 1571 Pegasus Street***



February 1, 2006

Mr. Martin Angel  
County of Orange Planning & Development

Re: SI 060004-1571 Pegasus, Santa Ana Heights, Ca.

Mr. Angel,

Per Laurie's request I am requesting an SI Permit for a 18 bed sober living home located at 1571 Pegasus, Santa Ana Heights, this is a renewal of SI 1040097.

I have enclosed a copy information application.

Please advise at your earliest convenience when I can pick up permit and schedule inspection.

Thank you,

Leisha Mello  
Administrative Coordinator

(949) 678-0761

2-1-06



***Attachment No. 5***  
***Staff Report dated February 20, 2009***

***Attachment No. 6***  
***Correspondence Received After February 20, 2009***

**Brown, Janet**

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**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Thursday, March 05, 2009 9:26 AM  
**To:** Brown, Janet  
**Subject:** 1561 Indus Street - Sober Home

Dear Janet,

The sober living home next door to our house habitually leaves their garbage cans out after trash day. Yesterday was our trash pick up and this morning, as of ten to nine when I left for work, their cans were still in front of their house. This is not unusual, as it is common for them to leave them out until late Thursday, or even into Friday. They used to place their cans in front of our house, but as one of our neighbors brought it up at the last city meeting, and after we talked to one of Yellowstone's representatives on 3 different occasions, they are finally placing them in front of their own property.

Can something be done about this?

Thank you for your time,

Jennifer Haining

**Brown, Janet**

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**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Monday, March 09, 2009 1:52 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian; Kiff, Dave; Wolcott, Cathy; Kappeler, John  
**Subject:** RE: Sober Living Homes

Dear Ms. Brown,

Thank you for your quick reply. I know my husband plans on attending the meeting this Thursday. I also wanted to mention that yes, we were aware that 1561 Indus was a sober living home when we purchased our house (although we did not know the other sober living house we share a fence with on Pegasus was, nor were we made aware of the other house on Indus). However, when we found our house and purchased it, 1561 Indus was on the market as well. We anticipated that it would be sold to a family and there would no longer be a business operating next to us. We have nothing against the sober living houses or their occupants, but it is a business operating next to us (though I understand this may be a matter of opinion) and therefore has issues we would rather not have to deal with in a single family residential neighborhood.

Sincerely,  
Jennifer Haining  
1572 Indus Street

---

**Subject:** RE: Sober Living Homes  
**Date:** Mon, 9 Mar 2009 13:25:07 -0700  
**From:** [JBrown@city.newport-beach.ca.us](mailto:JBrown@city.newport-beach.ca.us)  
**To:** [jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)  
**CC:** [BContino@city.newport-beach.ca.us](mailto:BContino@city.newport-beach.ca.us); [DKiff@city.newport-beach.ca.us](mailto:DKiff@city.newport-beach.ca.us); [CWolcott@city.newport-beach.ca.us](mailto:CWolcott@city.newport-beach.ca.us); [JKappeler@city.newport-beach.ca.us](mailto:JKappeler@city.newport-beach.ca.us)

Dear Ms. Haining.

Thank you for your e-mail. This information will be made a part of the record for the Yellowstone public hearings. In addition, I have requested the Code Enforcement Officer assigned to this area to look into code violations that may be occurring.

The public hearing for the applications submitted by Yellowstone was continued to this Thursday, March 12, at 4:00 p.m. The meeting will take place in the City Council Chambers (same location as the February 20<sup>th</sup> meeting).

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

---

**From:** Jenn Haining [mailto:[jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)]  
**Sent:** Monday, March 09, 2009 1:09 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian  
**Subject:** Sober Living Homes

Dear Janet,

My husband attended the last city meeting addressing the potential closures of the Yellowstone sober

houses. I am writing to you now because my husband and I became aware at this meeting, of certain policies the occupants of the sober living homes are supposed to be abiding by. We bought our house last April and just moved in December 20, 2008. In the short time we have lived here, it seems that they have been in constant violation of a lot of the policies set forth by the city. As we were unaware of these policies until recently, we have not complained or kept track of their activities.

In the past week or so however, we have been more vigilant about noticing things they may be in violation of. The following are some of these things:

1. I believe it was the weekend before last, I was letting my dog out and could hear someone on the phone at the Pegasus house which backs up to our property. They appeared to be angry and used foul language.
2. Both of these properties frequently have their trash cans out after trash day for up to one to two days.
3. People are frequently coming or going after hours, easily past 11pm. We have heard loud cars racing from the house and one night/early morning someone honking their horn.
4. People appear to be in the house during hours when this is prohibited. I come home for lunch at 2pm and often see people being dropped off and/or picked up.
5. There are often different cars in the driveway that do not appear to be the house mothers.
6. Yesterday, while out tending to my roses in the front yard, I could smell cigarette smoke coming from the 1561 Indus property.

These are just a few of the things we have noted. Not only that, but in reading some of the information they put forth in their applications, it appears as though the attorney was misinformed or not being truthful. The men's house on Redlands, up until recently, was having weekly Tuesday meetings in which it was obvious that a large number of men, that were not occupants, were attending. It brought in quite a bit of car and foot traffic. Also, remembering back to when we were working on our house last summer, girls from the other houses were walking to and from 1561 Indus with towels and bathing suits to use the pool.

I hope this information is helpful to your decision making process. We love our new home and want to have a safe, clean and positive environment to live in.

Sincerely,  
Jennifer Haining  
1572 Indus Street

**1571 PEGASUS: STAFF REPORT (w/ Attachments 1-6) FOR MARCH 12, 2009 HEARING**



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

March 12, 2009  
Agenda Item 4

**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](mailto:jbrown@city.newport-beach.ca.us)

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### **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 reopen the 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 the February 20, 2009, staff report (Attachment 5), and based on new information provided 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. Consistent with the Hearing Officer's February 20, 2009, decision to deny the use permit at this address, deny the request for reasonable accommodation for an exemption from the use permit operating standards' occupancy restrictions as set forth in NBMC Section 20.91A.050.

In the event the Hearing Officer reopens the hearing as to use permits and grants a use permit 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 denial of the requested accommodation subject to the findings discussed in this staff report..

4. Deny of the request for reasonable accommodation for an exemption of the application filing fee, subject to the findings in this staff report..

### **INTRODUCTION**

On February 20, 2009, the Hearing Officer conducted the public hearing for Use Permit No. 2008-036, taking testimony from staff, the applicant and members of the public. At the conclusion of the hearing, the Hearing Officer concurred with staff's recommendation to deny the use permit subject to the findings in the staff report (Attachment 5), and directed staff to prepare a resolution for denial with prejudice of Use Permit No. 2008-036. The hearing was continued to March 12, 2009, to take action on the application for Reasonable Accommodation No. 2009-06.

Following testimony by the applicant at the February 20 hearing which characterized the existing sober living use as an established nonconforming use of the property, staff conducted further investigation into the circumstances and laws applicable at the time the facility was established while under the jurisdiction of the County of Orange. Based on new information provided by the County, staff believes one of the findings previously made in the February 20 staff report cannot be made. Therefore, staff recommends the Hearing Officer reopen the hearing in order to consider the additional information contained in this report, and adopt the attached draft resolution to deny with prejudice Use Permit No. 2008-036.

### **BACKGROUND**

The subject property is located in an area referred to as West Santa Ana Heights, which was annexed into the City of Newport Beach effective January 1, 2008. Prior to annexation, West Santa Ana Heights was an unincorporated area under the jurisdiction

of the County of Orange. The subject property was located in the Santa Ana Heights Specific Plan area and zoned Residential-Single Family (RSF).

According to information submitted to the City by the applicant, the use of the single family dwelling located at 1571 Pegasus Street as a sober living facility use was established in 2005 (although documentation from the County indicates the use may have been established in 2003). When the use changed from that of a single family dwelling to a sober living facility, it was subject to any land use regulations the County of Orange placed on such uses at that time.<sup>1</sup> County of Orange Planning Department and Code Enforcement staff informed the City that a sober living use would have been classified as either a community care facility or a congregate care facility.

Applicable Land Use Regulations:

The Santa Ana Heights Specific Plan was adopted by the County in October 1986 and was last revised by the County in 2001. Portions of the Specific Plan are attached as Attachment 1. The property located at 1571 Pegasus Street was zoned RSF. Principal uses permitted in the RSF district under the Specific Plan are as follows:

1. Single family detached dwellings or single family mobile homes
2. **Community care facilities serving six (6) or fewer persons and large family day care homes.**
3. Parks, playgrounds, and athletic fields.
4. Riding and hiking trails.

A number of additional principal uses not relevant to this analysis, such as communication transmitting facilities, fire and police stations, and churches, were permitted with a use permit or site development permit. Temporary uses and accessory uses were also allowed, some which required a use permit. All other uses were prohibited.

In addition, the Specific Plan provided, "The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150: Any other use which the Planning Commission finds consistent with the purpose and intent of this district."

At the time property located 1571 Pegasus Street was established as a sober living facility, the County of Orange's Zoning Code definition of community care facility was *"Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically*

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<sup>1</sup> A change of occupancy for purposes of the California Building Code (CBC) also occurred when the use changed, and to operate legally the structure was required to conform with any CBC requirements for the occupancy type created.

*handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes."*

*A congregate care facility was defined as: "A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility. Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above."*

Definitions from the May 2002 version of the County of Orange Zoning Code (in effect in 2005) are attached as Attachment 2.

Section 7-9-141 of the County's 2002 comprehensive Zoning Code further discussed requirements for community care facilities. That section provided:

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling or purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

The closest classification provided in County regulations for the unlicensed facility located at 1571 Pegasus Street appears to be a community care facility. Therefore, if the operators established and maintained the facility with a bed count of six or fewer, it was a permitted use and thus legally established at that occupancy level at that location. If the operator obtained a use permit from the County Planning Commission for seven to 12 residents under the provision of the Specific Plan "other uses which the Planning Commission finds consistent with the purpose and intent of this district," it would also have been a lawfully established use.

However, the applicant has never indicated to the City that the facility was a community care facility housing six or fewer clients at any time, and there is evidence that more than six residents were housed at the facility in 2005 (see below.) There are no County records of a use permit being issued for this address, although County Planning employees conducted a thorough search of their records at the request of City staff. Even if a use permit had been applied for, it is unlikely the County would have granted a use permit for the 18 beds as currently requested by the applicant because the County

Zoning Code granted the Planning Commission the authority to approve use permits for up to 12 beds for community care facilities. The County of Orange Planning Commission did not have the authority to a grant use permits for a community care facility housing more than 12 beds.

Records obtained from the County of Orange indicate that in 2003, Yellowstone Recovery attempted to obtain County sober living certification at 1571 Pegasus Street (Attachment 4). There is also some evidence that County Code Enforcement was aware that the facility was housing more than six residents without a use permit. Records show an undated Code Enforcement action at this address stating "Sober Living home, operating without a permit (over 6 people)."

On February 25, 2009, City staff spoke with Lt. Len Nearing of the Orange County Sheriff's Department. Lt. Nearing is the current coordinator of the County's sober living certification program, run through the Orange County Sheriff's Department. Lt. Nearing stated that the certification program relied on the local jurisdictions to inspect the physical setting of a sober living facility, and confirm that the facility's building and grounds meet the requirements for a County certified program. (Most of the requirements are related to the physical conditions on the property, but one requirement is "conformance with all locally applicable and regularly enforced zoning regulations.") Lt. Nearing's assistant, Margo Grise added that in the case of the facilities under County jurisdiction, County code enforcement personnel would conduct "the SI." The County certification program relies on the Special Investigation reports it receives from the local jurisdictions, and does not require further proof of land use compliance.

Of the 26 sober living homes certified by the County, none are located in Newport Beach or Santa Ana Heights, and none of the Yellowstone addresses in Newport Beach hold current County certification. At one time, Ms. Grise indicated, one of the Yellowstone facilities held certification, but dropped out of the certification program.

### **CONCLUSION**

Based on the above information, it appears the facility located 1571 Pegasus Street was operating as a sober living facility with more than six beds without the approval of a use permit issued by the County of Orange Planning Commission; and therefore, is not a legally established use. Finding A of NBMC Section 20.91A.060 requires that the use conform to all application provisions of Section 20.91A.050, including items b and h of the development and operational standards:

- b. Facility must comply with state and local law, and the submitted management plan, including any modifications required by this use permit.
- h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

If in fact the facility was established in 2003 or in 2005 as a sober living facility with an occupancy greater than six beds, it did not comply with local law at that time because the operator had not obtained approval of a use permit from the Orange County Planning Commission. Review of County records document that a second facility operated by the applicant located at 20172 Redlands Drive was also operating as a sober living facility with an occupancy greater than six beds without approval of a use permit (Attachment 3). This evidence supports a conclusion that the applicant has demonstrated a pattern of operating similar facilities in violation of County law. Therefore, NBMC Section 20.91A.060 Finding A cannot be made.

In addition, staff believes there is some doubt whether the Yellowstone facilities are even qualified to apply for and receive a use permit under NBMC Section 20.62.030 (Determination of Nonconformity). Subsection B of NBMC Section 20.62.030 provides that a use that was lawfully established under the laws in place at the time, but that no longer conforms to the use regulations or required conditions for the district in which is was located because of annexation to the City, shall be deemed to be a nonconforming use. However, *"a use shall not be considered to have been lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including to not limited to permits and licenses required by any federal, state, or local government agency"* (italics added). Pursuant to NBMC Section 20.91A.020, persons whose use of their property in a residential district was rendered nonconforming by the adoption of Ordinance No. 2008-05 are qualified to seek a use permit to continue the use in its current location. There is no similar provision for illegal uses. Staff believes the facility located at 1571 Pegasus Street could be more accurately characterized as an illegal use than a nonconforming use as described by NBMC Section 20.62.030 (B).

#### **Use Permit No. 2008-036 Analysis Summary**

In conclusion, staff recommends denial of Use Permit No. 2008-036 for the following reasons:

1. The inability to make all of the findings required by the NBMC Section 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, applicant testimony, apparent documentation contradictions and/or misrepresentations, new information regarding the establishment of the facility, 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 and D cannot be made.

If, after reviewing this report, and hearing any further 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 with prejudice of Use Permit No. 2008-036.

## **APPLICATIONS FOR REASONABLE ACCOMMODATION**

### **BACKGROUND**

The background of the applicant's requests for reasonable accommodation is summarized in the February 20, 2009, staff report, attached to this report for reference (Attachment 5). The specific accommodations requested by the applicant are:

1. That the 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; and
3. An exemption from the City's requirement that all use permit applicants pay a use permit application deposit fee to permit cost recovery by the City. (NBMC Chapter 3.36 and NBMC Section 20.90.030)

### **DISCUSSION**

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits 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 provided a separate analysis of each specific accommodation request in the February 20 staff report, and will continue to follow that format.*

#### **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 that its facility be treated as a Single Housekeeping Unit, as that term is defined in NBMC Section 20.03.030. Staff fully analyzed this request in the February 20 staff report and recommended denial of the request. The denial recommendation was based on the grounds that the accommodation requested was broader than necessary to afford disabled individuals an opportunity to reside in the housing of their choice, and that the request was not reasonable because it would fundamentally alter the nature of this portion of the zoning program, and undermine its basic purpose. For a more in-depth analysis and findings, please see the February 20, 2009, staff report.

#### **SUMMARY**

With regard to the applicant's request to provide reasonable accommodation that treats the facility as a Single Housekeeping Unit, two of the five required findings 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.

At the February 20 hearing, staff recommended that a use permit be denied for this facility. Because of new information gathered as a result of testimony by the applicant at the February 20 hearing, staff has recommended that the use permit portion of the hearing be reopened, and that the Hearing Officer deny a use permit for other Yellowstone addresses as well as this facility. If there is no use permit granted for this facility, an exemption from the occupancy restrictions the use permit would have imposed does not need to be analyzed.

In the event the Hearing Officer decides to grant a use permit to this facility after the hearing is reopened, please apply the staff recommendations and findings in the March 12, 2009, staff report for 20172 Redlands Drive to this request.

**Reasonable Accommodation Analysis No. 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 permit 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 No. 2, Finding 2 (C).

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

the average income and expenses related to the four facility properties, discussed above in Reasonable Accommodation Request No. 2, Finding 2 (C).

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.

However, based on the general summary of average expenses for each facility submitted by the applicant for the February 20 hearing, and the weekly client fee range which the applicant posts on its website, staff's analysis indicates that the applicant should have been able to meet the use permit fee obligation.

The average monthly expense for each house is reported by the applicant to be around \$6,200, with an average mortgage of \$4,500/month, \$800/month for utilities (electricity, gas, trash service, water and phone) and \$900/month for food (the May 20, 2008 reasonable accommodation application states that residents are responsible for their own meals; the \$900 may represent basic supplies.) Applicant reports an average monthly expense of \$6,200, leaving only a \$200 monthly profit. Applicant has stated that it relies on contributions from the community to keep it from operating at a loss.

The applicant states that in general, its weekly fees are based on a sliding scale from \$50 to \$160 per week, with an average rent of \$100 per resident per week. With 16 residents (the number of resident clients; facility managers do not appear to pay rent) the applicant reports the average monthly income from each house is \$6,400.

The applicant's statement was not supported by requested documentation (bills, etc. requested by staff), and was not signed under penalty of perjury. Yellowstone's own website indicates that income and expense calculations may be inaccurate. The website's "Our Fees" page (dated 2008) states that fees for sober living are \$160 - \$180 per week. Using the applicant's own reporting formula, this represents an average of \$170 per resident per week. With 16 paying residents (resident staff may not be paying rent), this would result in an average monthly income per house of \$10,880. If the reported average expense of \$6,200 is accurate, each facility housing 16 residents generates a monthly profit of \$4,680. (\$56,160 per year for each house of the three with 16 residents; or an estimated \$168,480 total for the three facilities at 1621 Indus Street, 1571 Pegasus Street and 20172 Redlands Drive.)

#### **RECOMMENDATION:**

For the foregoing reasons, staff recommends that Reasonable Accommodation Request No. 3 be denied.

Environmental Review

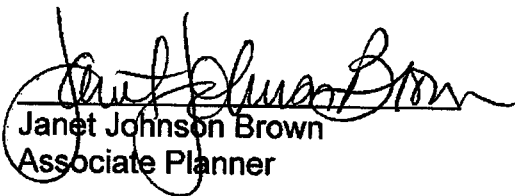
This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. 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.

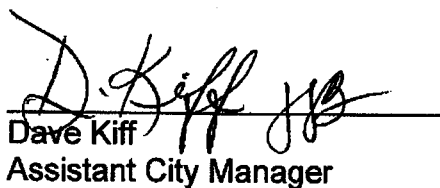
Public Notice

Notice of this Public Hearing was published in the *Daily Pilot*, mailed to property owners and occupants within 300 feet of the project site and posted at the project site a minimum ten (10) days in advance of this Public Hearing consistent with the Newport Beach Municipal Code. In addition, the item appeared on the agenda for this Public Hearing, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

  
Janet Johnson Brown  
Associate Planner

  
Dave Kiff  
Assistant City Manager

Attachments:

1. County of Orange Santa Ana Heights Specific Plan
2. County of Orange Zoning Code Definitions
3. County of Orange Records regarding 20172 Redlands Drive
4. County of Orange Records regarding 1571 Pegasus Street
5. February 20, 2009 Staff Report
6. Correspondence Received After February 20, 2009

***Attachment No. 1***  
***County of Orange***  
***Santa Ana Heights Specific Plan***

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**  
*Seventh Amendment*

**PREPARED BY:**

**Environmental & Project Planning Services Division**

**County of Orange**

**Planning & Development Services Department**  
**Tom Mathews, Director**

Adopted October 1986  
1<sup>st</sup> Revised March 1988  
2<sup>nd</sup> Revised December 1989  
3<sup>rd</sup> Revised May 1991  
4<sup>th</sup> Revised August 1996  
5<sup>th</sup> Revised November 1999  
6<sup>th</sup> Revised September 2000  
7<sup>th</sup> Revised January 2001

# SANTA ANA HEIGHTS SPECIFIC PLAN

## 4. RSF "Residential Single Family" District

### a. Purpose and Intent

The RSF District is established to provide for the development and maintenance of medium density single family detached residential neighborhoods. Only those uses are permitted that are complementary to and can exist in harmony with such a residential neighborhood.

### b. Principal Uses Permitted

#### (1) The following principal uses are permitted:

- (a) Single family detached dwellings or single family mobile homes per Zoning Code section 7-9-149.5 (one per building site).
- (b) Community care facilities serving six (6) or fewer persons and large family day care homes.
- (c) Parks, playgrounds, and athletic fields (noncommercial).
- (d) Riding and hiking trails.
- (2) The following principal uses are permitted subject to the approval of a site development permit per Zoning Code section 7-9-150:
  - (a) Communication transmitting, reception, or relay facilities.
  - (b) Public/private utility buildings and structures.

### (3) The following principal uses are permitted subject to the approval of a use permit by the Zoning Administrator per Zoning Code Section 7-9-150:

- (a) Fire and police stations.
- (b) Churches, temples and other places of worship.
- (4) The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150:
  - (a) Any other use which the Planning Commission finds consistent with the purpose and intent of this district.

### c. Temporary Uses Permitted

The following temporary uses only, per Zoning Code section 7-9-136:

- (1) Continued use of an existing building during construction of a new building.
- (2) Mobile home residence during construction.

### d. Accessory Uses Permitted

Accessory uses and structures are permitted when customarily associated with and subordinate to a principal permitted use on the same building site per Zoning Code section 7-9-137, to include:

- (1) Garages and carports.
- (2) Swimming pools.
- (3) Fences and walls.

# **SANTA ANA HEIGHTS SPECIFIC PLAN**

- (4) Patio covers.
- (5) Signs per Zoning Code section 7-9-111.  
  
Six (6) square feet of sign area maximum unless otherwise provided for by an approved site development permit or use permit.
- (6) Home occupations per Zoning Code section 7-9-146.6.
- (6) Noncommercial keeping of pets and animals weighing less than three hundred (300) pounds and not prohibited in section (e), subject to the following standard. Pens, cages, and other structures specifically for the keeping of animals other than in the residence, shall be located at least twenty-five (25) feet from any residential window located on an adjoining building site. Exceptions to the above may be provided for by a use permit approved by the County Zoning Administrator.
- (7) Non commercial keeping of horses on land immediately adjacent to the Recreation Equestrian District (REQ) provided that no horse shall be permitted on a building site containing less than ten thousand (10,000) square feet of land area and pens, cages, and other structures specifically for the keeping of horse shall be located at least fifty (50) feet from and residential window located on an adjoining building site. One (1) or two (2) adult horses are permitted on a building site containing between ten thousand (10,000) and fifteen thousand (15,000) square feet of land area. One (1) additional adult horse may be kept for each additional ten thousand (10,000) square feet, with a maximum of six (6) horses on any one building site. The offspring of such animals shall be considered adults when eight (8) months old. Exceptions to the above may be provided for by a

use permit approved by the County Zoning Administrator.

Any nonconforming use of any property within this zone for the maintenance of pets and animals other than those enumerated in this section shall be terminated within one year of the enactment of this section. In any case in which a building in excess of 600 square feet has been erected pursuant to a validly issued permit for maintenance of pets and animals the amortization period of continuation of such use shall be extended for four additional years.

- (8) Second living unit, attached or detached, in conformance with Zoning Code Section 7-9-146.5, subject to approval of a use permit.
- (9) Any other accessory use or structure which the Director, PDS/D finds consistent with the purpose and intent of this district.

## **e. Prohibited Uses**

The following uses are specifically prohibited:

- (1) All uses not permitted by section b through d above.
- (2) The storage of vehicles, equipment, or products related to a commercial activity not permitted in this district.
- (3) The keeping of animals for any commercial purpose unless provided for by an approved use permit.
- (4) Apiaries.

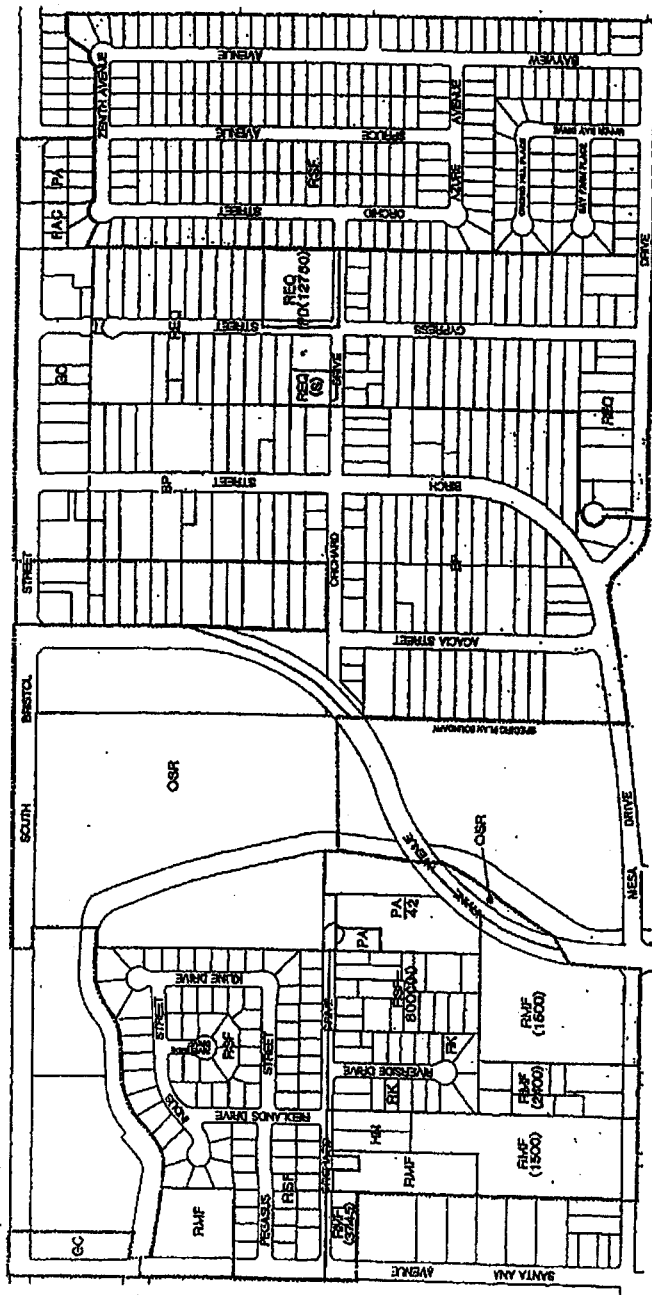
## **Land Use District Regulations**

IV-14

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**

**f. Site Development Standards**

- (1) Building site area. Seven thousand and two hundred (7,200) square feet minimum except as otherwise identified on the Land Use District map.
- (2) Building height. Thirty-five (35) feet maximum. Roof-mounted mechanical equipment shall not be visible from any existing dwelling unit located three hundred (300) feet or less from the subject building site.
- (3) Building setbacks.
  - (a) Front setback. Twenty (20) feet minimum.
  - (b) Side setback. Five (5) feet minimum.
  - (c) Rear setback. Twenty-five (25) feet minimum.
- (4) Off-street parking. Per Zoning Code section 7-9-145.
- (5) Lighting. All lighting shall be designed and located so that direct light rays are confined to the premises.



Seventh Amendment

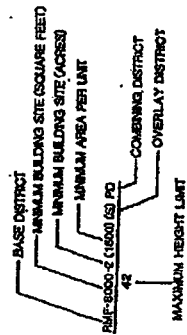
- OSR OPEN SPACE/RECREATION
- REO RESIDENTIAL EQUESTRIAN
- RK RESIDENTIAL KENNEL
- REF RESIDENTIAL SINGLE FAMILY
- RAF RESIDENTIAL MULTIPLE FAMILY
- HN HORTICULTURAL NURSERY

Zone Changes 20 00-05

- GC GENERAL COMMERCIAL
- BP BUSINESS PARK
- PA PROFESSIONAL AND ADMINISTRATIVE OFFICE
- PAC PROFESSIONAL AND ADMINISTRATIVE CONSOLIDATION
- PD PLANNED DEVELOPMENT
- CS COMMERCIAL STABLE
- CU COMMERCIAL NURSERY

LAND USE DISTRICT MAP

SANTA ANA HEIGHTS SPECIFIC PLAN



ACCEPTED AND FILED AT THE  
REGISTER OF  
PLANNING & DEVELOPMENT SERVICES  
DATE April 20, 2001  
TIME 2:40 P.M. - 11:55 A.M.  
INSTRUMENT NO. 2001-001-001  
BOOK 7 PAGE 310  
OFFICIALS  
COUNTY CLERK - RECORDER  
BY *Charles J. Johnson*  
CLERK

WE HEREBY CERTIFY THAT THIS  
LAND USE DISTRICT MAP  
WAS APPROVED BY THE ORANGE  
COUNTY PLANNING COMMISSION IN December 2000  
AND ADOPTED BY ORDINANCE NO. 301501  
BY THE ORANGE COUNTY BOARD OF SUPERVISORS  
ON January 23, 2001.

*Thomas B. Mathews*  
BY THOMAS B. MATHEWS  
DIRECTOR OF PLANNING  
AND DEVELOPMENT SERVICES  
DEPARTMENT

***Attachment No. 2***  
*County of Orange*  
*Zoning Code Definitions*

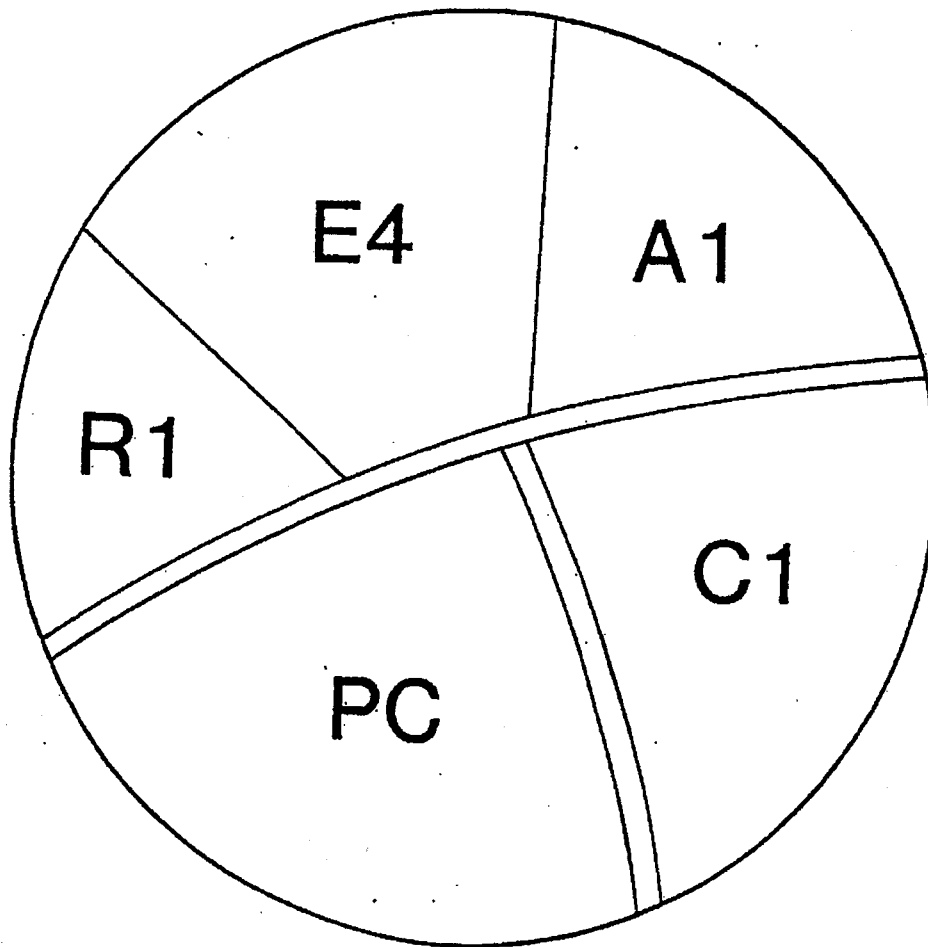


RECEIVED BY  
PLANNING DEPARTMENT  
CITY OF NEWPORT BEACH

MAR 11 2003

AM PM  
7,8,9,10,11,12,1,2,3,4,5,6

# COUNTY OF ORANGE ZONING CODE



Planning and Development Services Department  
May, 2002 Edition

Community care facility: Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes.

Community facility: A noncommercial use established primarily for the benefit or enjoyment of the population of the community in which it is located.

Condominium: An estate consisting of an undivided interest in common in a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an office or store or multifamily dwelling. A condominium may include, in addition, a separate interest in other portions of such real property.

Congregate care facility: A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility.

Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above.

Convalescent home: A facility licensed by the State Department of Health Services which provides bed and ambulatory care for more than six (6) patients with postoperative convalescent, chronically ill or dietary problems and persons unable to care for themselves; including persons undergoing psychiatric care and treatment both as inpatients and outpatients but not including persons with contagious diseases or afflictions. Also known as nursing home, convalescent hospital, rest home, or home for the aged.

Conversion project: An apartment house, multiple or group dwelling existing, under construction or for which building permits have been issued, which is proposed for conversion to a residential condominium, community apartment, residential stock cooperative or planned development; or an existing mobilehome park which is proposed to be converted to a mobilehome condominium project, a mobilehome stock cooperative project, a mobilehome planned development or a conventional mobilehome subdivision.

#### **Sec. 7-9-25. Definitions. (D)**

Day (care) nursery: A.k.a. child day care facility and day care center. Any facility operated by a person, corporation or association used primarily for the provision of nonmedical daytime care, training, or education of more than six (6) children under eighteen (18) years of age at any location other than their normal place of residence, excluding any children normally residing on the premises.

Detached buildings and structures: Two (2) or more buildings or structures that are each structurally independent and freestanding and not connected by walls, roofs, floors, decks, supports, trellises, architectural features or any other structure, fixture or device that exceeds thirty (30) inches in height above the finished grade.

**Sec. 7-9-141. Community Care Facilities.**

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling for purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.1. Reserved.**

**Sec. 7-9-141.2. Child care facilities/day care nurseries.**

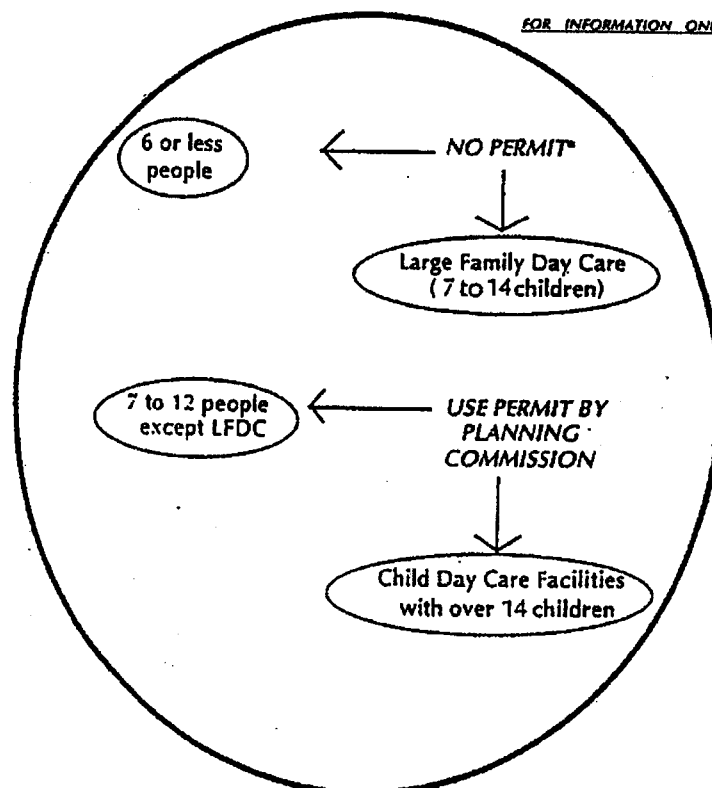
Child day care facilities/day care nurseries serving more than fourteen (14) persons may be permitted in any district, planned community or specific plan area (except in designated airport accident potential zones) where this use is not otherwise identified as a permitted use, subject to the approval of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.3. Reserved.**

**COMMUNITY CARE FACILITIES**

Sec. 7 - 9 - 141 . 141.2

FOR INFORMATION ONLY



*\*NOTE: No permit beyond that required for a single-family dwelling.*

**Sec. 7-9-142. Congregate Care Facilities.**

- (a) A congregate care facility serving six (6) or fewer persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single-family dwelling for purposes of zoning and land use regulations.
- (b) A congregate care facility serving seven (7) to twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission pursuant to section 7-9-150. A congregate care facility shall;
  - (1) Demonstrate compatibility with adjacent development;
  - (2) Provide adequate on site parking for residents and staff;
  - (3) Provide adequate screening of the facility by landscaping and/or fencing; and,
  - (4) Limit signage and lighting.
- (c) A congregate care facility serving more than twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for either multifamily residential or hotels subject to the approval of a use permit by the Planning Commission pursuant to section 7-9-150.
- (d) Equivalent dwelling unit counts for congregate care facilities shall be determined by the following table. The consequent unit counts are to be subtracted from the total number of allowed dwelling units for a planned community or specific plan area, and will also determine consistency with area per dwelling unit zoning limitations.

| Configuration                  | Dwelling Unit Counts |
|--------------------------------|----------------------|
| 2 or more bedrooms in the unit | 1 dwelling           |
| 1 bedroom in the unit          | .5 dwelling          |
| 0 bedroom in the unit          | .25 dwelling         |
| Medical care rooms             | 0 dwelling           |

Density bonuses may be granted to congregate care facilities in residentially-zoned areas in the same manner that they may be granted to standard residential projects per the Housing Element.

***Attachment No. 3***  
***County of Orange***  
***Records Regarding 20172 Redlands Drive***

## Activity Report for Permit Number SI050059

## ACCOUNT

Created: 09/13/2005

Status: CLOSED

Status Updated: 05/06/2008

Status Updated By: Ramon Kimpo

## APPLICANT/FRP

Yellowstone Women's Recovery of California

1571 Pegasus

Santa Ana, CA 92627

Phone: 949-646-4494

## SITE

Tract: 4307 36 TR Lot(s): null

20172 REDLANDS DR NEWPORT  
BEACH

Permit Description: SI for sober living certification, refer to CE050237, certification to be on an annual basis

| Post Date  | Type    | Work Description                                                                                                              | Work Date  | Name                                       | Hours  | Title (Hourly Rate)                  | Amount   | Balance  |
|------------|---------|-------------------------------------------------------------------------------------------------------------------------------|------------|--------------------------------------------|--------|--------------------------------------|----------|----------|
| 09/13/2005 | Deposit | Initial Deposit                                                                                                               |            | Yellowstone Women's Recovery of            |        |                                      | \$450.00 | \$450.00 |
| 09/13/2005 | Charge  | Permit Issuance Charge                                                                                                        |            | Cooke Earl                                 |        |                                      | \$15.00  | \$435.00 |
| 09/20/2005 | Charge  | 965 Supervisor admin timecharge                                                                                               | 09/20/2005 | Mike Powell                                | 0.0952 | Building Inspector IV (\$143.25)     | \$13.64  | \$421.36 |
| 09/20/2005 | Charge  | 965 ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                                                | 09/20/2005 | Don Parker                                 | 1.0000 | Building Inspector IV (\$143.25)     | \$143.25 | \$278.11 |
| 09/20/2005 | Charge  | 965 Travel timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                             | 09/20/2005 | Don Parker                                 | 0.1333 | Building Inspector IV (\$143.25)     | \$19.10  | \$259.01 |
| 09/20/2005 | Charge  | 965 Admin timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                              | 09/20/2005 | Don Parker                                 | 0.1500 | Building Inspector IV (\$143.25)     | \$21.49  | \$237.52 |
| 11/14/2005 | Charge  | Initiate SI                                                                                                                   | 09/13/2005 | John Powers                                | 0.4667 | Staff Specialist (\$105.95)          | \$49.45  | \$188.07 |
| 04/29/2008 | Charge  | ADMIN Admin timecharge. Review of open permit. This inspection was completed and approved on 9/20/05. Please final and close. | 04/29/2008 | Don Parker                                 | 0.2500 | Building Inspector IV (\$154.66)     | \$38.67  | \$149.40 |
| 04/29/2008 | Charge  | PE Admin timecharge. Close out SI Sober Living Permit                                                                         | 04/29/2008 | Allan Metz                                 | 0.7333 | Administrative Manager II (\$201.26) | \$147.58 | \$1.82   |
| 05/06/2008 | Refund  | Automatic Refund Transfer: Request for check forwarded to A/C on 05/06/08                                                     |            | Yellowstone Women's Recovery of California |        |                                      | \$1.82   | \$0.00   |
|            |         |                                                                                                                               |            | Total Hours                                | 2.8285 |                                      | Balance  | \$0.00   |

|             |          |
|-------------|----------|
| Deposits    | \$450.00 |
| Charges     | \$448.18 |
| Refunds     | \$1.82   |
| Adjustments | \$0.00   |
| Balance     | \$0.00   |

## Notes

- O.T. - Overtime
- E.O.T. - Extraordinary Overtime
- E.O.T.\* - Extraordinary Overtime (Flat Fee Permit)

***Attachment No. 4***  
***County of Orange***  
***Records Regarding 1571 Pegasus Street***



February 1, 2006

Mr. Martin Angel  
County of Orange Planning & Development

Re: SI 060004-1571 Pegasus, Santa Ana Heights, Ca.

Mr. Angel,

Per Laurie's request I am requesting an SI Permit for a 18 bed sober living home located at 1571 Pegasus, Santa Ana Heights, this is a renewal of SI 1040097.

I have enclosed a copy information application.

Please advice at your earliest convenience when I can pick up permit and schedule inspection.

Thank you,

A handwritten signature in cursive script that reads "Leisha Mello".

Leisha Mello  
Administrative Coordinator

(949) 678-0761

2-1-06

**4307-8-4-TR (TRACT) : ATTACHED PERMITS**

Legal Description : 4307-8-4-TR (Tract)

Location :

APN : 119-361-14 (Release)

Effective: Jun 09, 2001

Address : 1571 Pegasus St, Santa Ana (Permanent Bldg Address)

Check All Clear All

| Permit No.                        | Primary | Flag | \$ | Status          | Owner                            | Description                                                                                             | Address                    |
|-----------------------------------|---------|------|----|-----------------|----------------------------------|---------------------------------------------------------------------------------------------------------|----------------------------|
| <input type="checkbox"/> CE050277 | ★       |      |    | Closed          |                                  | Sober living home, operating without a permit (over 6 people).                                          | 1571 Pegasus St, Santa Ana |
| <input type="checkbox"/> SI030031 | ★       | 🚩    | \$ | Closed-Complete | Yellowstone Women's First Step H | Special investigation to cover cost of sober living home                                                | 1571 Pegasus St Santa Ana  |
| <input type="checkbox"/> SI040097 | ★       |      | \$ | Closed-Complete | Yellowstone Women's Recovery Of  | Special investigation to cover cost of sober living home for Yellowstone Women's Recovery of California | 1571 Pegasus St Santa Ana  |
| <input type="checkbox"/> SI060004 | ★       | 🚩    | \$ | Filed           | Yellowstone Women's First Step H | Special investigation to cover costs of sober living home for Yellowstone Women's Recovery Center       | 1571 Pegasus St Santa Ana  |

***Attachment No. 5***  
***Staff Report dated February 20, 2009***

***Attachment No. 6***  
***Correspondence Received After February 20, 2009***

**Brown, Janet**

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**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Thursday, March 05, 2009 9:26 AM  
**To:** Brown, Janet  
**Subject:** 1561 Indus Street - Sober Home

Dear Janet,

The sober living home next door to our house habitually leaves their garbage cans out after trash day. Yesterday was our trash pick up and this morning, as of ten to nine when I left for work, their cans were still in front of their house. This is not unusual, as it is common for them to leave them out until late Thursday, or even into Friday. They used to place their cans in front of our house, but as one of our neighbors brought it up at the last city meeting, and after we talked to one of Yellowstone's representatives on 3 different occasions, they are finally placing them in front of their own property.

Can something be done about this?

Thank you for your time,

Jennifer Haining

**Brown, Janet**

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**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Monday, March 09, 2009 1:52 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian; Kiff, Dave; Wolcott, Cathy; Kappeler, John  
**Subject:** RE: Sober Living Homes

Dear Ms. Brown,

Thank you for your quick reply. I know my husband plans on attending the meeting this Thursday. I also wanted to mention that yes, we were aware that 1561 Indus was a sober living home when we purchased our house (although we did not know the other sober living house we share a fence with on Pegasus was, nor were we made aware of the other house on Indus). However, when we found our house and purchased it, 1561 Indus was on the market as well. We anticipated that it would be sold to a family and there would no longer be a business operating next to us. We have nothing against the sober living houses or their occupants, but it is a business operating next to us (though I understand this may be a matter of opinion) and therefore has issues we would rather not have to deal with in a single family residential neighborhood.

Sincerely,  
Jennifer Haining  
1572 Indus Street

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**Subject:** RE: Sober Living Homes  
**Date:** Mon, 9 Mar 2009 13:25:07 -0700  
**From:** [JBrown@city.newport-beach.ca.us](mailto:JBrown@city.newport-beach.ca.us)  
**To:** [jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)  
**CC:** [BContino@city.newport-beach.ca.us](mailto:BContino@city.newport-beach.ca.us); [DKiff@city.newport-beach.ca.us](mailto:DKiff@city.newport-beach.ca.us); [CWolcott@city.newport-beach.ca.us](mailto:CWolcott@city.newport-beach.ca.us); [JKappeler@city.newport-beach.ca.us](mailto:JKappeler@city.newport-beach.ca.us)

Dear Ms. Haining.

Thank you for your e-mail. This information will be made a part of the record for the Yellowstone public hearings. In addition, I have requested the Code Enforcement Officer assigned to this area to look into code violations that may be occurring.

The public hearing for the applications submitted by Yellowstone was continued to this Thursday, March 12, at 4:00 p.m. The meeting will take place in the City Council Chambers (same location as the February 20<sup>th</sup> meeting).

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

**From:** Jenn Haining [mailto:[jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)]  
**Sent:** Monday, March 09, 2009 1:09 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian  
**Subject:** Sober Living Homes

Dear Janet,

My husband attended the last city meeting addressing the potential closures of the Yellowstone sober

houses. I am writing to you now because my husband and I became aware at this meeting, of certain policies the occupants of the sober living homes are supposed to be abiding by. We bought our house last April and just moved in December 20, 2008. In the short time we have lived here, it seems that they have been in constant violation of a lot of the policies set forth by the city. As we were unaware of these policies until recently, we have not complained or kept track of their activities.

In the past week or so however, we have been more vigilant about noticing things they may be in violation of. The following are some of these things:

1. I believe it was the weekend before last, I was letting my dog out and could hear someone on the phone at the Pegasus house which backs up to our property. They appeared to be angry and used foul language.
2. Both of these properties frequently have their trash cans out after trash day for up to one to two days.
3. People are frequently coming or going after hours, easily past 11pm. We have heard loud cars racing from the house and one night/early morning someone honking their horn.
4. People appear to be in the house during hours when this is prohibited. I come home for lunch at 2pm and often see people being dropped off and/or picked up.
5. There are often different cars in the driveway that do not appear to be the house mothers.
6. Yesterday, while out tending to my roses in the front yard, I could smell cigarette smoke coming from the 1561 Indus property.

These are just a few of the things we have noted. Not only that, but in reading some of the information they put forth in their applications, it appears as though the attorney was misinformed or not being truthful. The men's house on Redlands, up until recently, was having weekly Tuesday meetings in which it was obvious that a large number of men, that were not occupants, were attending. It brought in quite a bit of car and foot traffic. Also, remembering back to when we were working on our house last summer, girls from the other houses were walking to and from 1561 Indus with towels and bathing suits to use the pool.

I hope this information is helpful to your decision making process. We love our new home and want to have a safe, clean and positive environment to live in.

Sincerely,  
Jennifer Haining  
1572 Indus Street

**20172 REDLANDS: STAFF REPORT  
(w/ Attachments 1-6) FOR MARCH 12, 2009  
HEARING**

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

March 12, 2009

Agenda Item 5

**TO:** Thomas W. Allen, Hearing Officer

**SUBJECT:** Yellowstone First Step House, Inc. (PA2008-108)  
20172 Redlands Drive

- Use Permit No. 2008-037
- Reasonable Accommodation No. 2009-07

**APPLICANT:** Yellowstone First Step House, Inc.  
Isaac R. Zfaty, Attorney

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

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**PROJECT SUMMARY**

A use permit application to allow the continued operation of an existing unlicensed adult residential care facility providing a sober living environment with a total occupancy of 17 persons. 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 reopen the 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 with prejudice subject to the findings discussed in this report, and direct staff to prepare a resolution to deny with prejudice Use Permit No. 2008-037.
2. Deny the request for reasonable accommodation for the residents of the facility to be treated as a single housekeeping unit based on the information discussed in this staff report.
3. If the Hearing Officer decides to grant a use permit 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 denial of the requested accommodation based on the information discussed in this staff report.
4. Deny the request for reasonable accommodation for an exemption of the application filing fee requirement, based on the information and findings discussed in this staff report.

### **INTRODUCTION**

On February 20, 2009, the Hearing Officer conducted the public hearing for Use Permit No. 2008-037, taking testimony from staff, the applicant and members of the public. At the conclusion of the hearing, the Hearing Officer concurred with staff's recommendation to approve the use permit with a reduced occupancy subject to the findings in the staff report (Attachment 5), and directed staff to prepare a resolution for approval of Use Permit No. 2008-037. The hearing was continued to March 12, 2009, to take action on the application for Reasonable Accommodation No. 2009-07.

Following testimony by the applicant at the February 20 hearing which characterized the existing sober living use as an established nonconforming use of the property, staff conducted further investigation into the circumstances and laws applicable at the time the facility was established while under the jurisdiction of the County of Orange. Based on information provided by the County, staff believes not all of the findings required to approve the use permit can be made. Therefore, staff recommends the Hearing Officer reopen the hearing as to whether a use permit at this location should be granted, reconsider the decision to approve the use permit, and deny Use Permit No. 2008-037 for the reasons stated below.

### **BACKGROUND**

The subject property is located in an area referred to as West Santa Ana Heights, which was annexed into the City of Newport Beach effective January 1, 2008. Prior to annexation, West Santa Ana Heights was an unincorporated area under the jurisdiction

of the County of Orange. The subject property was located in the Santa Ana Heights Specific Plan area and zoned Residential-Single Family (RSF).

According to information submitted to the City by the applicant, the use of the single family dwelling located at 20172 Redlands Drive as a sober living facility use was established in 2005. When the use changed from that of a single family dwelling to a sober living facility, it was subject to any land use regulations the County of Orange placed on such uses at that time.<sup>1</sup> County of Orange Planning Department and Code Enforcement staff informed the City that a sober living use would have been classified as either a community care facility or a congregate care facility.

Applicable Land Use Regulations:

The Santa Ana Heights Specific Plan was adopted by the County in October 1986 and was last revised by the County in 2001. Portions of the Specific Plan are attached as Attachment 1. The property located at 20172 Redlands Drive was zoned RSF. Principal uses permitted in the RSF district under the Specific Plan are as follows:

1. Single family detached dwellings or single family mobile homes
2. **Community care facilities serving six (6) or fewer persons and large family day care homes.**
3. Parks, playgrounds, and athletic fields.
4. Riding and hiking trails.

A number of additional principal uses not relevant to this analysis, such as communication transmitting facilities, fire and police stations, and churches, were permitted with a use permit or site development permit. Temporary uses and accessory uses were also allowed, some of which required a use permit. All other uses were prohibited.

In addition, the Specific Plan provided, "The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150: Any other use which the Planning Commission finds consistent with the purpose and intent of this district."

At the time property located at 20172 Redlands Drive was established as a sober living facility, the County of Orange's Zoning Code definition of community care facility was *"Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically*

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<sup>1</sup> A change of occupancy for purposes of the California Building Code (CBC) also occurred when the use changed, and to operate legally the structure was required to conform with any CBC requirements for the occupancy type created.

*handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes."*

A congregate care facility was defined as: *"A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility. Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above."*

Definitions from the May 2002 version of the County of Orange Zoning Code (in effect in 2005) are attached as Attachment 2.

Section 7-9-141 of the County's 2002 comprehensive Zoning Code further discussed requirements for community care facilities. That section provided:

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling or purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

The closest classification provided in County regulations for the unlicensed facility located at 20172 Redlands Drive appears to be a community care facility. Therefore, if the operators established and maintained the facility with a bed count of six or fewer, it was a permitted use and thus legally established at that occupancy level at that location. If the operator obtained a use permit from the County Planning Commission for seven to 12 residents under the provision of the Specific Plan "other uses which the Planning Commission finds consistent with the purpose and intent of this district," it would also have been a lawfully established use.

However, the applicant has never indicated to the City that the facility was a community care facility housing six or fewer clients at any time, and there is evidence that more than six residents were housed at the facility in 2005 (see below). There are no County records of a use permit being issued for this address, although County Planning employees conducted a thorough search of their records at the request of City staff. Even if a use permit had been applied for, it is unlikely the County would have granted a

use permit for the 17 beds as currently requested by the applicant because the County Zoning Code granted the Planning Commission the authority to approve use permits for up to 12 beds for community care facilities. The County of Orange Planning Commission did not have the authority to grant use permits for a community care facility housing more than 12 beds.

Records obtained from the County of Orange indicate that in 2005, Yellowstone Recovery attempted to obtain County sober living certification at 20172 Redlands Drive (Attachment 3). Notes in a County activity report indicate that on September 20, 2005, an annual fire inspection was performed, and that the house was "set up for 15 beds."

On February 25, 2009, City staff spoke with Lt. Len Nearing of the Orange County Sheriff's Department. Lt. Nearing is the current coordinator of the County's sober living certification program, run through the Orange County Sheriff's Department. Lt. Nearing stated that the certification program relied on the local jurisdictions to inspect the physical setting of a sober living facility, and confirm that the facility's building and grounds meet the requirements for a County certified program. (Most of the requirements are related to the physical conditions on the property, but one requirement is "conformance with all locally applicable and regularly enforced zoning regulations.") Lt. Nearing's assistant, Margo Grise added that in the case of the facilities under County jurisdiction, County code enforcement personnel would conduct "the SI." The County certification program relies on the Special Investigation reports it receives from the local jurisdictions, and does not require further proof of land use compliance.

Of the 26 sober living homes certified by the County, none are located in Newport Beach or Santa Ana Heights, and none of the Yellowstone addresses in Newport Beach hold current County certification. At one time, Ms. Grise indicated, one of the Yellowstone facilities held certification, but dropped out of the certification program.

## **CONCLUSION**

Based on the above information, it appears the facility located at 20172 Redlands Drive was operating as a sober living facility with more than six beds without the approval of a use permit issued by the County Planning Commission; and therefore, is not a legally established use.

NBMC Section 20.91A.060 Finding A requires that the use conform of all applicable provisions of Section 20.91A.050, including items b and h, as follows:

- b. Facility must comply with state and local law, and the submitted management plan, including any modifications required by this use permit.
- h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

If in fact the facility was established in 2005 as a sober living facility with an occupancy greater than six beds, it did not comply with local law at that time because the operator had not obtained approval of a use permit from the Orange County Planning Commission. Review of County records document that a second facility operated by the applicant located at 1571 Pegasus Drive was also operating as a sober living facility (Attachment 4) with an occupancy greater than six beds without approval of a use permit. This evidence supports a conclusion that the applicant has demonstrated a pattern of operating similar facilities in violation of County law. Therefore, NBMC Section 20.91A.060 Finding A cannot be made.

Staff believes there is substantial doubt whether the Yellowstone facilities are qualified to apply for and receive a use permit under NBMC Section 20.62.030 (Determination of Nonconformity). Subsection B of NBMC Section 20.62.030 provides that a use that was lawfully established under the laws in place at the time, but that no longer conforms to the use regulations or required conditions for the district in which it was located because of annexation to the City, shall be deemed to be a nonconforming use. However, *"a use shall not be considered to have been 'lawfully established and maintained' and is an illegal use if it was established or operated without required permits and licenses, including but not limited to permits and licenses required by any federal, state, or local government agency"* (italics added). Pursuant to NBMC Section 20.91A.020, persons whose use of their property in a residential district was rendered nonconforming by the adoption of Ordinance No. 2008-05 are qualified to seek a use permit to continue the use in its current location. There is no similar provision for illegal uses. Staff believes the facility located at 20172 Redlands Drive could be more accurately characterized as an illegal use than a nonconforming use as described by NBMC Section 20.62.030 (B).

## **APPLICATIONS FOR REASONABLE ACCOMMODATION**

### **BACKGROUND**

The background of the applicant's requests for reasonable accommodation is summarized in the February 20, 2009 staff report, attached to this report for reference (Attachment 5). The specific accommodations requested by the applicant are:

1. That the residents of the Yellowstone facility at 20172 Redlands Drive 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; and

3. An exemption from the City's requirement that all use permit applicants pay a use permit application deposit fee to permit cost recovery by the City. (NBMC Chapter 3.36 and NBMC Section 20.90.030)

### **DISCUSSION**

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits 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 provided a separate analysis of each specific accommodation request in the February 20 staff report, and will continue to follow that format.*

### **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 that its facility be treated as a Single Housekeeping Unit, as that term is defined in NBMC Section 20.03.030. Staff fully analyzed this request in the February 20 staff report and recommended denial of the request. The denial recommendation was based on the grounds that the accommodation requested was broader than necessary to afford disabled individuals an opportunity to reside in the housing of their choice, and that the request was not reasonable because it would fundamentally alter the nature of this portion of the zoning program, and undermine its basic purpose. For a more in-depth analysis and findings, please see the February 20, 2009, staff report.

basic purpose. For a more in-depth analysis and findings, please see the February 20, 2009, staff report.

### **SUMMARY**

With regard to the applicant's request to provide reasonable accommodation that treats the facility as a Single Housekeeping Unit, two of the five required findings 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.

At the February 20 hearing, staff had recommended that a use permit be granted for this facility. Because of new information gathered as a result of testimony by the applicant at the February 20 hearing, staff now recommends that the use permit for this facility be denied. If there is no use permit granted for this facility, an exemption from the occupancy restrictions the use permit would have imposed does not need to be analyzed.

In the event the Hearing Officer decides to grant a use permit to this facility, however, staff makes the following analysis and findings.

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 Street) has 12 residents in five bedrooms; another facility has 17 beds in six bedrooms (20172 Redlands Drive), and the other two (1621 Indus Street, and 1571 Pegasus Street) have 18 residents in six bedrooms. Under the operating standards of NBMC Section 20.91A.050(C)(2), a use permit issued this facility would be limited to no more than 13 residents. The applicant requests an exemption from this requirement that will allow the facility to continue at its current occupancy level.

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

As to prospective residents of the facility, the applicant's counsel states that the accommodation is necessary because the prospective residents of this facility also have financial constraints caused by their disability, and would be unable to afford to rent a dwelling if the additional beds at this facility 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 designated 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:*

This finding can be made. If a use permit is issued for this facility without the requested accommodation, five current residents of this facility 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 those individuals to remain in the dwelling for the remainder of their temporary stay, providing

them with the opportunity to continue to live in their current dwelling for the necessary limited period of time.

*As to prospective residents:*

This finding cannot be made. Applicant states that it charges monthly fees on a sliding scale based on ability to pay, and that this is a needed service 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 five beds to this facility could afford five additional disabled individuals 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 *Giebler 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 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:* If the use permit is granted and the accommodation is denied, five residents will be displaced from their temporary home.

*As to prospective residents:* The applicant has not submitted information on whether this facility is currently occupied at full capacity, or whether there is a waiting list of potential residents.

- 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 repeatedly, the applicant did not submit specific evidence such as mortgage statements or utility bill by the date this report was prepared. Therefore, staff has performed a financial needs analysis based on the information supplied by the applicant, and other information publicly available on the applicant's website.

The applicant states that in general, its weekly fees are based on a sliding scale from \$50 to \$160 per week, with an average rent of \$100 per resident per week. With 16 residents (the number of resident clients; facility managers do not appear to pay rent) the applicant reports the average monthly income from each house is \$6,400.

The average monthly expense for each house is reported by the applicant to be around \$6,200, with an average mortgage of \$4,500/month, \$800/month for utilities (electricity, gas, trash service, water and phone) and \$900/month for food (the May 20, 2008 reasonable accommodation application states that residents are responsible for their own meals; the \$900 may represent basic supplies.)

Applicant reports an average monthly expense of \$6,200, leaving only a \$200 monthly profit. Applicant has stated that it relies on contributions from the community to keep it from operating at a loss.

The applicant's statement was not supported by requested documentation (bills, etc. requested by staff), and was not signed under penalty of perjury. Yellowstone's own website indicates that income and expense calculations may be inaccurate. The website's "Our Fees" page (dated 2008) states that fees for sober living are \$160 - \$180 per week. Using the applicant's own reporting formula, this represents an average of \$170 per resident per week. With 16 paying residents (resident staff may not be paying rent), this would result in an average monthly income per house of \$10,880. If the reported average expense of \$6,200 is accurate, each facility housing 16 residents generates a monthly profit of \$4,680. (\$56,160 per year for each house of the three with 16 residents; or an estimated \$168,480 total for the three facilities located at 1621 Indus Street, 1571 Pegasus Street, and 20172 Redlands Drive.)

For the facilities currently housing 16 paying residents, if the resident count were reduced to 11 paying residents (of the maximum 13 occupants permitted under the operating standards, two are Yellowstone staff), the monthly income would be \$7,480. Without knowledge of the actual mortgage and utility costs, staff cannot say whether this facility would actually operate at a monthly profit of approximately \$1,280, or approximately \$15,360 per year (\$46,080 total for three facilities currently housing 16 residents each), but this profit range seems sufficient for a non-profit that raises funds from the community to keep from operating at a loss. Therefore, staff does not agree with the applicant's contention that it needs 15 residents at each facility to be financially viable. The facilities do not appear to need residents in excess of the number allowed under the operational standards to be financially viable under the business model the applicant has described.

Several of the homes are owned by the applicant's CEO and/or her husband and leased to the applicant. The average monthly mortgage for each house that the CEO has reported appears to be more than covered by the fees which residents pay to the applicant. Additionally, extended operation of the homes with 15 or 16 residents at the rental rate reported on Yellowstone's website appears to result in the CEO's eventual full ownership of several homes and a significant annual profit for the applicant.

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 approximately 315 sober living beds in the city. (This estimate does not include the up to 213 ADP-licensed residential beds in the City.) 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 by annexation. 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. However, many of these alternate sober living beds are probably not offered on a sliding fee scale based on ability to pay.

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:*

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 this facility to complete their stay at the facility. Upon their 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:*

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 the applicant is requesting similar accommodations at additional facilities.

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 six months to one year. It does not fundamentally undermine the nature of the City's zoning program to allow five of the current residents of this facility to complete their stay. Upon their departure, the facility's bed count would 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. The City Council adopted these regulations 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 for which staff recommended approval at the February 20 hearing, and each facility receives the reasonable accommodation requested here, the extra 10 individuals could trigger an overconcentration that contributes even further to the change in the character of the neighborhood. This could create a quasi-institutional environment within the neighborhood that 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 that it would adversely affect persons with disabilities and 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 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 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 the applicant is located) However, the petition was countered by letters, emails and phone calls from neighbors that reported increasing negative secondary impacts on the neighborhood as the applicant established more facilities there 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
- 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.)

- 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 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." (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 their impact 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 negative impacts its facilities have 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 alumnae 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 1561 Indus Street. Only the two resident managers may have vehicles in the neighborhood, which must be parked on-site.

vehicles are no longer allowed at 1561 Indus Street. Only the two resident managers may have vehicles in the neighborhood, which must be parked on-site.

Letters and public testimony from facility neighbors indicate this may not be the case.

*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 non-staff facility residents were not permitted to have personal vehicles at the property. The use permit application also stated that no residents except the two resident managers have personal vehicles which they park onsite. 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 and testimony from the public say that meetings occur and that parking is impacted, but do not indicate which of the facilities hold meetings.

**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 17-bed residential care facility would generate approximately 46.58 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

## **RECOMMENDATION**

The applicant has requested that this facility 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 can be made as to the current residents of this facility. 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 as to prospective residents.

If the Hearing Officer denies the use permit at this facility, staff recommends that this reasonable accommodation request be denied as unnecessary; the occupancy restrictions are tied to the use permit operating conditions.

If the Hearing Officer decides to grant the use permit which staff recommended at the February 20 hearing, staff recommends that the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach, and members of the public. At the conclusion of the hearing, if the Hearing Officer plans to approve a use permit with conditions of approval, staff recommends that the Hearing Officer grant the reasonable accommodation request as to current residents only, and deny the reasonable accommodation request as to prospective residents.

### **Reasonable Accommodation Analysis No. 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 permit 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 No. 2, Finding 2 (C).

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.

However, based on the general summary of average expenses for each facility submitted by the applicant for the February 20 hearing, and the weekly client fee range which the applicant posts on its website, staff's analysis indicates that the applicant should have been able to meet the use permit fee obligation.

The average monthly expense for each house is reported by the applicant to be around \$6,200, with an average mortgage of \$4,500/month, \$800/month for utilities (electricity, gas, trash service, water and phone) and \$900/month for food (the May 20, 2008 reasonable accommodation application states that residents are responsible for their own meals; the \$900 may represent basic supplies.) Applicant reports an average monthly expense of \$6,200, leaving only a \$200 monthly profit. Applicant has stated that it relies on contributions from the community to keep it from operating at a loss.

The applicant states that in general, its weekly fees are based on a sliding scale from \$50 to \$160 per week, with an average rent of \$100 per resident per week. With 16 residents (the number of resident clients; facility managers do not appear to pay rent) the applicant reports the average monthly income from each house is \$6,400.

The applicant's statement was not supported by requested documentation (bills, etc. requested by staff), and was not signed under penalty of perjury. Yellowstone's own website indicates that income and expense calculations may be inaccurate. The website's "Our Fees" page (dated 2008) states that fees for sober living are \$160 - \$180

per week. Using the applicant's own reporting formula, this represents an average of \$170 per resident per week. With 16 paying residents (resident staff may not be paying rent), this would result in an average monthly income per house of \$10,880. If the reported average expense of \$6,200 is accurate, each facility housing 16 residents generates a monthly profit of \$4,680. (\$56,160 per year for each house of the three with 16 residents; or an estimated \$168,480 total for the three facilities at 1621 Indus Street, 1571 Pegasus Street and 20172 Redlands Drive.)

### **RECOMMENDATION:**

For the foregoing reasons, staff recommends that Reasonable Accommodation Request No. 3 be denied.

### **Environmental Review**

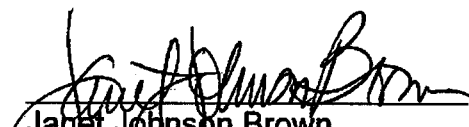
This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. 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.

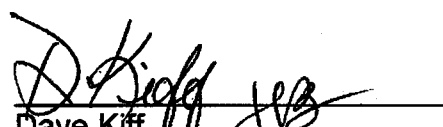
### **Public Notice**

Notice of this Public Hearing was published in the *Daily Pilot*, mailed to property owners and occupants within 300 feet of the project site and posted at the project site a minimum ten (10) days in advance of this Public Hearing consistent with the Newport Beach Municipal Code. In addition, the item appeared on the agenda for this Public Hearing, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

  
Janet Johnson Brown  
Associate Planner

  
Dave Kiff  
Assistant City Manager

**Attachments:**

1. County of Orange Santa Ana Heights Specific Plan
2. County of Orange Zoning Code Definitions
3. County of Orange Records regarding 20172 Redlands Drive
4. County of Orange Records regarding 1571 Pegasus Street
5. February 20, 2009 Staff Report
6. Correspondence Received After February 20, 2009

***Attachment No. 1***  
***County of Orange***  
***Santa Ana Heights Specific Plan***

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**  
*Seventh Amendment*

**PREPARED BY:**

**Environmental & Project Planning Services Division**

**County of Orange**

**Planning & Development Services Department**  
**Tom Mathews, Director**

Adopted October 1986  
1<sup>st</sup> Revised March 1988  
2<sup>nd</sup> Revised December 1989  
3<sup>rd</sup> Revised May 1991  
4<sup>th</sup> Revised August 1996  
5<sup>th</sup> Revised November 1999  
6<sup>th</sup> Revised September 2000  
7<sup>th</sup> Revised January 2001

# SANTA ANA HEIGHTS SPECIFIC PLAN

## 4. RSF "Residential Single Family" District

### a. Purpose and Intent

The RSF District is established to provide for the development and maintenance of medium density single family detached residential neighborhoods. Only those uses are permitted that are complementary to and can exist in harmony with such a residential neighborhood.

### b. Principal Uses Permitted

#### (1) The following principal uses are permitted:

- (a) Single family detached dwellings or single family mobile homes per Zoning Code section 7-9-149.5 (one per building site).
- (b) Community care facilities serving six (6) or fewer persons and large family day care homes.
- (c) Parks, playgrounds, and athletic fields (noncommercial).
- (d) Riding and hiking trails.

#### (2) The following principal uses are permitted subject to the approval of a site development permit per Zoning Code section 7-9-150:

- (a) Communication transmitting, reception, or relay facilities.
- (b) Public/private utility buildings and structures.

#### (3) The following principal uses are permitted subject to the approval of a use permit by the Zoning Administrator per Zoning Code Section 7-9-150:

- (a) Fire and police stations.
- (b) Churches, temples and other places of worship.

#### (4) The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150:

- (a) Any other use which the Planning Commission finds consistent with the purpose and intent of this district.

### c. Temporary Uses Permitted

The following temporary uses only, per Zoning Code section 7-9-136:

- (1) Continued use of an existing building during construction of a new building.
- (2) Mobile home residence during construction.

### d. Accessory Uses Permitted

Accessory uses and structures are permitted when customarily associated with and subordinate to a principal permitted use on the same building site per Zoning Code section 7-9-137, to include:

- (1) Garages and carports.
- (2) Swimming pools.
- (3) Fences and walls.

# SANTA ANA HEIGHTS SPECIFIC PLAN

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(4) Patio covers.</p> <p>(5) Signs per Zoning Code section 7-9-111.</p> <p>(6) Six (6) square feet of sign area maximum unless otherwise provided for by an approved site development permit or use permit.</p> <p>(6) Home occupations per Zoning Code section 7-9-146.5.</p> <p>(6) Noncommercial keeping of pets and animals weighing less than three hundred (300) pounds and not prohibited in section (e), subject to the following standard. Pens, cages, and other structures specifically for the keeping of animals other than in the residence, shall be located at least twenty-five (25) feet from any residential window located on an adjoining building site. Exceptions to the above may be provided for by a use permit approved by the County Zoning Administrator.</p> <p>(7) Non commercial keeping of horses on land immediately adjacent to the Recreation Equestrian District (REQ) provided that no horse shall be permitted on a building site containing less than ten thousand (10,000) square feet of land area and pens, cages, and other structures specifically for the keeping of horse shall be located at least fifty (50) feet from and residential window located on an adjoining building site. One (1) or two (2) adult horses are permitted on a building site containing between ten thousand (10,000) and fifteen thousand (15,000) square feet of land area. One (1) additional adult horse may be kept for each additional ten thousand (10,000) square feet, with a maximum of six (6) horses on any one building site. The offspring of such animals shall be considered adults when eight (8) months old. Exceptions to the above may be provided for by a</p> | <p>use permit approved by the County Zoning Administrator.</p> <p>Any nonconforming use of any property within this zone for the maintenance of pets and animals other than those enumerated in this section shall be terminated within one year of the enactment of this section. In any case in which a building in excess of 600 square feet has been erected pursuant to a validly issued permit for maintenance of pets and animals the amortization period of continuation of such use shall be extended for four additional years.</p> <p>(8) Second living unit, attached or detached, in conformance with Zoning Code Section 7-9-146.5, subject to approval of a use permit.</p> <p>(9) Any other accessory use or structure which the Director, PDSO finds consistent with the purpose and intent of this district.</p> <p>e. Prohibited Uses</p> <p>The following uses are specifically prohibited:</p> <p>(1) All uses not permitted by section b through d above.</p> <p>(2) The storage of vehicles, equipment, or products related to a commercial activity not permitted in this district.</p> <p>(3) The keeping of animals for any commercial purpose unless provided for by an approved use permit.</p> <p>(4) Apiaries.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Land Use District Regulations

IV-14

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**

**f. Site Development Standards**

- (1) Building site area. Seven thousand and two hundred (7,200) square feet minimum except as otherwise identified on the Land Use District map.
- (2) Building height. Thirty-five (35) feet maximum. Roof-mounted mechanical equipment shall not be visible from any existing dwelling unit located three hundred (300) feet or less from the subject building site.
- (3) Building setbacks.
  - (a) Front setback. Twenty (20) feet minimum.
  - (b) Side setback. Five (5) feet minimum.
  - (c) Rear setback. Twenty-five (25) feet minimum.
- (4) Off-street parking. Per Zoning Code section 7-9-145.
- (5) Lighting. All lighting shall be designed and located so that direct light rays are confined to the premises.

**IV-15**

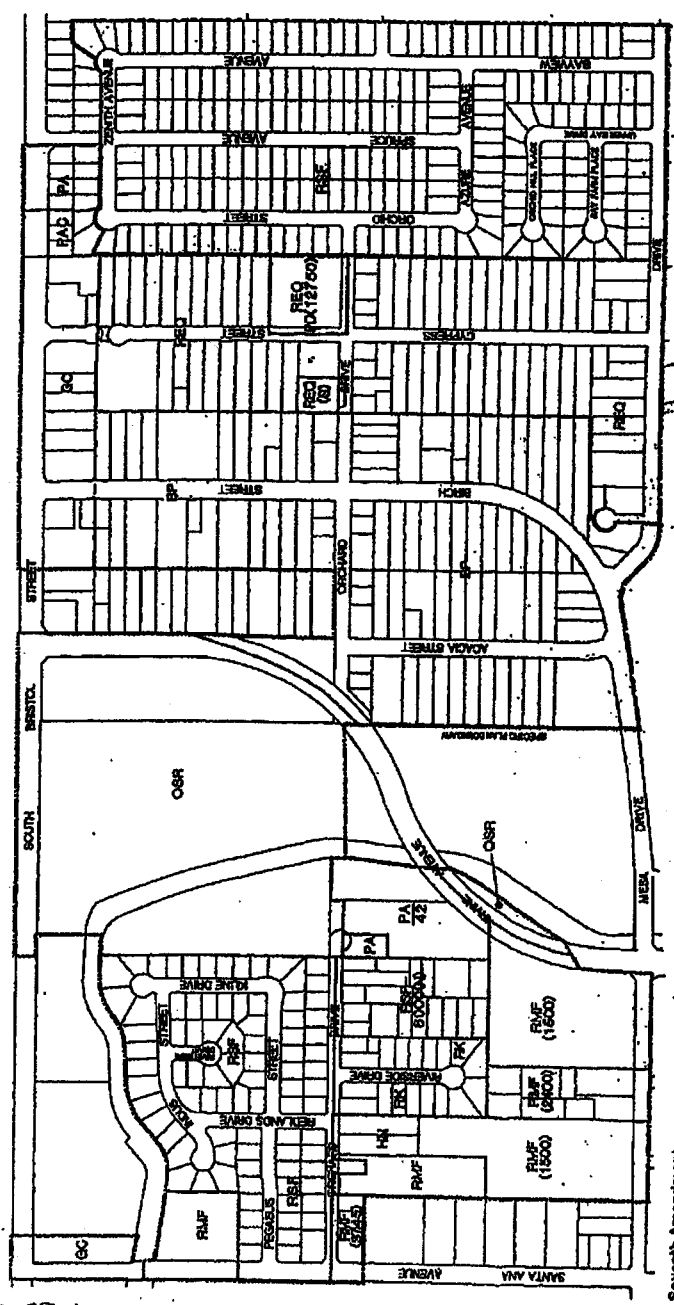
**Land Use District Regulations**

Page 30

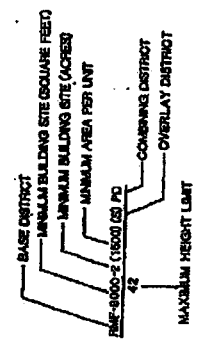
BK 2

Page 36

BK 2



- Seventh Amendment**
- ☐ OSR OPEN SPACE/RECREATION
  - ☐ REC RESIDENTIAL EQUESTRIAN
  - ☐ R2 RESIDENTIAL SINGLE FAMILY
  - ☐ R3 RESIDENTIAL MULTIPLE FAMILY
  - ☐ R4 RESIDENTIAL MULTIPLE FAMILY
  - ☐ R5 RESIDENTIAL MULTIPLE FAMILY
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  - ☐ R99 RESIDENTIAL MULTIPLE FAMILY
  - ☐ R100 RESIDENTIAL MULTIPLE FAMILY
- Zone Change ZC 00-05**
- ☐ GC GENERAL COMMERCIAL
  - ☐ BP BUSINESS PARK
  - ☐ PA PROFESSIONAL AND ADMINISTRATIVE OFFICE
  - ☐ PAC PROFESSIONAL AND ADMINISTRATIVE CONSOLIDATION
  - ☐ PD PLANNED DEVELOPMENT
  - ☐ CD COMMERCIAL STABLE
  - ☐ CN COMMERCIAL NURSERY



# **LAND USE DISTRICT MAP** **SANTA ANA HEIGHTS SPECIFIC PLAN**

ACCEPTED AND FILED AT THE  
 PLANNING AND DEVELOPMENT SERVICES  
 DEPARTMENT  
 ON April 20, 2001  
 BY Thomas B. Matthews  
 DIRECTOR OF PLANNING  
 AND DEVELOPMENT SERVICES  
 DEPARTMENT

WE HEREBY CERTIFY THAT THIS  
 LAND USE DISTRICT MAP  
 WAS APPROVED BY THE ORANGE  
 COUNTY PLANNING COMMISSION IN December, 2000  
 AND ADOPTED BY ORDINANCE NO. 01-01  
 BY THE ORANGE COUNTY BOARD OF SUPERVISORS  
 ON January 23, 2001

***Attachment No. 2***  
***County of Orange***  
***Zoning Code Definitions***

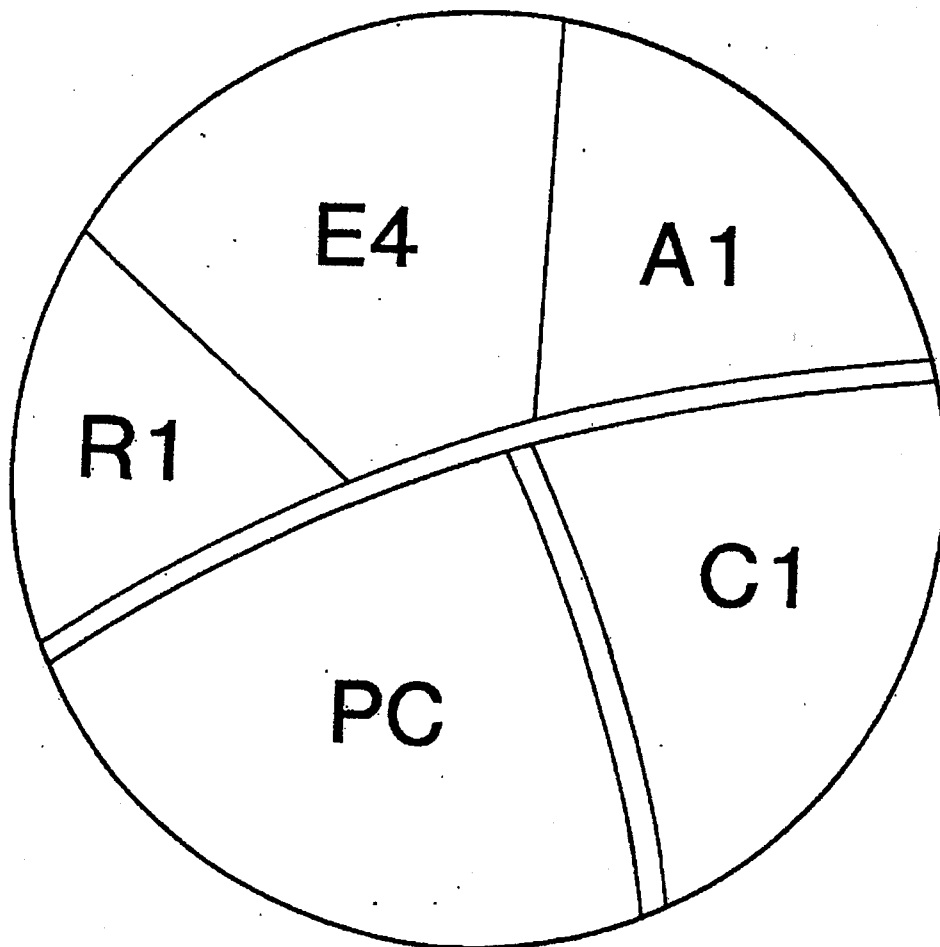


RECEIVED BY  
PLANNING DEPARTMENT  
CITY OF NEWPORT BEACH

MAR 11 2003

AM PM  
7,8,9,10,11,12,1,2,3,4,5,6

# COUNTY OF ORANGE ZONING CODE



Planning and Development Services Department  
May, 2002 Edition

**Community care facility:** Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes.

**Community facility:** A noncommercial use established primarily for the benefit or enjoyment of the population of the community in which it is located.

**Condominium:** An estate consisting of an undivided interest in common in a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an office or store or multifamily dwelling. A condominium may include, in addition, a separate interest in other portions of such real property.

**Congregate care facility:** A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility.

Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above.

**Convalescent home:** A facility licensed by the State Department of Health Services which provides bed and ambulatory care for more than six (6) patients with postoperative convalescent, chronically ill or dietary problems and persons unable to care for themselves; including persons undergoing psychiatric care and treatment both as inpatients and outpatients but not including persons with contagious diseases or afflictions. Also known as nursing home, convalescent hospital, rest home, or home for the aged.

**Conversion project:** An apartment house, multiple or group dwelling existing, under construction or for which building permits have been issued, which is proposed for conversion to a residential condominium, community apartment, residential stock cooperative or planned development; or an existing mobilehome park which is proposed to be converted to a mobilehome condominium project, a mobilehome stock cooperative project, a mobilehome planned development or a conventional mobilehome subdivision.

#### **Sec. 7-9-25. Definitions. (D)**

**Day (care) nursery:** A.k.a. child day care facility and day care center. Any facility operated by a person, corporation or association used primarily for the provision of nonmedical daytime care, training, or education of more than six (6) children under eighteen (18) years of age at any location other than their normal place of residence, excluding any children normally residing on the premises.

**Detached buildings and structures:** Two (2) or more buildings or structures that are each structurally independent and freestanding and not connected by walls, roofs, floors, decks, supports, trellises, architectural features or any other structure, fixture or device that exceeds thirty (30) inches in height above the finished grade.

**Sec. 7-9-141. Community Care Facilities.**

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling for purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.1. Reserved.**

**Sec. 7-9-141.2. Child care facilities/day care nurseries.**

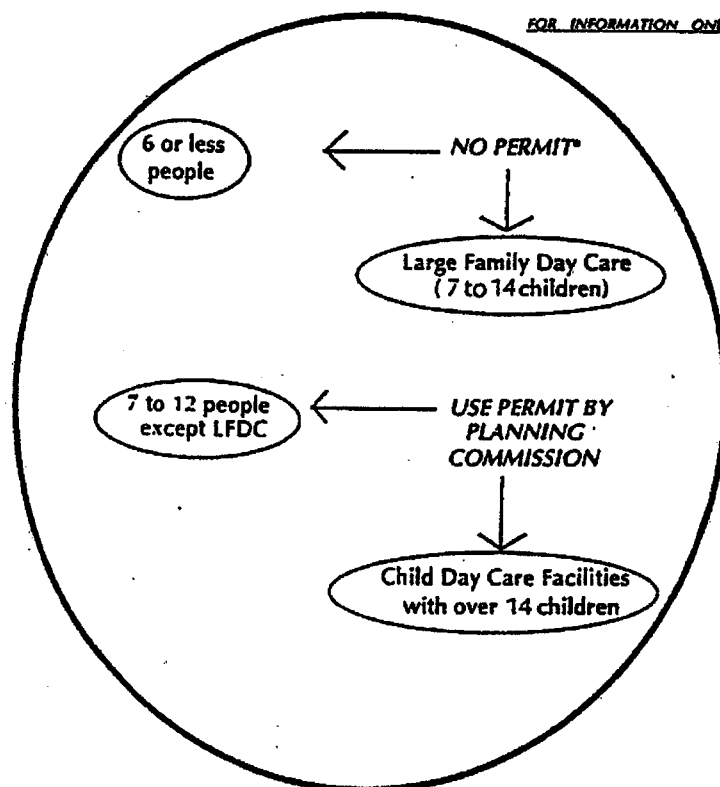
Child day care facilities/day care nurseries serving more than fourteen (14) persons may be permitted in any district, planned community or specific plan area (except in designated airport accident potential zones) where this use is not otherwise identified as a permitted use, subject to the approval of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.3. Reserved.**

**COMMUNITY CARE FACILITIES**

Sec. 7 - 9 - 141 - 141.2

FOR INFORMATION ONLY



*\*NOTE: No permit beyond that required for a single-family dwelling.*

**Sec. 7-9-142. Congregate Care Facilities.**

- (a) A congregate care facility serving six (6) or fewer persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single-family dwelling for purposes of zoning and land use regulations.
- (b) A congregate care facility serving seven (7) to twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission pursuant to section 7-9-150. A congregate care facility shall;
  - (1) Demonstrate compatibility with adjacent development;
  - (2) Provide adequate on site parking for residents and staff;
  - (3) Provide adequate screening of the facility by landscaping and/or fencing; and,
  - (4) Limit signage and lighting.
- (c) A congregate care facility serving more than twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for either multifamily residential or hotels subject to the approval of a use permit by the Planning Commission pursuant to section 7-9-150.
- (d) Equivalent dwelling unit counts for congregate care facilities shall be determined by the following table. The consequent unit counts are to be subtracted from the total number of allowed dwelling units for a planned community or specific plan area, and will also determine consistency with area per dwelling unit zoning limitations.

| Configuration                  | Dwelling Unit Counts |
|--------------------------------|----------------------|
| 2 or more bedrooms in the unit | 1 dwelling           |
| 1 bedroom in the unit          | .5 dwelling          |
| 0 bedroom in the unit          | .25 dwelling         |
| Medical care rooms             | 0 dwelling           |

Density bonuses may be granted to congregate care facilities in residentially-zoned areas in the same manner that they may be granted to standard residential projects per the Housing Element.

***Attachment No. 3***  
***County of Orange***  
***Records Regarding 20172 Redlands Drive***

## Activity Report for Permit Number SI050059

## ACCOUNT

Created: 09/13/2005

Status: CLOSED

Status Updated: 05/06/2008

Status Updated By: Ramon Kmpo

## APPLICANT/FRP

Yellowstone Women's Recovery of California

1571 Pegasus

Santa Ana, CA 92627

Phone: 949-646-4494

## SITE

Tract: 4307 36 TR Lot(s): null

20172 REDLANDS DR NEWPORT  
BEACH

Permit Description: SI for sober living certification, refer to CE050237, certification to be on an annual basis

| Post Date  | Type    | Work Description                                                                                                               | Work Date  | Name                                       | Hours  | Title (Hourly Rate)                  | Amount   | Balance  |
|------------|---------|--------------------------------------------------------------------------------------------------------------------------------|------------|--------------------------------------------|--------|--------------------------------------|----------|----------|
| 09/13/2005 | Deposit | Initial Deposit                                                                                                                |            | Yellowstone Women's Recovery of            |        |                                      | \$450.00 | \$450.00 |
| 09/13/2005 | Charge  | Permit Issuance Charge                                                                                                         |            | Cooke Earl                                 |        |                                      | \$15.00  | \$435.00 |
| 09/20/2005 | Charge  | 965. Supervisor admin timecharge                                                                                               | 09/20/2005 | Mike Powell                                | 0.0952 | Building Inspector IV (\$143.25)     | \$13.64  | \$421.36 |
| 09/20/2005 | Charge  | 965. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                                                | 09/20/2005 | Don Parker                                 | 1.0000 | Building Inspector IV (\$143.25)     | \$143.25 | \$278.11 |
| 09/20/2005 | Charge  | 965. Travel timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                             | 09/20/2005 | Don Parker                                 | 0.1333 | Building Inspector IV (\$143.25)     | \$19.10  | \$259.01 |
| 09/20/2005 | Charge  | 965. Admin timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.                                              | 09/20/2005 | Don Parker                                 | 0.1500 | Building Inspector IV (\$143.25)     | \$21.49  | \$237.52 |
| 11/14/2005 | Charge  | Initiate SI                                                                                                                    | 09/13/2005 | John Powers                                | 0.4667 | Staff Specialist (\$105.95)          | \$49.45  | \$188.07 |
| 04/29/2008 | Charge  | ADMIN Admin timecharge. Reviews of open permit. This inspection was completed and approved on 9/20/05. Please final and close. | 04/29/2008 | Don Parker                                 | 0.2500 | Building Inspector IV (\$154.66)     | \$38.67  | \$149.40 |
| 04/29/2008 | Charge  | PF Admin timecharge. Close out SI Sober Living Permit                                                                          | 04/29/2008 | Allan Metz                                 | 0.7333 | Administrative Manager II (\$201.26) | \$147.58 | \$1.82   |
| 05/06/2008 | Refund  | Automatic Refund Transfer: Request for check forwarded to A/C on 05/06/08                                                      |            | Yellowstone Women's Recovery of California |        |                                      | \$1.82   | \$0.00   |
|            |         |                                                                                                                                |            | Total Hours                                | 2.8285 |                                      | Balance  | \$0.00   |

|             |          |
|-------------|----------|
| Deposits    | \$450.00 |
| Charges     | \$448.18 |
| Refunds     | \$1.82   |
| Adjustments | \$0.00   |
| Balance     | \$0.00   |

## Notes

O.T. - Overtime

E.O.T. - Extraordinary Overtime

E.O.T.\* - Extraordinary Overtime (Flat Fee Permit)

***Attachment No. 4***  
***County of Orange***  
***Records Regarding 1571 Pegasus Street***



February 1, 2006

Mr. Martin Angel  
County of Orange Planning & Development

Re: SI 060004-1571 Pegasus, Santa Ana Heights, Ca.

Mr. Angel,

Per Laurie's request I am requesting an SI Permit for a 18 bed sober living home located at 1571 Pegasus, Santa Ana Heights, this is a renewal of SI 1040097.

I have enclosed a copy information application.

Please advice at your earliest convenience when I can pick up permit and schedule inspection.

Thank you,

A handwritten signature in cursive script that reads "Leisha Mello".

Leisha Mello  
Administrative Coordinator

(949) 678-0761

2-1-06

154 East Bay Street ■ Costa Mesa, CA 92627 Tel. (949) 646-4494 ■ Fax (949) 646-5296 ■ (800) 941-9048

20

Feb 22 06 04:37



***Attachment No. 5***  
***Staff Report dated February 20, 2009***

***Attachment No. 6***  
***Correspondence Received After February 20, 2009***

**Brown, Janet**

---

**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Thursday, March 05, 2009 9:26 AM  
**To:** Brown, Janet  
**Subject:** 1561 Indus Street - Sober Home

Dear Janet,

The sober living home next door to our house habitually leaves their garbage cans out after trash day. Yesterday was our trash pick up and this morning, as of ten to nine when I left for work, their cans were still in front of their house. This is not unusual, as it is common for them to leave them out until late Thursday, or even into Friday. They used to place their cans in front of our house, but as one of our neighbors brought it up at the last city meeting, and after we talked to one of Yellowstone's representatives on 3 different occasions, they are finally placing them in front of their own property.

Can something be done about this?

Thank you for your time,

Jennifer Haining

**Brown, Janet**

---

**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Monday, March 09, 2009 1:52 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian; Kiff, Dave; Wolcott, Cathy; Kappeler, John  
**Subject:** RE: Sober Living Homes

Dear Ms. Brown,

Thank you for your quick reply. I know my husband plans on attending the meeting this Thursday. I also wanted to mention that yes, we were aware that 1561 Indus was a sober living home when we purchased our house (although we did not know the other sober living house we share a fence with on Pegasus was, nor were we made aware of the other house on Indus). However, when we found our house and purchased it, 1561 Indus was on the market as well. We anticipated that it would be sold to a family and there would no longer be a business operating next to us. We have nothing against the sober living houses or their occupants, but it is a business operating next to us (though I understand this may be a matter of opinion) and therefore has issues we would rather not have to deal with in a single family residential neighborhood.

Sincerely,  
Jennifer Haining  
1572 Indus Street

---

**Subject:** RE: Sober Living Homes  
**Date:** Mon, 9 Mar 2009 13:25:07 -0700  
**From:** [JBrown@city.newport-beach.ca.us](mailto:JBrown@city.newport-beach.ca.us)  
**To:** [jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)  
**CC:** [BContino@city.newport-beach.ca.us](mailto:BContino@city.newport-beach.ca.us); [DKiff@city.newport-beach.ca.us](mailto:DKiff@city.newport-beach.ca.us); [CWolcott@city.newport-beach.ca.us](mailto:CWolcott@city.newport-beach.ca.us); [JKappeler@city.newport-beach.ca.us](mailto:JKappeler@city.newport-beach.ca.us)

Dear Ms. Haining.

Thank you for your e-mail. This information will be made a part of the record for the Yellowstone public hearings. In addition, I have requested the Code Enforcement Officer assigned to this area to look into code violations that may be occurring.

The public hearing for the applications submitted by Yellowstone was continued to this Thursday, March 12, at 4:00 p.m. The meeting will take place in the City Council Chambers (same location as the February 20<sup>th</sup> meeting).

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

---

**From:** Jenn Haining [mailto:[jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)]  
**Sent:** Monday, March 09, 2009 1:09 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian  
**Subject:** Sober Living Homes

Dear Janet,

My husband attended the last city meeting addressing the potential closures of the Yellowstone sober

houses. I am writing to you now because my husband and I became aware at this meeting, of certain policies the occupants of the sober living homes are supposed to be abiding by. We bought our house last April and just moved in December 20, 2008. In the short time we have lived here, it seems that they have been in constant violation of a lot of the policies set forth by the city. As we were unaware of these policies until recently, we have not complained or kept track of their activities.

In the past week or so however, we have been more vigilant about noticing things they may be in violation of. The following are some of these things:

1. I believe it was the weekend before last, I was letting my dog out and could hear someone on the phone at the Pegasus house which backs up to our property. They appeared to be angry and used foul language.
2. Both of these properties frequently have their trash cans out after trash day for up to one to two days.
3. People are frequently coming or going after hours, easily past 11pm. We have heard loud cars racing from the house and one night/early morning someone honking their horn.
4. People appear to be in the house during hours when this is prohibited. I come home for lunch at 2pm and often see people being dropped off and/or picked up.
5. There are often different cars in the driveway that do not appear to be the house mothers.
6. Yesterday, while out tending to my roses in the front yard, I could smell cigarette smoke coming from the 1561 Indus property.

These are just a few of the things we have noted. Not only that, but in reading some of the information they put forth in their applications, it appears as though the attorney was misinformed or not being truthful. The men's house on Redlands, up until recently, was having weekly Tuesday meetings in which it was obvious that a large number of men, that were not occupants, were attending. It brought in quite a bit of car and foot traffic. Also, remembering back to when we were working on our house last summer, girls from the other houses were walking to and from 1561 Indus with towels and bathing suits to use the pool.

I hope this information is helpful to your decision making process. We love our new home and want to have a safe, clean and positive environment to live in.

Sincerely,  
Jennifer Haining  
1572 Indus Street

# **TRANSCRIPT OF MARCH 12, 2009 HEARING**

**CERTIFIED COPY**

PUBLIC HEARING ON  
OCEAN RECOVERY, INC.

and

YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC.  
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER

NEWPORT BEACH, CALIFORNIA

THURSDAY, MARCH 12, 2009

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Public hearing was taken on behalf of  
the City of Newport Beach at 3300 Newport Boulevard,  
Newport Beach, California, beginning at 4:00 p.m., and  
ending at 6:16 p.m., on Thursday, March 12, 2009, before  
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.  
9266.

1 APPEARANCES:

2  
3 For The City of Newport Beach:

4 RICHARDS, WATSON, GERSHON  
5 BY: PATRICK K. BOBKO, ESQ.  
6 355 S. Grand Avenue, 40th Floor  
7 Los Angeles, CA 90071-3101  
8 (213) 626-8484

9 CITY OF NEWPORT BEACH  
10 BY: CATHY WOLCOTT, DEPUTY CITY ATTORNEY  
11 DAVE KIFF, Assistant City Manager  
12 JANET JOHNSON BROWN, Associate Planner  
13 NOELANI MIDDENWAY, Assistant City Clerk  
14 3300 Newport Boulevard  
15 Newport Beach, CA 92658-8915  
16 (949) 644-3002

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

18 DAVIS, ZFATY  
19 BY: ISAAC R. ZFATY, ESQ.  
20 580 Broadway Street, Suite 301  
21 Laguna Beach, CA 92651  
22 (949) 376-2828  
23  
24  
25

**LAWYER'S NOTES**

[illegible]

1 NEWPORT BEACH, CALIFORNIA; THURSDAY, MARCH 12, 2009

2 4:00 P.M. - 6:16 P.M.

3  
4 MR. ALLEN: We'll open the hearing again.  
5 Let's see. My name is Thomas W. Allen, and I've been  
6 designated by the City as the Hearing Examiner for the  
7 matters that are before us today.

8 We have four continued hearings from a  
9 previously meeting, all involving the Heights area and  
10 Yellowstone. The addresses are 1561 and 1621 Indus,  
11 20172 Redlands, and 1571 Pegasus. And as I indicated,  
12 Yellowstone Recovery is the Applicant in each of these  
13 instances.

14 The City staff has requested that we reopen the  
15 hearings on all of these, that is, the use permit  
16 hearings on the basis of later discovered information.  
17 The staff will explain that in more detail.

18 But basically, the contention is that the four  
19 units that were acted upon at the previous meeting were  
20 not lawfully established at the time they were annexed  
21 into the City, and, therefore, they don't qualify for use  
22 permits.

23 However, before going any further with those, I  
24 need to step back in the agenda for the purpose of the  
25 adoption of Resolution Number One, Resolution of Approval

1 for Ocean Recovery. And this is not a public hearing.  
2 It's simply an administrative action. So the Hearing  
3 Officer hereby adopts the Resolution.

4 MR. KIFF: Actually, Mr. Allen, it's 2009-003.  
5 That's the number that it would be assigned.

6 MR. ALLEN: Thank you. So I hereby adopt  
7 Resolution Number 2009-003 Resolution of Approval for  
8 Ocean Recovery at 1601 Balboa Boulevard.

9 And then back to the Indus matters. I think I  
10 gave a sufficient opening.

11 MR. KIFF: We'll have you sign that now.  
12 Sorry. I didn't mean to interrupt.

13 MR. ALLEN: And we can proceed with the initial  
14 staff report on the Yellowstone matters. And as we do at  
15 the previous meeting, we'll open consideration of all  
16 four of these together, simply because they are all the  
17 same Applicant and virtually identical, unless staff  
18 disagrees with that approach?

19 MR. KIFF: We agree.

20 MR. ALLEN: So let's proceed in that fashion.

21 MR. KIFF: Okay. Thank you.

22 Mr. Allen, just as a reminder, as you noted,  
23 this is a public hearing item per our ordinance on group  
24 residential uses involving four facilities in West Santa  
25 Ana Heights.

1           We did do a presentation. There is a staff  
2 report available at the table out front of our  
3 presentation, generally, at the last meeting. I'll let  
4 Janet Brown explain some of the additional information  
5 evaluated in between the last meeting and this meeting.

6           MS. BROWN: Thank you, and good afternoon.

7           I am going to take a couple of moments to just  
8 recap what occurred at the February 20th hearing. At  
9 that hearing, staff recommended that the Hearing Officer  
10 approve the use permits with operational conditions for  
11 the Redlands property and the property located at 1621  
12 Indus to allow the sober living facilities to continue  
13 operating with the reduced occupancy of 15 beds.

14           Staff also recommended denial of the use  
15 permits for the properties located on Pegasus Street and  
16 at 1561 Indus. Our recommendations were based on  
17 documentation that had been provided by the Applicant and  
18 information that was available to us at the time that the  
19 reports were written.

20           We noted at that hearing that there might be  
21 new information introduced that may require further  
22 evaluation by staff and the Hearing Officer to help us  
23 determine whether or not our recommendations were  
24 correct.

25           At the conclusion of the hearing, the Hearing

1 Officer concurred with staff recommendation and  
2 determined, based on the information provided, that the  
3 Pegasus property and the 1561 Indus property be closed,  
4 and that the Redlands property and the 1621 Indus  
5 property continue to operate a sober living facility.

6 Staff was directed to prepare the appropriate  
7 Resolutions, and the hearing was continued for action to  
8 March 12th.

9 Due to testimony provided by the Applicant's  
10 Counsel and new information that is provided in this  
11 latest staff report, staff recommends that the hearing  
12 for the use permit be reopened. During the February 20th  
13 hearing, the Applicant's Counsel made an argument that  
14 had never been raised during the prior discussions with  
15 staff during the past nine months that we had worked with  
16 he and his clients to bring the applications to the point  
17 of completeness.

18 At the hearing, the Applicant's Counsel  
19 characterized the Yellowstone facilities as established  
20 non-conforming uses, and cited a number of California  
21 cases that held that established uses generally retain  
22 the same rights they had before the law was changed.

23 In response to this argument, staff conducted  
24 an investigation into the circumstances and laws that  
25 were applicable to the properties at the time the uses

1 were established in 2003, 2005 and 2007.

2 We were informed by the County Planning and  
3 Code Enforcement staff that a sober living facility would  
4 have been classified as either a community care facility  
5 or a congregate care facility.

6 The Orange County Zoning Code defines a  
7 community care facility as "any facility which may or may  
8 not require a state license, to provide non-medical  
9 residential care, or day care for children, adults, or  
10 both, including physically handicapped and mentally  
11 incompetent persons. This includes day care facilities,  
12 day care nurseries, and family day care homes."

13 This use classification most closely matches  
14 the uses of the Yellowstone facilities. As noted in the  
15 staff report, at the time the uses were established, the  
16 properties were located in the Santa Ana Height Specific  
17 Plan and were zoned RSF, or Residential Single Family.

18 The Specific Plan, which was last revised by  
19 the County in 2001, included land use regulations for the  
20 RSF district that allowed certain principal uses,  
21 including singly attached family dwellings, and  
22 community care facilities serving six or fewer persons,  
23 and large family day care homes.

24 The Specific Plan also included provisions that  
25 stated that "The following principal uses are permitted

1 subject to a use permit by the Planning Commission, per  
2 Zoning Code Section 7.9.150. Any other use which the  
3 Planning Commission finds consistent with the purpose and  
4 intent of this district."

5 Section 7.9.141 of the Orange County Zoning  
6 Code provided requirements for community care facilities  
7 basically stating that "a facility serving six or less  
8 persons was permitted in any district, planned community,  
9 or specific plan areas zoned for residential uses. And  
10 that a facility serving seven to twelve persons was  
11 permitted in any district, planned community, or specific  
12 plan area subject to the issuance of the use permit by  
13 the Planning Commission."

14 Because very little information in the way of  
15 permits or other records were turned over to the City by  
16 the County following annexation of this area, City staff  
17 contacted the County to request copies of all records  
18 they had for the four addresses.

19 There are no records of a use permit being  
20 issued for any of the four Yellowstone facilities, even  
21 though County Planning staff thoroughly conducted a  
22 search of their records at our request. We did find  
23 records of a temporary use permit issued for 1621 Indus  
24 that allowed meetings four times a year, ten days each,  
25 allowing up to a total of 40 meetings. That permit was

1 issued in March of 2005.

2 We also found a letter sent by the Applicant to  
3 the County in February of 2006 requesting to obtain Sober  
4 Living Certification for an 18-bed sober living home at  
5 the Pegasus property. Also at the Pegasus property, an  
6 undated Code Enforcement Action stating "Sober living  
7 home operating without a permit (over six people)."

8 We also found a record from 2005 that  
9 Yellowstone attempted to obtain County Sober Living  
10 Certification for the Redlands property with notes in the  
11 County Activity Report dated September 2005, and an  
12 actual fire inspection was performed, and the house was  
13 set up for 15 beds.

14 Based on these records, it appears as if the  
15 Redlands and Pegasus properties were being used as sober  
16 living homes for more than 12 persons. We believe that  
17 this demonstrates a pattern and a practice by the  
18 Applicant of operating residential care facilities in  
19 violation of local laws in effect at the time the  
20 Yellowstone facilities were established.

21 And for this reason, we believe that Finding A  
22 of Section 20.91A.060 cannot be made with regards to the  
23 development and operational standard that no owner or  
24 manager shall have demonstrated any pattern of operating  
25 similar facilities in violation of the law.

1           Staff also questions whether the Yellowstone  
2 facilities were even qualified to apply for and receive  
3 use permits under Municipal Code Section 20.62.030,  
4 Determination of Non-Conformity.

5           Section B of that section states that,

6           "A use that was lawfully established,"  
7 excuse me, "under the laws in place at the time  
8 that that no longer conforms to the use  
9 regulations or required conditions for the  
10 district in which it is located because of  
11 annexation to the City shall be deemed to be an  
12 non-conforming use.

13           "However," it continues, "a use shall not be  
14 continued to have been lawfully established and  
15 maintained and is an illegal use if it was  
16 established or operated without required  
17 permits and licenses, including, but not  
18 limited to, permits and licenses required by  
19 any Federal, state or local governmental  
20 agency."

21           Pursuant to section 20.91A, "Persons whose use  
22 of their property in a residential district was  
23 rendered non-conforming by adoption of  
24 Ordinance 2008-05 are qualified to seek a use  
25 permit to continue the use in its current

1 location."

2 But there's no similar provision or illegal  
3 uses. So, therefore, staff believes the Yellowstone  
4 facilities might more accurately be characterized as an  
5 illegal use rather than as a non-conforming use. And for  
6 these reasons and as stated in greater detail in our  
7 staff report, staff recommends denial of all four use  
8 permits as requested by the Applicant.

9 If the Hearing Officer agrees with staff  
10 recommendations, staff recommends the Hearing Officer  
11 adopt the Draft Resolution of Denial with Prejudice for  
12 Use Permit Number 2008-030, for the property located at  
13 1561 Indus, and also to direct staff to prepared a  
14 Resolution of Denial for the other three use permits.

15 And that concludes my presentation. I'm  
16 available for any questions you might have.

17 MR. ALLEN: I don't have any questions at this  
18 time. Does the staff have anything to add?

19 MR. KIFF: No.

20 MR. ALLEN: All right. What about the  
21 Applicant? Would you like to respond, I presume?

22 MR. ZFATY: Yes. Thank you, Mr. Allen. Again,  
23 Isaac Zfaty on behalf of Yellowstone.

24 I think as a preliminary matter we have to have  
25 some ruling as to whether we are going to reopen the CUP

1 hearings as to these four properties. I say that because  
2 my understanding is that those were completed at the  
3 February 20th hearing.

4 And, of course, I have a presentation that I  
5 would be happy to provide to you, Mr. Allen, in terms of  
6 why it is that I think that the argument that's offered  
7 by the staff at this point in favor of reopening these  
8 hearings falls short.

9 MR. ALLEN: I've thought somewhat about that.  
10 My thought is this. That staff has timely made the  
11 request to reopen the hearings. I don't expect but would  
12 be willing to listen that your client has incurred any  
13 detrimental reliance or adverse effect as a result of  
14 reopening the hearings.

15 In other words, I don't see that there would be  
16 any changes that took place in that short period of time  
17 that would constitute a vesting of some sort such that  
18 the hearings couldn't be reopened.

19 So my ruling would be that the hearings can be  
20 reopened for the purpose of considering the position now  
21 taken by the staff.

22 MR. ZFATY: Well, we're not going to make an  
23 argument that we have detrimentally relied at this point.  
24 So with that, I would ask that I be allowed to give a  
25 presentation on the CUP for each of the four properties

1 based on the new information, I think, is what we're  
2 talking about here?

3 MR. ALLEN: Yes.

4 MR. ZFATY: Okay.

5 MR. ALLEN: Yes, you're welcome to proceed.

6 MR. ZFATY: Just to frame the issue, Mr. Allen,  
7 the comment that Ms. Brown just made on the record was  
8 that there's been new -- and I'm going to quote  
9 this -- "information available to us at the time of the  
10 hearing," referring to the February 20th hearing.

11 And the issue here is whether there was  
12 actually something new that was presented at that  
13 hearing. Ms. Brown just noted that it was testimony by,  
14 I think, myself that for the very first time, we brought  
15 to the City's attention that we were claiming that we  
16 were an established non-conforming use.

17 I would submit to you that we have said from  
18 the very beginning, going all the way back to our  
19 original application in May of 2008, that we are an  
20 established use, and, of course, I think that it goes  
21 without saying that based on the implementation of the  
22 ordinance that we are non-conforming.

23 So I don't agree that there's anything new  
24 here. But the bigger picture is, what is it that we're  
25 analyzing? The issue, in terms of what this new

1 information is -- assuming that it actually is new  
2 information, just arguendo, is that Yellowstone was  
3 operating facilities in Santa Ana Heights unlawfully.

4 And that requires an analysis of the County's  
5 requirements by the City ex post facto, far after the  
6 time, and we really have a mootness problem. It  
7 stretches far beyond just a basic Constitutional analysis  
8 of whether we've been afforded due process on the issue.

9 Because, as you can imagine, if the County had  
10 decided that we were not in conformance with something  
11 that -- some County Zoning Regulation, we would be  
12 provided with, under the 5th and 14th Amendment of the  
13 United States Constitution, notice and opportunity to be  
14 heard, and we were provided with neither one of those.

15 And I think the City would agree with me that,  
16 in fact, there was nothing that turned up that showed in  
17 their subsequent search since February 20th that we were  
18 cited or asked to be -- that we were held in abatement or  
19 in violation of any zoning ordinance. So that's the big  
20 picture analysis.

21 What would have to happen, though, Mr. Allen,  
22 in order to get to the place that the staff is now  
23 recommending, is that the City would have to make a  
24 finding -- this is necessary -- the City would have to  
25 make a finding that we had violated a County rule without

1 an opportunity to be noticed and without an opportunity  
2 to be heard on that.

3 That is it a -- that is a Pandora's box that I  
4 don't think the City wants to open. I don't think the  
5 City wants to start going back and looking at potential  
6 violations that were never cited, never noticed, and  
7 never given an opportunity to be heard upon. That's the  
8 big picture.

9 Specifically, the City requests to open the CUP  
10 hearing -- I think that ship sailed -- and have you  
11 analyze County requirements and, again, have you make an  
12 actual judicial finding that Yellowstone violated some  
13 law in the past.

14 Again, the City's indicated that "it conducted  
15 a further investigation" -- this is based on the staff  
16 report -- "into the laws applicable at the time the  
17 facility was established while under the jurisdiction of  
18 the County of Orange." And the reason provided again is  
19 information obtained in the February 20th hearing.

20 Now, at the February 20th hearing, there was  
21 factual information provided based upon the issues that  
22 the City raised in terms of conflicts that were perceived  
23 by the staff, and we provided those clarifications and  
24 submitted to you, Mr. Allen, that there were no  
25 discrepancies that were based upon -- that were

1 necessarily in contrast to each other.

2           There were explanations, for example, length of  
3 stay, things like that, that we talked about that may  
4 have varied during the time from our initial submission  
5 and the February 20th hearing.

6           The staff recommendation for the rejection of  
7 the CUP now is based upon section 20.91A.060, items (b)  
8 and (h).

9           Subsection (b) provides that "A facility must  
10 comply with state and local law, and the submitted  
11 management plan, including any modifications, required by  
12 this use permit."

13           (H) provides that "No owner or manager shall  
14 have any demonstrated pattern of operating similar  
15 facilities in violation of the law."

16           The 5th and 14th Amendments of the United  
17 States Constitution provide that Yellowstone can't be  
18 deprived of liberty or property without due process. And  
19 this is a substantial due process issue. As I mentioned  
20 earlier, it means we have to have been provided notice,  
21 and we have to have been provided with an opportunity for  
22 a hearing as to the purported County violation.

23           Article I of the California Constitution  
24 actually provides a much broader scope. And the quoted  
25 language here from Ryan versus California

1 Interscholastic -- Interscholastic Federation, San Diego  
2 section, at 94 Cal. App. 4th, 1069, talks generally about  
3 that standard.

4 The pertinent language is that "Procedural due  
5 process under the California Constitution is much more  
6 inclusive and protects a broader range of interest than  
7 under the Federal Constitution."

8 Importantly, Mr. Allen, the staff report cites  
9 to no violation of law. The staff reports infers a  
10 violation based on a multiple-step process that was just  
11 reported to you. And the conclusion is that there could  
12 have been a notice by the County based upon the City's  
13 assessment here today.

14 And I would submit that the staff report relies  
15 upon a bunch of untested and speculative information that  
16 had we been provided due process with the County, we  
17 would have had an opportunity to be heard, and we would  
18 have had our rights voiced.

19 One example -- and this is quoted from the  
20 report -- that "The County of Orange Planning Department  
21 and Code Enforcement Staff informed the City that a sober  
22 living use would have been classified as either a  
23 community care facility or a congregate care facility."  
24 We don't even know which it is even today.

25 The staff report concludes that "Had the County

1 pursued the matter, a violation of law would have been  
2 found." And the inference there -- and I think it's  
3 pretty clear here -- that the County did not, in fact,  
4 pursue the matter. No County evaluation occurred. No  
5 notice was given. No hearing was held. And we had no  
6 opportunity to be heard.

7 I provided here three pieces of evidence that  
8 were included by the City, but -- purported evidence.  
9 It's sort of -- again, it's hard to test this stuff. But  
10 the first is that "Yellowstone Recovery attempted to  
11 obtain County Sober Living Certification at 1571 Pegasus  
12 Street." And the inference there is that we didn't  
13 obtain it, or that we were rejected, but there's no  
14 evidence of that.

15 The second is that there's also some evidence  
16 that the County Code Enforcement was aware that the  
17 facility was housing more than six residents without a  
18 use permit.

19 Well, without getting into the Code  
20 analysis -- the County Code analysis, for my money,  
21 reading that quote from the staff report tells me that  
22 somebody in the County at some point knew who we were,  
23 knew what we were doing, and didn't do anything about it.

24 So -- and on that point, I would mention to  
25 you, Mr. Allen, that last night, to my wife's chagrin, I

1 spent a couple of hours reviewing the Santa Ana Specific  
2 Plan, which is about 150-some-odd pages. Then, I got to  
3 the Zoning Code.

4 As you can see, this is approximately 2 inches  
5 thick -- 2 inches of paper that we're now being called to  
6 look at with a snapshot, without any due process, and  
7 say, "Yellowstone violated this." Okay? That's  
8 problematic.

9 The last point that I would raise directly from  
10 the staff report is the staff notes that, "Had there been  
11 an investigation, County Code Enforcement personnel would  
12 conduct the SI." Didn't happen.

13 Staff report concludes that, "It," meaning  
14 Yellowstone, "did not comply with the local law at that  
15 time, because the operator had not obtained approval of a  
16 use permit from the Orange County Planning Commission."  
17 Again, no enforcement action. No opportunity to be  
18 heard. No opportunity to appeal.

19 At this point, Mr. Allen, Yellowstone's not  
20 able to and won't attempt to defend an action that the  
21 County never initiated. It didn't happen.

22 The staff report provides that the Planning  
23 Commission, per Zoning Code -- and this is this 2-inch  
24 thick document that I was just referring to -- Section  
25 7-1-950 allows for, to quote, "any other use which the

1 Planning Commission finds consistent with the purpose and  
2 intent of this district."

3 That quote is important, because it's a  
4 catchall. It basically says that had we been in front of  
5 the County, had we had an opportunity to be heard, had we  
6 been put on notice that perhaps we were violating some  
7 County ordinance, we would have been able to apply for  
8 something similar to the way that we here today. We  
9 would have been able to apply for a use permit.

10 And the Code section that -- the Zoning Code  
11 section that the staff cites specifically says "Any other  
12 use," and so it's very broad. This is also set forth in  
13 the Santa Ana Heights Specific Plan.

14 And, you know, I sound like a broken record.  
15 No notice of a violation was issued. No opportunity to  
16 be heard. No opportunity to apply for a permit. No  
17 opportunity to cure it.

18 Based on my cursory review, I could find that  
19 there was a County use permit procedure that was set  
20 forth in 7-9-105.1C that's set forth a process. It  
21 included a public hearing. It included that variances  
22 could be applied for under subsection (e), and that  
23 special use permits could be applied for under subsection  
24 (f).

25 So, the next point that I'd like to make refers

1 to this discussion about the potential application for a  
2 Sheriff's Certification process. I think that there's  
3 some confusion there.

4 First off, the Sheriff's Certification Program  
5 is -- the staff report notes that at one time, one of  
6 Yellowstone's facilities was certified but dropped out of  
7 the Certification Program. That is a purely optional  
8 program. It's a program that some sober living homes are  
9 a part of. Some are not.

10 It's not required by the County. And it's  
11 something that we initially wanted to become a part of,  
12 and, for reasons completely unrelated to zoning, we made  
13 a decision that we would rather become a part of the  
14 Sober Living Coalition. And again, there's another loose  
15 affiliation of sober living homes.

16 It has nothing to do with the zoning. It has  
17 nothing do with violations of zoning. It has nothing to  
18 do with compliance of zoning.

19 The staff tries to cast Yellowstone in the  
20 staff's judgment of how the County Zoning Code should be  
21 interpreted here as a community care facility. We would  
22 note that we don't provide care. If given the  
23 opportunity to be heard, Yellowstone would argue that no  
24 Yellowstone home fell into a category requiring a use  
25 permit.

1           If that argument didn't rule today, then  
2     Yellowstone would apply for a use permit with the County.  
3     But how the County would have decided the issue is pure  
4     speculation.

5           Currently, all four of the houses have County  
6     Fire Clearances, and those include inspections. So we  
7     can infer, if we're making inferences, that the County  
8     has come through our property, and we know that they have  
9     come through our properties, and still, there's been no  
10    citation.

11           Staff report admits that there's also some  
12    evidence that County Code Enforcement was aware that the  
13    facility was housing more than six residents without a  
14    use permit. Again, no enforcement action.

15           So the question is, how are we to know what the  
16    County would have done? Well, we don't have any standing  
17    to seek injunctive relief from a court of competent  
18    jurisdiction, because it's moot. There's no court of  
19    competent jurisdiction that would even listen to us.  
20    We're not a part of the County any longer. So again, it  
21    goes back to the due process issue.

22           And the City cannot be and may not be the  
23    arbiter of some other jurisdictional rules now. The City  
24    can't do what a court could not do now. There could be  
25    no decision made, because of the Doctrine of Mootness.

1           The staff report concludes -- I think this is  
2 also telling, Mr. Allen -- that "it's unlikely that the  
3 County would have granted a use permit."

4           I've listed here -- and I won't go through all  
5 of them on the record, but I've listed here just a few  
6 questions that the City would have to answer, not just  
7 ask, but answer, in order to reach the conclusion that  
8 the staff has now proposing in order to get to the  
9 conclusion that Yellowstone was in violation of some  
10 County law without there actually being some citation,  
11 some notice, and some opportunity to be heard.

12           First is, whether the County would have  
13 required a use permit at any of the Yellowstone homes in  
14 the first place?

15           The second is, what guidelines would have been  
16 utilized in making the analysis?

17           What type of notice would have been provided?

18           You know, what reasonable accommodation  
19 provisions the County would have analyzed? And that goes  
20 back to what we talked about on February 20th, where  
21 there are affirmative requirements that reasonable  
22 accommodations be provided.

23           So the list goes on. But these are all  
24 questions -- and they are just the ones that are off the  
25 top of my head that we would have to answer, not just

1 ask, but answer, in order to go back and open up this  
2 hearing, and reverse the original ruling based upon the  
3 claim that Yellowstone did something unlawful in the  
4 past.

5 There's some more -- on this slide, there's  
6 some more discussions about what was included in the  
7 Santa Ana Heights Specific Plan. In Section C, there's a  
8 general provision that shows that the County contemplated  
9 that it was even possible that portions of its Zoning  
10 Code or, excuse me, it's Specific Plan could have been  
11 adjudicated invalid.

12 The quote that I have up there is, "If any  
13 portion of these regulations is, for any reason, declared  
14 by a court of competent jurisdiction to be invalid or  
15 ineffective in whole or in part, such decision shall not  
16 effect the validity of the remaining portions thereof."

17 That's kind of boilerplate stuff. But it shows  
18 that at least the County, itself, contemplated that there  
19 could be a problem here. We could have gone back and  
20 said, you know, we could have had a Constitutional  
21 challenge to the County requirements. But again, we  
22 don't even come close to getting that far.

23 And actually going back, the last point that I  
24 make there is we can't have that adjudication because we  
25 don't have standing. We don't have any standing to go

1 and challenge the County's Specific Plan, because we are  
2 no longer part of that unincorporated part of that  
3 County.

4 As to our legal conduct, at a minimum, what we  
5 know is that Yellowstone has been lawfully operating in  
6 the City of Newport Beach since January 1 of 2008. And,  
7 of course, the response to that could be, "Well, it was  
8 contemplated that Santa Ana Heights would become part of  
9 the County and that this Ordinance was going into place."  
10 That doesn't make any difference.

11 The bottom line is that at least until now, and  
12 actually up through and including now, Yellowstone has  
13 received no notice, no notice of abatement, and there's  
14 been no requirement that Yellowstone do anything with  
15 these properties, other than what they are currently  
16 doing.

17 And that's the end of my presentation,  
18 Mr. Allen, on the issue of the claim of some violation by  
19 the City.

20 MR. ALLEN: Does the City wish to make any  
21 response to that -- to those points raised by Mr. Zfaty?

22 MR. BOBKO: Just a few quick ones, Mr. Allen.  
23 Patrick Bobko.

24 First thing is with regard to reopening the  
25 hearing. Just as a matter of procedure, there hasn't

1 been a final decision yet in this hearing. Until there's  
2 a final decision, I think it's perfectly acceptable for  
3 the City to come forward with more information.

4 With regard to the second issue about this  
5 being -- this hearing somehow being a post-hoc trial, it  
6 is not. What's going on right now is the City is being  
7 asked to accept, merely on the Applicant's word, that  
8 they have a legal non-conforming use. And that's  
9 different from being an illegal non-conforming use.

10 And the fact that the Applicant has come  
11 forward and said that they were legal does not make it  
12 so. And I don't think that there's any authority for the  
13 City to have to be required to take that at the  
14 Applicant's word.

15 In fact, if you were to come into the town and  
16 say that you were buying a home, and that your home  
17 was -- you were going to do some expansion to your home,  
18 and it wasn't a non-conforming home, City would  
19 immediately go to the records and check and see whether  
20 or not it was.

21 So the City's really just doing its due  
22 diligence here. There's no trial going on. There's no  
23 conviction happening. It's simply verifying that the  
24 Applicant's presentation as a legal non-conforming use is  
25 true. And the City has now come with evidence to suggest

1 that perhaps that is not the case.

2 So we don't believe that there's any Latches  
3 argument, which effectively is what the Applicant is  
4 asserting now, that the City is estopped or foreclosed  
5 from going back into the records to determine whether or  
6 not it is a legal or illegal non-conforming use. Again,  
7 it's simply a matter of due diligence for the City, and  
8 it's actually no different than any other research the  
9 City would do for a non-conforming use.

10 Finally, I want to put to rest this idea that  
11 there's somehow been some terrible miscarriage of justice  
12 with regard to due process here. You know, Counsel has  
13 just put on another very lengthy presentation. He's been  
14 presented with all of the evidence and all of the  
15 information that the City has.

16 He's had an opportunity to basically examine  
17 everything point by point, and challenge, refute,  
18 discredit it. He's been heard. Evidence has been  
19 presented. The Applicant had an opportunity to present  
20 evidence. This is the hearing. This is it right here.  
21 There's been no miscarriage of justice.

22 And the City -- again, if the Hearing Officer  
23 thinks that perhaps more time would be reasonable, we'd  
24 be willing to stipulate to a week's continuance so that  
25 there would be further preparation. But we don't think

1 that's necessary. But let's be clear that there has been  
2 no miscarriage of due process here at all.

3 Unless you have any other questions of me?

4 MR. ALLEN: No, not at the moment. Thank you.

5 MR. BOBKO: Okay.

6 MR. ZFATY: May I approach and respond?

7 MR. ALLEN: Sure. Does the City wish to say  
8 something else first?

9 MS. WOLCOTT: I was going to augment his  
10 statement.

11 MR. ALLEN: No. You go ahead, and then he can  
12 respond to both of you.

13 MS. WOLCOTT: All right. Cathy Wolcott.

14 I wanted to address Mr. Zfaty's  
15 characterization of his earlier correspondence with the  
16 City in May of 2008 when they first submitted their  
17 reasonable accommodation and use permit applications.  
18 They did mention non-conforming, you know. They asked  
19 for certification of non-conforming use.

20 The reason that we looked farther after the  
21 February 20th presentation by the Applicant's Counsel is  
22 that up to that point, they had not asserted that they  
23 had vested rights as an non-conforming use that should  
24 excuse them from having to be subject to a use permit in  
25 the first place.

1 MR. ALLEN: I'm sorry. Would you say that  
2 again, please?

3 MS. WOLCOTT: Sure. Up until the February 20th  
4 hearing, the Applicant had never asserted that they had  
5 vested rights as a legal non-conforming use that should  
6 excuse them from having to be subject to a use permit  
7 from the City in the first place.

8 At the February 20th hearing, the Applicant  
9 presented a substantial amount of case law about specific  
10 cases, which they were characterizing as law that  
11 indicated that they shouldn't be subject to the use  
12 permit process of the City because they had their rights  
13 vested.

14 Because of the assertions made and the case law  
15 cited, staff determined that it needed to review what  
16 those vested rights, if any, actually were. And so at  
17 that point, we needed to find out if the County had  
18 already placed specific conditions on the facility  
19 operations or if they had established a specific  
20 occupancy load to which Yellowstone was already legally  
21 entitled before annexation.

22 If those conditions were something that was in  
23 the County records that we hadn't seen, we thought, out  
24 of fairness, we needed to find out what they are. What  
25 we found out in contrast was that actually nothing had

1 been applied for, nothing had been granted.

2 I would also say that I've never heard the  
3 argument before that failure to apply for a required  
4 permit from a government entity equaled lack of notice,  
5 lack of right to be heard. It equals you failed to apply  
6 for a permit that you needed.

7 And finally, the Applicant has asserted many  
8 times over the nine months it took to get this  
9 application to a complete form that every one of their  
10 facilities had a fire clearance. In fact, only one, 1571  
11 Pegasus, had a signed fire clearance from the Orange  
12 County Fire Authority. There was nothing presented that  
13 indicated final fire clearance for any of the other  
14 facilities.

15 Thank you.

16 MR. KIFF: I have one comment before Mr. Zfaty  
17 comes up, too, Mr. Allen.

18 MR. ALLEN: Sure.

19 MR. KIFF: Just a clarification for you,  
20 Mr. Zfaty, the Orange County Fire Authority has nothing  
21 to do with the County of Orange. They are separately  
22 formed governments and have separate Boards of Directors.  
23 So if I'm a County Fire Authority Inspector, I'm not  
24 going to be checking to see that that home -- it complies  
25 with Orange County land -- County of Orange land use

1 law.

2 MR. ZFATY: All right. I just want to  
3 comment -- I want to respond to a couple of things.  
4 First, we're not making a Latches claim. That's not what  
5 we're saying at all. We're not saying that the City is  
6 foreclosed from analyzing any particular issues.

7 As I said at the front end of this, if the City  
8 thinks that it needs to make any more analyses of any of  
9 the facts that has been presented with, that's fine. The  
10 bottom line, though, is I don't want to get confused,  
11 because we're talking over here, and this is really the  
12 issue over here.

13 The issue is, is the City going to deny a use  
14 permit to Yellowstone based on an affirmative finding  
15 that prior to December 31 of 2007, when Yellowstone was  
16 not a part -- when these four properties were not a part  
17 of the City of Newport Beach, that Yellowstone violated  
18 some County law? It has to be an affirmative finding.

19 I think the comment was that, "We've taken  
20 Yellowstone's word that they were in compliance." Well,  
21 the reality is that we were in compliance. You do have  
22 to take our word for it, because we were there. We were  
23 established.

24 If there's some interpretation of the Code that  
25 any -- any entity, any person wants to make as to whether