

CERTIFIED COPY

PUBLIC HEARING ON  
PACIFIC SHORES PROPERTIES, LLC  
APPLICATION FOR REASONABLE ACCOMMODATION  
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER  
NEWPORT BEACH, CALIFORNIA  
WEDNESDAY, DECEMBER 16, 2009



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1           Public hearing was taken on behalf of the City of  
2 Newport Beach at 3300 Newport Boulevard, Newport Beach,  
3 California beginning at 3:00 p.m., and ending at 5:14  
4 p.m., on Wednesday, December 16, 2009, before DEBORAH  
5 L. CHADWICK, Certified Shorthand Reporter No. 4146.

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1 APPEARANCES:

2

3 Hearing Officer:

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15

16 For Pacific Shores Properties, LLC

17 BRANCART & BRANCART  
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20 Also Present:

21 Mark Manderson

22

23

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1 HEARING OFFICER ALLEN: It's 3:00 p.m. and we're  
2 ready to commence the Pacific Shores Properties  
3 reasonable accommodations hearing.

4 Does everyone have their cell phones,  
5 et cetera, turned off, please?

6 My name is Thomas W. Allen. I've been  
7 appointed by the City to conduct the hearing as a  
8 Hearing Officer.

9 This hearing involves Pacific Shores  
10 Properties. Let me make sure that I look at the  
11 agenda. And as I said, application for reasonable  
12 accommodation of a drug, alcohol recovery facility at  
13 492 and 492 1/2 Orange Avenue, and a corollary  
14 3309 Clay, which as I understand it has been deleted  
15 from the hearing process as a result of an appeal  
16 having been withdrawn at the City Council level. And  
17 that that operation will presumably be commenced as a  
18 license six or fewer facility at some future point.

19 In March of 2009, this matter was before the  
20 Hearing Officer, and at that time, a denial was handed  
21 down as to all of the five requests that were made for  
22 reasonable accommodation by the Applicant.

23 And the Applicant appealed that decision to  
24 the City Council. And in late October, the City  
25 Council conducted an appeal hearing, and at the

1 conclusion of that hearing, directed the staff prepare  
2 a resolution that approved No. 5 of the list of  
3 reasonable accommodations that were being requested.

4 No. 5 specifically requests that the City  
5 waive the requirement of applicability of Municipal  
6 Code Section 20.91A.020, that unlicensed residential  
7 care facilities may be located only in residential area  
8 zoned MFR with a use permit. That is the matter that  
9 is before us today.

10 This waiver was approved by the City Council  
11 at the appeal with one proviso that we're to consider  
12 here today at this hearing, and that is that a finding  
13 be made that 12 residents in each unit is necessary for  
14 the financial viability of the operation. And that's  
15 the sole focus of this hearing today, as I understand  
16 it. The City Council directed the Hearing Officer to  
17 determine whether the requested number of residents are  
18 necessary to achieve financial viability.

19 I think that's a quick summary of what  
20 occurred here. And Ms. Brown is prepared to commence a  
21 staff report, unless anyone else has any comments prior  
22 to that.

23 Please proceed.

24 MS. BROWN: Thank you, Mr. Allen. Good afternoon.  
25 I'm Janet Brown with the Planning Department.

1           You've already gone through the background  
2 regarding the hearing process beginning in March of  
3 2009 when you granted -- excuse me, you conducted a  
4 public hearing for five separate accommodation  
5 requests. At the conclusion of that hearing, you  
6 denied four of the requests and approved one. And  
7 Pacific Shores appealed that decision to the City  
8 Council.

9           On October 27th, City Council considered the  
10 amended request for reasonable accommodation that was  
11 submitted by the Applicant. City Council granted a  
12 modified reasonable accommodation subject to certain  
13 conditions, which includes a determination by the  
14 Hearing Officer that the accommodation is necessary for  
15 the facility to be financially viable. Again, that is  
16 the purpose of this afternoon's hearing.

17           For the benefit of everyone here, I'll just  
18 briefly go through the process at the hearing. It  
19 starts with the staff presentation, then the  
20 Applicant's comments, if any. At that point, you, the  
21 Hearing Officer, would open the public hearing.  
22 Testimony would be limited to comments about the  
23 proceeding or the financial viability of the facility  
24 based on publicly assessable information. And comments  
25 are limited to three minutes, unless you determine

1 otherwise, Mr. Allen.

2 At that point, you would close the public  
3 hearing, and the Applicant may return to rebut or  
4 clarify comments made. Questions from the Hearing  
5 Officer to the Applicant or to City staff could follow.  
6 And at this point, either the Hearing Officer or the  
7 Applicant may request that discussion of any  
8 confidential information be conducted in camera. That  
9 is, proceeding in a separate area where the information  
10 would remain confidential.

11 The Hearing Officer's determination  
12 alternatives would include the finding that the  
13 accommodation is necessary and can be made; that the  
14 finding cannot be made. The Hearing Officer may make a  
15 decision to issue a determination in writing at a  
16 future date or continue the hearing to a date certain.

17 Prior to the hearing, in a letter form  
18 yesterday, City's legal counsel sent a letter out with  
19 proposed conduct of hearing. Briefly, these are up  
20 here on the board and I'll run through them each. The  
21 first being that all confidential financial information  
22 submitted by Pacific Shores is supplied under seal and  
23 will not be entered into the public record.

24 To the extent possible, the Hearing Officer  
25 will follow the established procedures for

1 administrative hearings, as we have in the past.

2 At the close of the hearing, if the Applicant  
3 wishes to argue or discuss any specific evidence  
4 submitted under seal to the Hearing Officer, the  
5 Hearing Officer shall conduct an in camera proceeding  
6 in an adjacent chamber with counsel for Pacific Shores,  
7 the City, the City's financial officer regarding the  
8 facilities financial viability.

9 The in camera proceeding shall be recorded by  
10 a court reporter, excuse me. That portion of the  
11 hearing transcript shall remain sealed.

12 All proceedings in camera shall remain under  
13 seal and will not be disclosed to the public.

14 And finally, at the close of any in camera  
15 proceedings, the Hearing Officer shall reconvene the  
16 public hearing and take such action as you would deem  
17 appropriate.

18 Pacific Shores Properties operates a sober  
19 living facility at 492 and 492 1/2 Orange Avenue, and  
20 also at 3309 Clay Street.

21 The City Council granted a modified request  
22 that would allow Pacific Shores an accommodation to  
23 continue the present use of the Orange Avenue  
24 properties with 12 residents and resident manager in  
25 each.

1           The amended request that was submitted by  
2 Pacific Shores stated that they have applied to the  
3 State Department of Drug and Alcohol Programs for a  
4 license to operate residential substance abuse  
5 treatment facility for six or fewer residents at the  
6 Clay Street address.

7           The amended request also stated that the 12  
8 residents at each of the Orange Avenue dwellings and  
9 the six residents at the Clay Street dwelling were  
10 necessary to make the facility financially viable.

11           As you noted, because licensed facilities for  
12 six or fewer residents is a permitted use in the City,  
13 the Clay Street property is not included this  
14 reasonable accommodation.

15           Counsel approved the modified reasonable  
16 accommodation to allow the 12 residents and a resident  
17 manager subject to certain conditions. The project's  
18 specific conditions include that the finding that the  
19 accommodation is necessary to afford disabled  
20 individuals an equal opportunity to use and enjoy a  
21 dwelling.

22           These conditions are noted up here on the  
23 screen for everyone to read. Counsel directed that  
24 that finding be remanded to the Hearing Officer to make  
25 the determination that the accommodation is necessary

1 for the facility to be financially viable.

2 As part of the conditions, City Council  
3 directed the Applicant to submit financial information  
4 to the City within 10 days following the adoption of  
5 the resolution. And that the number of residents  
6 entitled to reside on premises be based on standards at  
7 the California Building Code with no waiver California  
8 Building Code requirements. And it would be subject to  
9 inspection by the fire marshal to determine the maximum  
10 occupancy allowed.

11 On November 2nd, City staff communicated with  
12 Pacific Shores' legal counsel, informing them that the  
13 financial information submitted by Pacific Shores would  
14 be analyzed by the Administrative Services Director and  
15 provided examples of what type of information should be  
16 submitted that would enable the Administrative Services  
17 Director to recommend -- make a recommendation on the  
18 matter to the Hearing Officer.

19 In response to that correspondence, the  
20 Applicant's legal counsel requested an explanation of  
21 the scope of information requested, which staff  
22 responded to on November 9th.

23 On November 20th, the Applicant submitted a  
24 statement of expenses for a specific period of time.  
25 And on November 24th, they submitted supplemental

1 information for a different specific period of time,  
2 but did not provide any substantiating information for  
3 either the income or expenses reported.

4           Following receipt of the November 20th  
5 submittal, City staff spoke with the Applicant's legal  
6 counsel. And on December 4th, sent a letter requesting  
7 supporting documents in order for staff to provide  
8 financial analysis of the Applicant's operations and to  
9 make a recommendation.

10           No additional information was provided by the  
11 Applicant or their legal counsel until late yesterday  
12 afternoon. This new, additional information, as well  
13 as the information submitted on November 20th and  
14 November 24th, have been submitted under seal to you,  
15 the Hearing Officer, and to the Administrative Services  
16 Director, Mr. Dennis Danner.

17           That concludes my portion of the presentation.  
18 Unless you have any questions, I'd like to turn the  
19 matter over to Mr. Danner, who can discuss, in general  
20 terms, the analysis of the information that was  
21 provided.

22           HEARING OFFICER ALLEN: I have a question. I did  
23 not understand that we were considering financial  
24 viability to include the six residents at 3309 Clay.  
25 I'd like to understand how that integrates in with

1 financial necessity for the -- I thought the income  
2 information was for the two Orange Avenue properties  
3 only. Could we get that clarified?

4 MS. WOLCOTT: Yes. Originally, we were looking at  
5 all three of the properties in the original reasonable  
6 accommodation hearings. We got the amended reasonable  
7 accommodation request on October 23rd, 2009. The  
8 Applicant expressed the intention of operating the  
9 facility at 3309 Clay Street as a six-or-under facility  
10 licensed by the California Department of Alcohol and  
11 Drug Programs. If that facility is operated under a  
12 license from the Alcohol and Drug Programs and it is  
13 six-or-fewer residents, then under California Health  
14 and Safety Code Section 11834.23, the City must  
15 consider it a residential use, standard single-family  
16 residential use of property for zoning code purposes.

17 So if we are looking at applying ordinance  
18 2008-05, which is a zoning code, a section of the  
19 zoning code, we would not be applying it to a  
20 six-or-under licensed facility. So that is why we  
21 removed 3309 Clay from the analysis. And today, we are  
22 only looking at 492 and 492 1/2 Orange.

23 HEARING OFFICER ALLEN: Okay. So then it's not  
24 true that they will be submitting sufficient evidence  
25 to demonstrate financial necessity for 3309.

1 MS. WOLCOTT: For 3309, that's correct.

2 HEARING OFFICER ALLEN: Okay.

3 MS. WOLCOTT: Thank you.

4 HEARING OFFICER ALLEN: At this point, and before  
5 Mr. Danner gets involved, we need to handle this issue  
6 concerning confidentiality of the financial information  
7 that's been presented by the Applicants and that which  
8 we are going to discuss.

9 The Applicant -- for the audience, once again,  
10 the Applicant has submitted financial information  
11 concerning revenue and expenses of the operation of  
12 these facilities and contends that that information is  
13 confidential and should not be considered by anyone  
14 except the decision-makers in the process.

15 And, Mr. Brancart, I'd like to just ask you  
16 briefly, Mr. Bobko sent out the memorandum that  
17 Ms. Brown referred to a few minutes ago that contained  
18 a description of how we might conduct this hearing and  
19 handle those issues. What wasn't addressed in  
20 Ms. Brown's presentation is the point that -- that I  
21 became concerned about because Mr. Polin presented the  
22 financial information in his November 20th letter and  
23 said that it was being submitted subject to a  
24 protective order that was issued by a court in  
25 corollary proceedings you have going on.

1           So the question becomes: Is this hearing and  
2 is the information that was presented by you, sub -- is  
3 the protective order operative here in this proceeding?  
4 And if so, then how do we deal with that?

5           MR. BRANCART: Thank you very much. It's a  
6 pleasure to be back here in Newport Beach and appearing  
7 before you.

8           Yesterday afternoon, in response to our  
9 repeated request about how do we handle financial  
10 information being disclosed in public forum, we did  
11 receive the letter from Mr. Bobko, it was about two and  
12 a half pages long. I had an opportunity to review it  
13 yesterday evening. He outlines a procedure that I  
14 think will protect us in terms of any particular  
15 confidentiality or protective order that may be in  
16 place.

17           There have been, I believe, two or three that  
18 have issued in the federal objection. Mr. Bobko  
19 references one in correspondence, but I believe there  
20 were others, because additional information has been  
21 provided by the City, in which there was a request for  
22 an additional protective order. And we've had one in  
23 place regarding medical information and things of that  
24 kind.

25           I appreciate your sensitivity to this, because

1 as you recall, we've run into these issues of  
2 confidentiality, particularly our strenuous objections  
3 regarding the HIPAA provisions in terms of a hearing  
4 that doesn't deal with this Applicant, but someone  
5 else.

6           What I would propose as we go forward is this:  
7 That if we're going to be speaking about specific  
8 financial information, which I believe we will, and  
9 Mr. Manderson is here to speak to you about the  
10 financial information, provide you with evidence in the  
11 form of his statement to you about the information that  
12 you've received. If we're going to speak about that,  
13 that should occur in closed session. If we talk about  
14 the specific financial information in closed session,  
15 we will not run a follow of any of the orders that have  
16 been issued in the related action, nor will we breach  
17 any of the city or state procedures that govern this  
18 type of financial information being compelled to be  
19 disclosed to a governmental body.

20           So my -- I would accept it. You know, without  
21 agreeing with the legal analysis in Mr. Bobko's letter,  
22 from a very practical point of view, it sets forth a  
23 pathway we can follow here today so that we can talk  
24 about some of the issues that we're here to discuss.

25           HEARING OFFICER ALLEN: And you accept the proposal

1 that Mr. Bobko made regarding the court reporter's  
2 participation?

3 MR. BRANCART: Of course.

4 HEARING OFFICER ALLEN: And then keeping that  
5 sealed, as well.

6 MR. BRANCART: Of course. For purposes of our  
7 proceedings here today, when we talk about specific  
8 financial information, we need to be in closed session,  
9 and certainly it can be recorded under seal.

10 HEARING OFFICER ALLEN: All right, good.

11 Does that make sense for you, also, Mr. Bobko,  
12 I mean, from the standpoint of being able to adequately  
13 conduct the hearing?

14 MR. BOBKO: I think so. I'm unaware of any other  
15 protective orders. Just as Mr. Brancart suggested,  
16 there might be others. I'm only aware of the one. But  
17 I think that there are sufficient other safeguards that  
18 the information that's submitted today can be kept  
19 confidential. So if we're in agreement, then that's  
20 how we should proceed.

21 HEARING OFFICER ALLEN: I think your proposal  
22 adequately covers this, and as long as we stick --

23 So for purposes of audience participation,  
24 what we'll do is try to conduct as much as we can in  
25 the public session. But when we focus in on what is

1 the real crux of this matter, we're going to have to do  
2 it in closed session and we'll certainly make whatever  
3 rulings or determinations we make in public.

4 That having been said, is there anything else  
5 that we would want to cover before we open up the  
6 public hearing?

7 MS. WOLCOTT: Mr. Danner.

8 MS. BROWN: You may want to hear from Mr. Danner  
9 prior to opening public hearing.

10 HEARING OFFICER ALLEN: All right. I'm not sure --  
11 okay.

12 MR. BRANCART: If we want to hear -- this is Chris  
13 Brancart. If we want to hear Mr. Danner, that's fine,  
14 in a broad or general description of what he did. But  
15 again, if it touches on financial information, that's  
16 going to have to be handled in closed session.

17 HEARING OFFICER ALLEN: Exactly. That's what I  
18 assumed.

19 MR. BOBKO: And the City would be perfectly willing  
20 to accept if Mr. Brancart believes that, at some point,  
21 the discussion about the financials moves past the  
22 general and into the specific to pose objections and,  
23 of course, then we can make note of that question and  
24 address it in camera. So we'd be willing to let him  
25 object to anything that he believes starts to cross

1 over that line.

2 HEARING OFFICER ALLEN: Okay.

3 All right. Did Mr. -- was there a  
4 presentation to be made by Mr. Danner in connection  
5 with anything that's not confidential? Because his  
6 analysis was entirely focused on the numbers that were  
7 presented.

8 MR. DANNER: Good afternoon. Again, in very  
9 general terms, I was provided with the revenue -- I'm  
10 sorry -- with expenditure data for calendar year 2008.  
11 And subsequently -- that was a letter dated  
12 November 20th, 2009. Subsequently, about four days  
13 later, I received an Excel spreadsheet which listed  
14 revenue data or income data for the first 10 months of  
15 calendar year 2009. I prepared an analysis based upon  
16 the expenditure data from calendar year 2008, and the  
17 revenue data extrapolated for 12 months in 2009, and  
18 drew some conclusions based upon that.

19 HEARING OFFICER ALLEN: All right.

20 Well, I think, at this point, we can open the  
21 public hearing. And whoever from the public would like  
22 to comment, should feel free to do so. And I don't  
23 want to discourage any comment, but on the other hand,  
24 the whole focus here is not on whether we're going to  
25 grant this application from any standpoint, except just

1 this very limited focus on whether this operation needs  
2 12 people, plus a manager in each unit, to be  
3 financially viable. That is, is it necessary for them.

4 Thank you.

5 Please identify yourself for the record.

6 MR. SOYLEMEZ: Absolutely. My name is Mustafa  
7 Soylemez. I'm a resident of the area of Newport Beach,  
8 407 Bolsa Avenue, which is just catty-cornered to  
9 diagram, to actually where the units reside.

10 Just a couple points, I'll try to be very  
11 focused in terms of the financial viability because I  
12 know that's what we're trying to do here today.

13 First of all, just in comment to this  
14 gentleman's point that he did take a look at the  
15 analysis. By all means, I'm sure that the analysis he  
16 did was sound and it will all be showed correct here  
17 today. However, I just urge and suggest that we also  
18 keep in mind that, based on his own testimony, he said  
19 that he received an Excel data spreadsheet. Let's,  
20 please, whether it's yourself or someone on the staff,  
21 let's please have the right proper controls to make  
22 sure that data that's being put into that spreadsheet  
23 is actually verified, as well, not just get an analyze  
24 behind it that's verified. But the actual data itself  
25 is verified, and I didn't hear that in the few comments

1 that this gentleman behind me said.

2 Okay. Second of all, the other point I wanted  
3 to make is I've been to numerous council meetings that  
4 are meetings such as this regarding this issue, and for  
5 some reason, we have an ongoing issue with things,  
6 financial statements, testimony, new evidence,  
7 et cetera, that is turned in within 24 hours before the  
8 hearing is made. In this case, it was financial data,  
9 some financial data. 24 hours doesn't give anybody any  
10 time to do anything. And I can't believe that it is  
11 not strategic and not calculated to do this. So I  
12 would urge you to please, put some sort of controls in  
13 place where you say we need a week to digest the  
14 material. Sitting in the audience, I can't digest the  
15 material that's been submitted 24 hours in advance,  
16 when I never had a chance to look at them.

17 As far as the financial viability, my initial  
18 comments are the same. As you all know, those two  
19 units on Orange were actually one property, one  
20 single-family home that was freestanding. That was  
21 torn down, raised, and then two units were built on top  
22 of that.

23 As far as the financial statements and the  
24 financial viability, you will get into the details  
25 later. However, just from an intuitive perspective,

1 when I start doing the math on the back of a napkin, I  
2 just don't understand how it could not be financially  
3 viable, even if you just use simple assumptions. And  
4 these are known assumptions that the state provides  
5 between 500- to \$1,000 per person per week in each  
6 facility that is deemed necessary, according to the  
7 rules of the proposition.

8           When you start doing the simple math, that's  
9 approximately 50,000 a month for both units. The  
10 market rate for a normal R2 rental in that area is  
11 about \$5,000. Anyway, you look at it, the back of a  
12 napkin math, it just doesn't support that it would not  
13 be viable having less than 12 beds. Even with six  
14 beds, it would absolutely be financially viable. Just  
15 like they're going to make Clay viable with six people.  
16 They said, you know, we'll back off on the Clay. Well,  
17 guess what, he wouldn't be in business if it wasn't  
18 financially viable.

19           So to think that they're going to take one  
20 lot, divide it in two, create two units, double the  
21 people in each unit and say it's not financially  
22 viable, just doesn't add up intuitively. Again, I'm  
23 not privy to all the financial statements, but I know a  
24 couple things in terms of what the state pays per  
25 person, per patient, et cetera. Back of a napkin test,

1 it just doesn't pass the test, is my only comments.

2 Thank you.

3 HEARING OFFICER ALLEN: We don't have this timer  
4 on, apparently, do we, as far as the three minutes?

5 Just -- yeah, let's try to watch our time and  
6 keep it within three minutes or so. But please feel  
7 free to say your peace. Three minutes is the normal  
8 limit.

9 MS. MORRIS: Good afternoon, Morgan Morris of West  
10 Newport. Mustafa, I think, has really made an  
11 excellent observation about this entire processes.  
12 He's shed more light on how these things are running,  
13 you know, in the City than I've heard in all the  
14 process and council and, you know, all what the  
15 Applicant has brought forth. So I put a lot of weight  
16 in what he just said.

17 I don't believe that Mr. Manderson, or this  
18 operator can be trusted to even give the correct and  
19 true information regarding his properties. He's been  
20 in violation since the day he started operating. Since  
21 the day he tore it down and started building whatever  
22 it was he told us that he was building, which wasn't  
23 what it was.

24 You can't make money in these homes, the kind  
25 of money they need to make, the kind of money they want

1 to make by saying you're sober living and you're not  
2 going to be giving treatment, detox, abuse treatment,  
3 which is what they will be doing at Clay and Orange.  
4 The Clay property, they went to get the license so they  
5 could do that. And then they're going to be  
6 commingling on this compound, all these people. 12,  
7 12, and six is what they're asking for. When you have  
8 that many people, 30 people and only six of them are  
9 supposed to be getting that kind of detox treatment, I  
10 don't believe that's what's going to be happening in  
11 this compound at all.

12 So in reference to just what's going on there,  
13 to make the money that they need to, whatever it is  
14 that they're giving you, which I find the transparency  
15 in this to be ridiculous. This is what this is created  
16 to do. This is why this is designed this way, so that  
17 we can see what was happening. And now they want to  
18 take everything, put it behind closed doors, keep the  
19 public out. And for whatever, you know, he's very good  
20 at this kind of, you know, way of going about it. We  
21 show up, you know, to give our -- say our peace and  
22 then find out, well, there's nothing that can be talked  
23 about, we have to, you know, talk around it. And the  
24 reason why that is, and the reason why they go that  
25 route is because it's just like Mustafa said, the

1 amount of money that would be made in property is going  
2 to be enormous, more than enough. And 12 and 12 are  
3 too many on that piece of property. Six is what they  
4 got, the state gave them, and I think that's what we  
5 should be giving them in each one of those properties.  
6 And that's all that neighborhood can take. It's what  
7 they're asking for is for far too much, so I ask that  
8 that be considered. And I thank you for your time.

9 MS. OBERMAN: Good afternoon, Denise Oberman.

10 First of all, these lots are zoned, or were  
11 zoned by the City to be R2 and not MFR. As such, this  
12 operator illegally constructed both of these and,  
13 actually, three structures, but we'll just focus on the  
14 two subject structures, creating an illegal  
15 intensification of use. So with that illegal  
16 intensification of use, what happened is this operator  
17 has already realized a premium on these uses.

18 The market rate for an R2, income on property  
19 on R2 would be 4- to \$5,000 a month. With 12,000  
20 people in each of these, this operator, at \$1,000 a  
21 week, and rounded to \$4,000 a month, the operator  
22 brings in \$48,000 a month. So 12 per lot, A, is not  
23 consistent with the use and the zoning established by  
24 the City. And secondly, I agree with Ms. Morris, that  
25 six on each lot is certainly more than reasonable to

1 assure financial viability, if one were to look at a  
2 like-for-like market comparison to realize maximum  
3 profit on a property in a legal manner. And that  
4 really is all the neighborhood can take. Thank you.

5 MS. FABIAN: Hi, my name is Lisa Fabian. I reside  
6 at 3301 Clay Street.

7 First off, I don't understand how six at 3309  
8 has not been approved to be financially viable and not  
9 be part of the mix. How can 12 and 12 prove that it's  
10 not going to be financially viable?

11 I'd like to ask the question, who's building  
12 the multi-million dollar house on Cliff Drive if you  
13 guys aren't making any money? Somebody sure is.

14 Also, over the past two years, our community  
15 has expressed its concerns about the operation of this  
16 facility and the negative impacts that it has had on  
17 our neighborhood. The primarily reason we're opposed  
18 to this group home facility is based upon facts and not  
19 speculation.

20 For example, on the morning of November 6th,  
21 2007, an officer from the Orange County Sheriff's  
22 Department came to my home and my neighbor's home at  
23 3307 Clay Street, looking for an individual that was  
24 staying and residing at 3309 Clay Street. The officer  
25 informed us that the individual there they were looking

1 for was being sought by law enforcement for misdemeanor  
2 and felony drug-related charges. The officer also  
3 informed us that these types of suspects were elusive  
4 and hard to find because they move from house to house  
5 within the drug and group home that work in Newport  
6 Beach.

7 Who is doing the background checks on these  
8 individuals? Do you know that there's a preschool  
9 within less than a hundred feet from this facility? So  
10 if Newport -- or if the sheriff's department is looking  
11 for individuals that have a background breaking the  
12 law, who is -- who is checking these individuals that  
13 are moving into our neighborhood?

14 And everybody here smirks and smiles. You  
15 don't live in our neighborhood. I'm sitting back there  
16 watching you smirk and smile. I live there, I see this  
17 every day. So I don't appreciate coming here and  
18 talking, you know, in my behalf and my neighbors and  
19 having you guys throw your attitudes at us. It's  
20 really unprofessional.

21 HEARING OFFICER ALLEN: Anyone else? I don't see a  
22 lighting.

23 MR. MATHENA: Larry Mathena, M-A-T-H-E-N-A, a  
24 resident.

25 Just a couple of observations since the battle

1 seems to been lost and probably the war. No. 1, I do  
2 completely agree with the observation that any  
3 financial data you receive at the very last moment, I  
4 would suggest requires that you take the time to study  
5 and truly understand.

6           Clearly, I think you are probably acutely  
7 aware with how profitable these activities can be. In  
8 terms of reasonable, you know, accommodation hearing, I  
9 think that's an appropriate thing to start out as a  
10 general starting point. And unless and until you are  
11 actually explicitly explained and described why this  
12 thing has exceptional cost burdens, I think it's not  
13 unreasonable for you to presume a level of  
14 profitability, unless and until, on a per person basis,  
15 unless and until there's specific evidence suggesting  
16 to you the contrary.

17           The last thing I'd like to throw out,  
18 especially with this apparent agregation of structures,  
19 and again, excepting where this seems to be heading, to  
20 me, the real place after you do applying the laws  
21 strictly, determine how many bodies can go into each  
22 one is my understanding that there should, would, could  
23 be extreme restrictions on interaction between a  
24 facility that's licensed and one is not, and that the  
25 Applicant should be held accountable to that. And the

1 residents in the area should be aware of that and told  
2 that. And that to the extent there are violations of  
3 either state or city law, that residents who are aware  
4 of those violations be explained how the reporting  
5 process should occur so that people who are truly  
6 engaged in licensed rehab don't intermingle and you  
7 don't have cross activities with people who aren't.  
8 And with those observations, I don't have anything else  
9 to add. Good to see you.

10 HEARING OFFICER ALLEN: Thank you.

11 Any other public wishing to speak?

12 All right, we'll close the public hearing.

13 And from here, I believe we need to go to the financial  
14 information that has been submitted to demonstrate the  
15 necessity.

16 Does staff have anything to comment on or to  
17 present that would be appropriate ahead of going --  
18 focusing on the numbers?

19 MS. WOLCOTT: No. Other than to ask whether or not  
20 Mr. Brancart wishes to respond to any of the public  
21 comments on behalf of his client in open forum.

22 HEARING OFFICER ALLEN: Oh, absolutely. If you  
23 would like to, Mr. Brancart, feel free.

24 MR. BRANCART: No, thank you.

25 HEARING OFFICER ALLEN: Or your client.

1 MR. BRANCART: On behalf of Pacific Shores, no  
2 thank you.

3 HEARING OFFICER ALLEN: I believe it's now time for  
4 us to focus in on that financial information that has  
5 been presented to demonstrate the financial viability  
6 of the operations at 12.

7 The financial information that has been  
8 presented has been not in a well-defined and orderly  
9 fashion. There's been information for different years  
10 presented that makes it quite difficult. There are a  
11 number of issues with the financial information, and  
12 all I can suggest to you is that we're going to do our  
13 best to get sufficient financial information verified  
14 from the Applicant to render a responsible decision  
15 here, and report back to the City Council on the  
16 assignment that's been given.

17 And so with that, we are told that the  
18 adjacent room here where we had intended to conduct  
19 these discussions is not available and there's really  
20 nowhere else for us to go. So what we would request,  
21 unless staff has a different idea, what we request is  
22 that the public that's not participating, feel free to  
23 go anywhere in the City Hall complex, or to Starbucks,  
24 or right out here in the seating, and we'll proceed  
25 with our hearing and notify you, as best we can, when

1 we're through working on these numbers. And we'll  
2 definitely make an announcement here before we depart.

3 Thank you very much for participating, and  
4 we're sorry that you can't participate in it all.

5 MR. BRANCART: So we're off the record in recess  
6 briefly?

7 HEARING OFFICER ALLEN: Yes, we're in recess.

8 (Recess taken.)

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1 HEARING OFFICER ALLEN: The hearing is now  
2 reopened. The public is now present, to the extent  
3 they have been willing to wait around while we were in  
4 our in camera session.

5 We worked a great deal on the financial  
6 information that was presented, and we concluded that  
7 it was simply inadequate to render a decision here on  
8 financial viability. And we, therefore, worked much  
9 longer on a format for presentation by the Applicant of  
10 the financial information necessary for the City and  
11 the Hearing Officer to make a decision on financial  
12 viability that will be acceptable to us and allow us to  
13 render a decision to the City Council.

14 We stopped short of requiring formal audited  
15 financial statements, but we've worked up a format that  
16 we think will work for presentation of that  
17 information. And the representative of the Pacific  
18 Shores Properties will certify that that information is  
19 true, correct, and valid and it's being submitted with  
20 the understanding that it's going to be relied upon by  
21 the City in making a financial viability determination  
22 in connection with a necessity finding requirement of  
23 the reasonable accommodation law.

24 So we're confident that we have a procedure  
25 that's going to be up and running and we'll work to get

1 us the information that we need to make a decision.

2 And the Applicant has agreed to comply with that.

3 The financial information will be submitted to  
4 the City by January the 29th. We will then have until  
5 February 11th for the analysis. On February 11th,  
6 we'll reopen this hearing in this chamber, as long as  
7 it's available at, I believe, 3:00 p.m. on that date.  
8 So that will be the time when we, once again, take up  
9 this question, and at that time, sincerely hope we can  
10 render a final decision with respect to the reasonable  
11 accommodation.

12 Anything that needs to be said by any staff  
13 member or Applicant?

14 MR. BRANCART: Nothing from the Applicant. Thank  
15 you, Mr. Allen.

16 HEARING OFFICER ALLEN: Thank you.

17 Incidentally, as a part of this, the Hearing  
18 Officer is going to obtain a copy, draft copy of the  
19 transcript dealing with the information regarding the  
20 format and matter of the presentation of financial  
21 information, and issue an order to that effect which  
22 will be binding on the parties. And it will also  
23 include the continuance date and the date by which the  
24 financials are due.

25 All right. With that, we'll be adjourned for

1 this evening and be back again February the 11th.

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3 (Hearing adjourned at 5:14 P.M.)

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REPORTER'S CERTIFICATE

I, Deborah L. Chadwick, a Certified Shorthand Reporter of the State of California with principal office in the County of Orange, do hereby certify that the foregoing proceeding was written by me in Stenotype and transcribed into typewriting and that the foregoing is a true and correct copy of my shorthand notes thereof.

  
Certificate No. 4146

Dated: 12-25-09

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November 20, 2009

**SENT VIA ELECTRONIC MEANS**

Catherine Wolcott, Esquire  
Deputy City Attorney  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92663

Re: Appeal of Pacific Shores Properties, LLC  
A09-00583

Dear Ms. Wolcott,

In accordance with the resolution of the City Council of Newport Beach and our agreement to provide the City with financial information relative to Pacific Shores Properties, LLC request for a reasonable accommodation, we are providing financial information from calendar year 2008. This information is being provided with the following caveats: this information is subject to the protective order the parties agreed upon and filed with the Court in the related litigation, and the use and dissemination of that information is governed by the terms of the protective order; the financial viability analysis is not the sole the reason Pacific Shores Properties, LLC is requesting a reasonable accommodation, but is being provided in support of that request.

The information being provided is based on calendar year 2008 residency and occupancy totals, which were reflected in Pacific Shores original request for a reasonable accommodation for the Orange Avenue properties for 18 and 19 residents. Pacific Shores has amended that request and is now seeking a reasonable accommodation for 12 residents plus one staff member per Orange Avenue address. We believe that the expenses will remain constant regardless if there are 18 or 19 residents versus 12 residents. We also believe that the significant difference will be the significant decrease in the amount of income generated by the decrease in the population for each of the Orange Avenue addresses.

The 2008 expenses for the cost of operating the Orange Avenue addresses are as follows:<sup>1</sup>

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<sup>1</sup>This total excludes legal fees which have been expended by Pacific Shores in 2008. At this time, Pacific Shores will not provide an exact amount in terms of legal fees, but will state the amount is in excess of five figures.

<b>Water</b>	<b>\$ 1,580.00</b>
<b>Gas</b>	<b>\$ 2,547.00</b>
<b>Cable</b>	<b>\$ 1,033.00</b>
<b>Edison</b>	<b>\$ 3,550.00</b>
<b>Touchstone</b>	<b>\$ 63.00</b>
<b>Accountant</b>	<b>\$ 1,000.00</b>
<b>Management</b>	<b>\$ 52,792.00</b>
<b>Tests</b>	<b>\$ 2,300.00</b>
<b>Transportation (fuel)</b>	<b>\$ 3,778.00</b>
<b>Sober Living Coalition</b>	<b>\$ 600.00</b>
<b>Insurance</b>	<b>\$ 2,600.00</b>
<b>Taxes</b>	<b>\$ 2,384.00</b>
<b>Phone and Internet</b>	<b>\$ 3,360.00</b>
<b>Advertising</b>	<b>\$ 1,200.00</b>
<b>Merch/Supplies</b>	<b>\$ 6,680.00</b>
<b>Maintenance</b>	<b>\$ 4,750.00</b>
<b>Mort/Interest/Taxes</b>	<b>\$127,370.00</b>
<b>Total</b>	<b>\$217,587.00</b>

As previously stated, the total income for the Orange Avenue address is based on occupancy of 18 and 19 residents. During calendar year 2008, the rental income realized for the Orange Avenue addresses was \$268,500.00. Unfortunately, due to technical problems we cannot provide the City with a more detailed breakdown of this total. This information will be provided to the City no later than the close of business on November 23, 2009.

Pacific Shores Properties, LLC disagrees with the analysis provided in the City's November 9, 2009 letter interpreting selected cases on the application of financial viability as it pertains to a request for reasonable accommodation in particular the City's reliance on the *Lapid Laurel* case which involves a proposed development of a 93 bed elder care facility in a residential neighborhood. The use of *Lapid Laurel* as an analytical tool in this request is inappropriate. Pacific Shores request for a reasonable accommodation that the City allow 12 residents plus one house manager at each Orange Avenue address is based mainly on therapeutic necessity. As a provider of housing for disabled persons, Pacific Shores Properties, LLC is entitled to bring in sufficient income to cover its living expenses, and to generate enough income to pay its business expenses. Even if there is a "commercial nature" to the operation of Pacific Shores Properties, LLC at its Orange Avenue addresses, this is not a basis for denying its request for a reasonable accommodation. (The nature of group home living for the handicapped often requires alternative living arrangements to effectuate the purpose of the FHA. The disabled are not able to live safely and independently without

Catherine Wolcott, Esquire  
November 20, 2009

Page 3

organized, and sometimes commercial group homes. *Groome Resources Ltd. v. Parish of Jefferson*<sup>2</sup>, 234 F.3d 192, 206 (5th Cir. 2000). The fact that the Glendora home is a business should not be the basis for denying an accommodation when reasonable and necessary. *Avalon Residential Care Homes, Inc. v. City of Dallas*, 130 F. Supp. 2d 833, 841 (N.D. Tex. 2000)<sup>3</sup>. Pacific Shores Properties, LLC request for a reasonable accommodation is reasonable and necessary based on its need to pay normal household expenses as well as its business and operational expenses.

Please do not hesitate to contact me if you need additional information or need to discuss the contents of this letter.

Sincerely yours,



Steven G. Polin

cc: Christopher Brancart  
Pacific Shores Properties, LLC  
T. Peter Pierce  
Patrick Bobko  
Dana Mulhauser  
Paul E. Smith

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<sup>2</sup>The *Groome* Court also held: "In addition to the commercial aspect of purchasing the home, it must be noted that the granting of reasonable accommodations to Alzheimer's group homes and other homes for disabled individuals also affects the commercial viability of care organizations like Groome Resources. The district court found that the zoning ordinance, with its limitation on four unrelated persons, "will make it economically unfeasible for plaintiff to operate the proposed home." The court recognized that the economic viability of this care facility was impeded by the refusal to grant an accommodation" *Groome Resources, Ltd. v. Parish of Jefferson*, 234 F.3d 192, 206 (5th Cir. La. 2000)

<sup>3</sup>Other circuits have also recognized that commercial group homes may be the only way for disabled individuals to live in a residential community. See *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996); *Smith & Lee Assocs., Inc. v City of Taylor, Mich.*, 13 F.3d 920, 931 (6th Cir. 1993).

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## PACIFIC SHORES - 12/16/2009

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