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PUBLIC HEARING ON
NEWPORT COAST RECOVERY, LP
AND PACIFIC SHORES PROPERTIES, LLC
BEFORE NEWPORT BEACH CITY COUNCIL MEETING
NEWPORT BEACH, CALIFORNIA
TUESDAY, OCTOBER 27, 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 7:34 p.m., and
ending at 9:00 p.m., on Tuesday, October 27, 2009, before
LAURA A. RUTHERFORD, RPR, Certified Shorthand Reporter
No. 9266.

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APPEARANCES:

City Council Members:

EDWARD SELICH, Mayor
KEITH CURRY, Mayor Pro Tem
STEVEN ROSANSKY, Council Member
MICHAEL F. HENN, Council Member
NANCY GARDNER, Council Member
LESLIE DAIGLE, Council Member

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For Pacific Shores Properties, LLC:

BRANCART AND BRANCART
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1 NEWPORT BEACH, CALIFORNIA; TUESDAY, OCTOBER 27, 2009

2 7:34 P.M. - 9:00 P.M.

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4
5 MR. SELICH: It's now 7:34, so we can go back
6 to our regular agenda public hearings, items number nine
7 and ten. First one is item number nine. It's the Appeal
8 of Hearing Officer's Denial of Use Permit and Reasonable
9 Accommodation for Newport Coast Recovery.

10 The City has been informed that the Applicant
11 has -- or the Appellant, I should say, has withdrawn this
12 appeal, and there is no action necessary on the part of
13 the City Council. However, I believe the City Attorney
14 has a comment on what the impact of this withdrawal is.

15 MR. HUNT: Thank you, Mr. Mayor.

16 Yes, we received correspondence from the
17 Appellant's Counsel this morning at approximately 11
18 o'clock, indicating that the Appellant was withdrawing
19 its appeal to the Council. As a result, the appeal is
20 withdrawn. There's no action necessary of the Council.

21 They are not proceeding forward with the
22 appeal. That means that the Hearing Officer's
23 determination of the denial of the Use Permit and, I
24 believe, also reasonable accommodation was -- is upheld,
25 and it's the law of this particular action, and,

4

1 therefore, they do not have a reasonable accommodation or
2 a Use Permit.

3 We also would note that we have had Code
4 Enforcement check the facilities. They are empty. We've
5 learned that they actually moved out of the facilities
6 approximately a week ago. So we're understanding they
7 have moved their facilities to Costa Mesa.

8 Thank you.

9 MR. SELICH: Okay. Councilman Henn?

10 MR. HENN: Question of the City Attorney. So
11 at this location, then, will we be seeing another
12 rehabilitation home moving into this location?

13 MR. HUNT: We should not. Any new
14 rehabilitation use that wishes to locate into the City
15 will have to obtain a Conditional Use Permit or make an
16 application for a reasonable accommodation. We have not
17 seen any facilities move in without making the
18 original -- making an application as required pursuant to
19 our Code.

20 Any facility that proceeds to move in to that
21 location without the application would be in violation of
22 our Code, and we'll take abatement action.

23 MR. HENN: And in this -- this is in R2, is
24 that right, the Ordinance --

25 MR. HUNT: Yes.

1 MR. HENN: -- prohibiting a new rehabilitation
2 homes in that area.

3 MR. HUNT: Right. It's prohibited in all
4 residential areas, yes, except the MFR, Multi-Family
5 Residents.

6 MR. SELICH: Okay. There's no action necessary
7 on our part; correct?

8 MR. HUNT: No action is necessary.

9 MR. SELICH: Okay. Very good. We'll move on
10 to item number ten. This is the Appeal of the Hearing
11 Officer's Denial of Reasonable Accommodation for Pacific
12 Shores Properties.

13 With the Council's concurrence, I'd like to
14 follow the following procedure for this hearing this
15 evening:

16 First of all, we'll start off with the Staff
17 presentation. We'll then allow the Appellate to address
18 the Council. The Appellant will have a total of 20
19 minutes to be used as they see fit between their initial
20 address to the Council and their rebuttal to the public
21 comments.

22 That, at that point, we'll then allow the
23 public to comment, limiting public comments to three
24 minutes each. Then the Staff will again opine on the
25 proceedings. And then we'll allow the Appellant to use

1 the remainder of his 20 minutes, if he chooses to do so.

2 Any objections to that procedure?

3 (No audible response.)

4 MR. SELICH: Okay. Seeing none, we'll go ahead
5 and follow that procedure. So we'll start off with the
6 Staff Report.

7 MR. HUNT: Thank you, Mr. Mayor. As an initial
8 opening for the Staff Report, let me frame the issues for
9 the Council.

10 As you are aware, you adopted an Ordinance in
11 2008 dealing with applications for the location of
12 residential care facilities. And those facilities that
13 were located in a residential district needed to apply
14 for a Conditional Use Permit or reasonable accommodation.

15 Pacific Shores is the Operator in a residential
16 district and has applied for a reasonable accommodation.
17 It has three facilities in that residential district, two
18 on Orange and one on Clay Street. They made the
19 application to the Hearing Officer. The Hearing Officer
20 denied the application, and then they have the right to
21 appeal that determination to you as a Council.

22 The standard that you are faced with is is to
23 review the Hearing Officer's record, or the record of the
24 Hearing Officer's proceedings, and to determine whether
25 or not the Hearing Officer's determination is supported

1 by substantial evidence.

2 This is not a de novo hearing. This is not a
3 time to receive new evidence. This is a time to look to
4 see whether or not the decision by the Hearing Officer
5 was, in fact, supported by the evidence and the record.

6 And I will note an interesting change in this
7 particular application. First of all, the Hearing
8 Officer requested -- excuse me, not the hearing Officer.
9 The Applicant requested a reasonable accommodation to
10 allow for 50 beds cumulative in these three locations.
11 And ultimately, the Hearing Officer denied that request
12 without prejudice to coming back and addressing the issue
13 of lesser beds or coming to an agreement with the City.

14 We received correspondence on Friday afternoon
15 from the attorney for the Applicant and the Appellate.
16 They have reduced their request to 30 beds in those three
17 facilities, one of which would be an ADP licensed
18 facility of six or under. That's the Clay Street
19 address. They're now asking for a reasonable
20 accommodation to allow for 12 residents in the two Orange
21 Street houses, 494 -- excuse me -- 492 and 492 and a half
22 Orange Avenue.

23 In addition, they also have a right to have a
24 residential manager in each one of those homes, if that
25 was their choice. They make other requests for

1 reasonable accommodations. That is a substantial change
2 from the original application.

3 Since the Hearing Officer denied the request
4 without prejudice, this is open to the Council under your
5 standards to review the record and determine whether or
6 not you would wish to modify the Hearing Officer's
7 determination. And if there's substantial evidence in
8 the record, that would allow you to address the requested
9 change.

10 So under your Ordinance, you have a number of
11 options to go forward. One is you could reverse the
12 Hearing Officer's decision, and authorize the issuance of
13 a reasonable accommodation if the evidence and the record
14 supports it, you can modify the Hearing Officer's
15 decision based on evidence in the record, or can you
16 remand the matter to the Hearing Officer if you feel it's
17 not supported by substantial evidence.

18 All those options are available to you today.
19 The discussions and presentations you received will not
20 be in the way of evidence. They are in the way of
21 argument. The only evidence you may rely on is that
22 which was the record that was before the Hearing Officer.

23 And we would go forward with the Staff
24 presentation and the presentation of the Appellant,
25 pursuant to the same way that the Mayor has indicated,

1 and then you can receive testimony from the public.

2 MR. SELICH: Okay. Is there going to be any
3 additional Staff information from any other Staff member?

4 MR. HUNT: Yes, there's one other Staff
5 presentation. Ms. Wolcott or Mr. Bobko -- oh, Ms. Brown.
6 Thank you.

7 MS. BROWN: Good evening. I'm Janet
8 Johnson-Brown, Associate Planner. Mr. Mayor, members of
9 Council. I have just a very brief presentation to make,
10 because I know we have a lot of material to cover, so I'm
11 going to go over just a little bit of background
12 information.

13 Pacific Shores property operates a sober living
14 facility comprised of three different buildings. They
15 are located at the southwest corner of Orange Avenue and
16 Clay. As Mr. Hunt noted, there are two units on the
17 Orange Avenue property and a single family dwelling on
18 the Clay Street address.

19 Following an exchange of correspondence and
20 initial application submittal, the Pacific Shores legal
21 Counsel submitted an amended request to March 2009 for
22 five separate reasonable accommodations. The requests
23 that they made appear on this screen for your
24 convenience, and they are also in the Staff Report.

25 The Hearing Officer is designated to approve,

1 conditionally approve or deny the reasonable
2 accommodation application. The decision to approve the
3 reasonable accommodation may only be granted if all five
4 findings can be made. And those findings are here on the
5 screen also for your convenience.

6 At the March 25th noticed public hearing, the
7 Hearing Officer determined that based on the information
8 in that Staff Report and the testimony that was received
9 and taken at the hearing, that he could not make all five
10 findings necessary to grant request numbers one, two and
11 four, which were subsequently denied with prejudice.

12 However, request number three, which was to
13 classify the dwellings as legal non-conforming use, was
14 approved by the Hearing Officer.

15 And request number five, which was to continue
16 the use of the facility in the R2 District when such uses
17 are only permitted in an MFR District, was denied without
18 prejudice.

19 The Hearing Officer made the determination to
20 deny request number five without prejudice, as noted in
21 the hearing transcript, that while the Applicant had
22 rejected Staff's proposal for an alternative
23 accommodation, he did not have the ability to impose the
24 proposed accommodation or alternative accommodation on
25 the Applicant.

1 And that -- however, if the Applicant and Staff
2 could reach an agreement on an alternative accommodation,
3 he would be open to hearing that at a future time, or in
4 this case, this evening you'll be taking that into
5 consideration.

6 Again, as Mr. Hunt indicated, the Applicant did
7 submit a letter on October 23rd, requesting an amended
8 reasonable accommodation. I have these up on the screen.
9 There are four different items here on the screen. I
10 don't want to read through them and take up time.

11 So I think that concludes my presentation
12 unless you have any questions. Ms. Wolcott is going to
13 go into detail on the alternative requests that was
14 received on Friday.

15 MR. SELICH: Okay. Any questions for Janet?

16 (No audible response.)

17 MR. SELICH: Okay. Thank you, Janet.

18 MS. WOLCOTT: Good evening. Kathryn Wolcott,
19 Deputy City Attorney.

20 As you know, Mr. Hunt advises the Council on
21 group home matters. I advise at the Staff level for the
22 reasonable accommodation hearings.

23 For most of the Pacific Shores' reasonable
24 accommodation requests that you're looking at, what all
25 Council needs to decide this evening is whether

1 substantial evidence that is in the record that has been
2 presented to you supports any of the Hearing Officer's
3 findings.

4 If any of those five required findings that are
5 required in order to grant a reasonable accommodation
6 cannot be made, then the Hearing Officer's obligated,
7 under the Municipal Code, to not grant the reasonable
8 accommodation.

9 You'll be looking at it under the substantial
10 evidence test, which Mr. Hunt discussed earlier.
11 Substantial evidence, as we mentioned in the Staff
12 Report, is relevant evidence that a reasonable mind might
13 accept as adequate to support a conclusion.

14 It's also been described as reasonable,
15 credible proof of the essential of the law requires in a
16 particular case. Substantial evidence may include facts,
17 and it may include expert opinions that are supported by
18 facts, but it may not include arguments, speculation,
19 unsubstantiated opinion or clearly erroneous evidence.
20 However, testimony from a single individual may
21 constitute substantial evidence if the finder of facts
22 has determined that that is a credible testimony.

23 In this case, this Council is accustomed to
24 acting as the finder of facts. In this situation, the
25 Hearing Officer has already heard from the witnesses,

1 reviewed the testimony. The Hearing Officer, as the
2 finder of fact, has made his determination as to the
3 credibility of the evidence that was presented to him,
4 and he made his decision accordingly.

5 We presented a memorandum that accompanied
6 Mr. Hunt's Staff Report that lists some evidence, some
7 examples of the evidence, although certainly not all,
8 that is in the record that supports every one of the
9 findings that the Hearing Officer made. Staff believes
10 that the Hearing Officer's determinations were supported
11 by substantial evidence. So that is what you look for in
12 the record.

13 As to the original five requests, Staff
14 believes the Hearing Officer made supportable decisions.
15 As we've mentioned, that is detailed in the October 27th
16 memorandum. However, because we have so much material to
17 cover this evening, I'm not going to go into the specific
18 evidence that support those decisions unless you have
19 questions.

20 The reasonable accommodation is a process that
21 is required under Federal law. If a disabled individual
22 or organization or individual who represents disabled
23 individual makes a request to a government agency, the
24 government agency must grant that request if it is:

25 One, necessary to afford a disabled individual

1 an equal opportunity to use and enjoy a dwelling;

2 And two, reasonable. So it has to be a
3 necessary request and the request has to be reasonable.

4 "Necessity" has been defined by case law as
5 either the accommodation will grant a therapeutic benefit
6 that directly ameliorates one of the effects of the
7 handicaps, or it is necessary in order to make a facility
8 financially viable, so that it can provide housing for
9 disabled individuals. Those are the two situations under
10 which a court will find necessity.

11 For "reasonableness," a court will find
12 necessity if the request does not create a fundamental
13 alteration in the nature of a City program, or if
14 granting the question would not create an undue
15 administrative or financial burden for the City. So
16 that's the background on reasonable accommodation.

17 That is what the Staff analyzes when we get a
18 request for reasonable accommodation, and that is the
19 analysis that the Hearing Officer goes through as well,
20 and he make the determination based on that framework.

21 Pacific Shores made five separate original
22 requests, which we reviewed in March. And Ms. Brown has
23 listed them on the slide very briefly.

24 The first request was that Pacific Shores'
25 three buildings all be treated as single housekeeping

1 units;

2 The second request, which we saw as essentially
3 a repetition of the first request, was that Pacific
4 Shores' -- let's see -- single housekeeping unit -- that
5 might have been the zoning code one. I don't have it
6 written down. I'm sorry.

7 The third request was that they treat Pacific
8 Shores as a non-conforming use.

9 The fourth request was that the City waive the
10 application of building codes, fire codes and zoning
11 codes, as they would apply them to residential care
12 facilities, and instead, apply the standards that they
13 would apply for single- or two-family uses.

14 And the fifth request was -- oh, the second
15 request, I sorry. I remember -- was that we not classify
16 them as a residential care facility, which was
17 essentially the same as the first request. That first
18 request basically asked that the City not apply any of
19 the restrictions of Ordinance Number 2008-05 to this use.

20 The fifth request was that the facility be
21 allowed to continue in its current location without a Use
22 Permit in an R2 zone with a population of 50 individuals.

23 Staff analyzed this and found that it was not a
24 reasonable request, and it was not a necessary request,
25 and advised the Hearing Officer accordingly.

1 Staff did analyze the numbers that Staff felt
2 that the findings that were necessary to grant a
3 reasonable accommodation could be made, and came up with
4 a recommendation that if Pacific Shores had 12
5 individuals resident clients in one of the
6 buildings -- one of the dwelling units, excuse me, then
7 they could -- then the findings could be made.

8 The Hearing Officer didn't want to unilaterally
9 impose Staff recommendations on the Applicant when the
10 Applicant rejected them, and, therefore, the Hearing
11 Officer denied that request. However, as Ms. Brown
12 noted, it was denied without prejudice. The Hearing
13 Officer anticipated that there might be a future time
14 when the Applicant and the City could come up with a
15 mutually acceptable number.

16 On October 23rd, they amended their request for
17 reasonable accommodations, and that request essentially
18 restates or repeats some of the old requests. They, once
19 again, requested that the City apply the zoning, building
20 and fire codes that the City would apply to other single-
21 or two-family uses. And they, once again, requested that
22 we treat them as a single housekeeping unit.

23 They made one wholly new request, which was to
24 waive the enforcement of the integral facilities
25 restrictions. And they modified the original request

1 number five. As of October 23rd, instead of asking for
2 50 individuals, they are now asking for a total of 30
3 resident clients, with six of them housed in a
4 licensed -- state licensed six-or-under facility.

5 They intend to license 3309 Clay as a
6 six-or-under, therefore, in its analysis, Staff look the
7 numbers at 3309 Clay out its calculations. Because under
8 Health and Safety Code section 11834.23, the City is
9 required to treat a licensed facility of six or under, as
10 you know, like any other residential use.

11 This primarily modifies request number five,
12 which is the request that the Hearing Office denied
13 without prejudice. Council does have jurisdiction to
14 modify the decision of the Hearing Officer, as well as to
15 sustain or reverse it, under Newport Beach Municipal Code
16 Section 20.98.025.

17 Our recommendations are as follows:

18 The Hearing Officer's already denied with
19 prejudice the request to treat Pacific Shores as a single
20 housekeeping unit. We believe that there was ample
21 evidence in the record and in the Staff Report, which
22 also -- the facts that are in the Staff Report also are
23 considered evidence.

24 There was ample evidence to support the Hearing
25 Officer's decision, and we recommend that you sustain the

1 Hearing Officer's decision in this area.

2 The request to waive the integral facility
3 definition is new. Staff's recommends that the City not
4 enforce this definition against Pacific Shores at this
5 time. The reason for this is that the use of Pacific
6 Shores is subject to a pending case before Judge Selna in
7 Federal Court.

8 Selna enjoined the City from enforcing the term
9 "integral facilities" against small licensed facilities
10 in the Sober Living by the Sea v. City of Newport Beach
11 case. In light of the Pacific Shores litigation that's
12 pending before the same judge, we feel that the
13 reasonable accommodation setting is not the appropriate
14 venue to decide this issue and to analyze it. We feel
15 that the City Council should not assume jurisdiction over
16 this issue at this time.

17 We've reviewed the amended request number five,
18 and we recommend that the Council also review amended
19 request number five to house 12 residents at each unit at
20 Orange Avenue, for a total of 24.

21 In light of evidence presented prior hearings,
22 Staff has done a complete analysis; however, we cannot
23 present you with new evidence at this time. You have to
24 rely on the evidence that was presented to the Hearing
25 Officer in the decision below.

1 However, during our analysis, we believe we
2 could make a recommendation that the requested
3 accommodation would not fundamentally undermine the basic
4 purpose of the zoning code. The City Council has the
5 option of modifying the Hearing Officer's decision as to
6 request number five by granting conditional approval.

7 The conditional approval could include a tiered
8 approval, which grants accommodation for different
9 numbers of residents if different structural conditions
10 on the side are met. We talked with the Newport Beach
11 Fire Marshal, discussed the numbers. Fire Marshal
12 Bunting has not been in this facility. There are certain
13 requirements that would need to be met to exceed six.

14 If there are 32 inch doors at certain exiting
15 doors, which would include the front door, back door,
16 hall doors, possibly the bedrooms, he needs check. And
17 if there are only 32 inch doors, then Mr. Bunting can
18 accept up to nine residents in each unit.

19 If the doors are 36 inches where required, then
20 Fire Marshal Bunting can accept 10 residents in each
21 unit. If there are -- if the corridors of one hour fire
22 resistant construction and the 36 inch doors are also
23 present where required, Fire Marshal Bunting has stated
24 he can accept 12. We do not recommend exceeding 12 in
25 each unit.

1 Staff's other recommendation is that if the
2 City Council -- oh, also, the Applicant has not submitted
3 any verifiable evidence that would show their assertion
4 of financial necessity. Necessity is a prong of the
5 analysis that we were unable to do any analysis of based
6 on the information submitted to us.

7 Normally, when a facility argues financial
8 necessity, we require verifiable financial information so
9 that we can assess whether or not why -- how many more
10 individuals they need to house above Staff's
11 recommendation to achieve the financial viability that
12 Federal law says we accommodate.

13 Staff recommendation at this time is that if
14 the City Council finds the request reasonable, the
15 Council remand the amended request to the Hearing Officer
16 to consider the specific issues of the financial
17 viability.

18 At that time, during a limited period of time,
19 the Applicant would be required to submit verifiable
20 financial information to the City, the Administrative
21 Services Department would perform the necessary analysis,
22 and the Hearing Officer would review the financial
23 information and make a determination.

24 MS. GARDNER: Would there also be some sort of
25 an investigation in terms of the fire requirements?

1 MS. WOLCOTT: Yes, there would be a required
2 inspection on the part of Fire Marshal Bunting.

3 MS. WOLCOTT: If the City Council decides to
4 uphold the resolution -- and that means any or all of the
5 decisions, and we are recommending upholding some of
6 them -- Staff recommends the City Council direct the
7 Staff to return at the next Council meeting with a
8 Resolutions of Denial for the -- or, excuse me,
9 Resolutions to Uphold the Hearing Officer's decision
10 below.

11 Do you have any questions?

12 MR. SELICH: Any questions of Ms. Wolcott?

13 (No audible response.)

14 MR. SELICH: I don't see any. Thank you.

15 Does that conclude the Staff presentation,
16 Mr. Hunt?

17 MR. HUNT: It does, Mr. Mayor.

18 MR. SELICH: Okay. I'll invite the Appellant
19 to step forward at this time.

20 MR. BRANCART: Let me use the projector.

21 Good evening. My name is Chris Brancart, and
22 I'm here appearing on behalf the Appellate Pacific
23 Shores. I thank you for the opportunity to address the
24 Council, Mr. Mayor and Members.

25 There is not substantial evidence to support

1 the Hearing Officer's finding that there should not have
2 been a reasonable accommodation or the reasonable
3 accommodation was denied treating Pacific Shores as a
4 single housekeeping unit.

5 I'd like to focus on that first, and then I'd
6 like to turn to the statements that have been made by
7 Staff regarding the balance of the Hearing Officer's
8 determination.

9 I just want to take a moment to put in context
10 why it is the Hearing Officer heard as a matter of law
11 because there is not substantial evidence to support the
12 denial of the first request.

13 What you see here on the screen, Members, is
14 the location of the Pacific Shores facility. It is
15 located, as you can see, off the Peninsula. Closer view
16 of it here. The red circle indicates where the house is
17 located. As you can see, it's adjacent to a large
18 commercial structure right off of Old Newport Road and
19 adjacent to the 55 Freeway. Some of you probably know
20 this area.

21 You'll recall that before the Pacific Shores
22 house was built, it was a small, in some way, substandard
23 structure that was there. And over the course of a year,
24 with permits from the City, Pacific Shores built a
25 facility that not only is attractive but integrates well

1 with the surrounding community. You'll see the big white
2 building in the right-hand corner, Members. That's the
3 commercial structure that it backs right up against.

4 Becoming a sober house meant that they had to
5 provide a sober environment. And part of that was
6 guaranteeing that individuals that live in Pacific
7 Shores, unlike houses that are up and down the street,
8 you can say one thing for certain. Those individuals, as
9 a matter of policy in that house, as a matter of
10 commitment with the group, don't use drugs and alcohol.
11 You can't say that about other houses necessarily up and
12 down the block.

13 Not only that, they have agreed to go ahead and
14 share in chores. They've agreed, as you can see in item
15 number two, or at least, maybe you can't, that they will
16 not smoke out in front, that they will attend meetings,
17 and that they will abide by AA and NA policies.

18 There were complaints. And after those
19 complaints were heard, Pacific Shores implemented a Good
20 Neighbor Policy. This policy hoped to address some of
21 the concerns about parking along Clay, so that now
22 members only park along Old Newport Road.

23 They go out and pick up trash in front of the
24 location and up and down the street in the area. They do
25 not smoke or loiter in front of the house. And they are

1 barred from using profanity. In addition, they must
2 obtain full-time work or go to school.

3 Throughout this entire journey that the Council
4 has taken regarding regulation of group homes, we had an
5 assumption that we have a superabundance of such homes,
6 particularly here on the Peninsula. We are told by Staff
7 that there are 315 sober beds. In fact, the data does
8 not support what you have been told.

9 Starting out with the Federal government, the
10 most reliable source of unmet need for treatment is by
11 Health and Human Services. It's by the Administration
12 Office there called the Substance Abuse and Mental Health
13 Services Administration.

14 Here is their most recent report. I'm sorry
15 it's not larger, but what it shows you is that in our
16 area, Orange, that 8.06 percent of all persons older than
17 the age of 12, 8 percent of all persons in our area over
18 the age of 12, need substance abuse, particularly
19 alcohol, treatment and recovery and are not receiving it.

20 The number you see to the right-hand side is
21 the number for people who are using illicit drugs. 2.46
22 percent of all persons in our area over the age of 12
23 need treatment and are not receiving it.

24 You heard a report from Staff about trying to
25 revise the housing elements in order to obtain HCD

1 certification. And the Council has been told by public
2 interest groups, local interest groups, the Kennedy
3 Commission and, of course, the State of California that
4 the housing element is not compliant in the City of
5 Newport Beach because of affordable housing constraints
6 but also because of constraints upon housing for the
7 disabled. And Staff has specifically identified the
8 Ordinance in handling the treatment of group homes by the
9 City as one of those impediments. But I don't think we
10 should stop there.

11 The City itself takes CBEG money. Each year,
12 the City certifies to the Federal government, in order to
13 receive those monies, that we are affirmatively
14 furthering for housing. We've gone ahead and identified
15 goals to the Federal government. But you all know this,
16 because you, as a Council, vote and certify to the
17 Federal government that you are affirmatively furthering
18 housing, and you state the needs of the City to the
19 Federal government in order to receive those Federal
20 monies.

21 What does the City say? Well, back in 2005,
22 the City identified as one of its special needs high
23 priorities was treatment of people with substance abuse.
24 Specifically that was listed as a goal, to provide
25 substance abuse treatment.

1 That was reiterated earlier -- actually, I
2 should say it was first stated in 2000, in which the City
3 identified as one of its goals affording
4 recovering -- providing recovering facilities. It was
5 reiterated again in the Year Action Report filed with
6 HUD. And I will add, Members, and approved by this
7 Council.

8 As your City Attorney will advise you that in
9 light of recent events -- and, for example, in the
10 Westchester County case, these certificates are not to be
11 taken lightly. When the Council certifies that these are
12 the plans that we intend to follow in order to spend
13 money, that they come with consequences.

14 The Consolidated Plan is considered by HUD,
15 specifically identifies substance abuse as
16 being -- treatment as being one of the areas where the
17 City needs high priority funding investment.

18 And as early as last year, in terms of Newport
19 Beach's program objectives, affording housing, funding
20 and priorities. Number seven lists, and, of course, you
21 can't read that, but I will read it for you, it says
22 specifically "There needs to be an increase in supportive
23 services for persons suffering from substance abuse."

24 Whether it be the Federal government's
25 statistics that are the most reliable, or the fact that

1 HCD has not approved the housing elements because, in
2 part, of the group home Ordinance, or of the
3 certifications that this Council has repeatedly made to
4 the Federal government in order to obtain Federal funds,
5 the fact is that there is a tremendous unmet need.

6 To simply put it off and saying there's 305
7 sober beds in the City doesn't withstand any scrutiny.
8 So there is need to treat an organization such as this as
9 a single housekeeping unit, and that's why it's important
10 to take a look at this.

11 The single housekeeping unit was the core
12 concept in the 2008 Ordinance. It's what the City uses
13 to separate group homes from non-group homes. And it's
14 important to understand what exactly that definition
15 said.

16 It provides that, in order to be a single
17 housekeeping unit, the dwelling has to be jointly
18 occupied, jointly used, responsibility for all common
19 areas shared, and sharing of household activities. And,
20 Members -- and this is where -- and this is where the
21 City did something unique in order to sweep up the group
22 homes into the Use Permit process that we're using here.

23 If you take a look at the screen, if it is a
24 rental, in addition to those things, the residents have
25 to have chose to jointly occupy the entire premises. The

1 entire premises must be open to everybody who is around,
2 they must have a single written lease, and the residents
3 in this rental are determined by the tenants, not the
4 landlord. That's what your definition says.

5 What that means, of course, is that only in the
6 City of Newport Beach, throughout the State of
7 California, is it true that a landlord is required to
8 enter into a written lease. Only in the City of Newport
9 Beach, in order to rent a dwelling, are each adult who
10 live in a rental required to sign a lease. And not just
11 any old lease, they have to sign the same lease.

12 Only in the City of Newport Beach, throughout
13 the State of California, is it true that the
14 tenants -- this is what our definition means -- the
15 tenants decide the makeup of who lives in the dwelling,
16 and the landlord has no say whatsoever in it.

17 And finally, only in the City of Newport Beach
18 is there a bar on subletting and/or actually the landlord
19 losses their right to bar sublets or to limit a tenant's
20 rate to sublet. Because again, it is the tenants, under
21 our definition of single housekeeping unit, a definition
22 we had to put in place in order to sweep up all the group
23 homes into our Use Permit process.

24 What does that mean? What that means, Members,
25 is that for us to enforce this regulation, Code

1 Enforcement is required to determine whether the
2 household members have joint responsibility for chores.

3 Code Enforcement needs to know whether each
4 member of the household has equal rights to every room in
5 the house, including bedrooms. There are no private
6 bedrooms in rentals in Newport Beach, because that's what
7 single housekeeping unit means.

8 And Code Enforcement needs to engage in a
9 dialog with people to find out their personal
10 relationships to find out if they are interactive, an
11 interactive household.

12 This is not an academic exercise. Members,
13 what you see on the screen right there is the census data
14 from the last biannual census in the 2007 Housing Census
15 that was issued. It's called the American Community
16 Survey.

17 There are, in the City of Newport Beach
18 today -- I'm sorry you can't read this, but it's a little
19 number up there in the right-hand corner -- 3,463
20 dwellings -- 3,463 dwellings that are potentially in
21 violation of the single housekeeping unit definition.
22 Those are dwellings that are occupied by renters in which
23 there are more than one renter occupying a dwelling, not
24 family members.

25 I would suggest to you that there have not been

1 3,400 searches of homes, or there haven't been that many
2 complaints. In fact, all of the complaints you've
3 received regarding a single housekeeping unit have been
4 targeted at what their intended purpose was, group homes,
5 group homes, sober living facilities.

6 Oh, by the way. This 3,463, this doesn't count
7 the short-term rentals, which was one of the original
8 problems we'd hope to address when we put in the
9 moratorium, but then, of course, dropped that and focused
10 only on single housekeeping units in the context of -- in
11 the context of group homes.

12 One of the things that's been very discouraging
13 about the entire process here is that there is no
14 opportunity for the Applicant to -- of course, it's an
15 administrative proceeding. We can't cross-examine
16 individuals. We can't ask them to follow up and clarify
17 what the problems are.

18 But if you take a look at the transcript that
19 you're supposed to review to find substantial evidence
20 that shows that there's an undue burden created by the
21 existence of this facility, here's what you find. The
22 individuals, and each of them, had an complaint about a
23 quality of life infraction that occurred as a result of
24 living adjacent to the Pacific Shores property.

25 But what's so striking about it is that when

1 you look at the complaints that were received by each of
2 these individuals, a total of 11 people testified at the
3 hearing, they complained, of course, about traffic and
4 nuisance, there's smoking, there's overconcentrations,
5 profanity, things like that.

6 But what's so significant about each of these
7 things is that in no situation can we identify who was
8 the person who committed the infraction, what was the
9 date of infraction. Even in most cases, we don't even
10 know what the location of the infraction is. And in most
11 cases, there's no police involvement.

12 In one case, there claims to be police
13 involvement regarding alleged drug use that occurred down
14 the street, but we haven't been able to find a record of
15 that. And there's claims to have been a police search
16 conducted for a suspect by the Sheriff's department. But
17 again, we can't find any record of that.

18 Pacific Shores takes these quality of life
19 infractions seriously. That's why there's a Good
20 Neighbor Policy. But the only way we are going to be
21 able to determine whether, in fact, these infractions
22 occurred, is that individuals need to do what people do
23 throughout the United States and throughout Newport Beach
24 when they see a quality of life infraction, they need to
25 call the police.

1 Only when the police officer is called can a
2 timely report be made in which we can determine who did
3 commit the infraction, when was the infraction occurred,
4 what was the location of the infraction, and is it
5 connected with the operation of Pacific Shores.

6 This is not evidence. This is not substantial
7 evidence. This is speculation and conjecture based upon
8 hearsay, which is the worse kind of way to base a
9 decision.

10 Let me turn to the Staff Report, if I may. I'm
11 a bit confused. The Staff seems to lead you to believe
12 that they heard about the 12-12-6 proposal by Pacific
13 Shores on Friday. In fact, it was originally proposed by
14 Pacific Shores on May 28, 2009. The proposal they keep
15 saying that came up on Friday, the 23rd, was originally
16 proposed on May 26, 2009, in a letter addressed to Peter
17 Pierce through outside counsel.

18 So I'm not sure why --

19 MR. SELICH: You have about five minutes
20 left.

21 MR. BRANCART: Thank you.

22 Let me go ahead, then, in the minutes that I
23 have make a couple observations about the Staff Report.

24 The Staff Report, in essence, turns the law on
25 its head. It is the burden upon the City to establish

1 there would be no fundamental alteration or undue burden.
2 And what is so significant about the record that you have
3 before you is that there no evidence whatsoever.

4 When the City Staff argues that there's a
5 fundamental alteration, they say, "It's a fundamental
6 alteration because we would have to make an exception to
7 our zoning policy." But that's exactly what is required
8 when you make a reasonable accommodation.

9 As Staff will tell you, when you're quoting the
10 law, a reasonable accommodation is just that, it is an
11 exception to the established zoning policy. There is
12 a point in the Staff Report where they say, "if we make
13 it for one person, we'll have to make it for all." In
14 fact, that's not the law. The law is that it's an
15 individualized determination.

16 Nor is there any showing of undue burden.
17 There is, of course, statements that are made by
18 individuals, but there's no police reports. Nothing
19 other than routine matters.

20 The last thing I would say is the
21 issue of -- well, I'm going to leave it at that. Let me
22 reserve, if I may, the three minutes I have for Rebuttal.
23 And thank you very much for your time.

24 MR. SELICH: You may have a few questions here.
25 Council Member Gardner?

1 MS. GARDNER: I was just wondering, will Staff
2 be responding to any of that? I mean, I remember reading
3 through -- because I did read through all of the
4 documentation, and Sharon Wood has answered some
5 questions about the CBE grants, and I don't know whether
6 we were going to go over that, or whether I should just
7 ask the specific question.

8 MR. HUNT: Staff is prepared to address any
9 questions the Council has.

10 MS. GARDNER: Okay. Well, I just --

11 MR. BRANCART: Do you have a question?

12 MS. GARDNER: I did. I mean, I know you
13 mentioned those grants, and that we had applied for them,
14 but I also felt that -- it's a little bit -- to me, it
15 was misleading, because those grants aren't for
16 for-profit type of housing. They are more for lower
17 income, I thought. Wasn't that what I read?

18 MR. BRANCART: The CBEG program is a funding
19 program promulgated by and administered by HUD that goes
20 to entitlement jurisdictions of 50,000 or more. Under
21 the CBEG program, a City certifies as to particular needs
22 to address low income and to make housing available on
23 an -- on a basis to affirmatively further fair housing.

24 In order obtain CBEG funds, the City must first
25 pass what's called a Consolidated Plan. This is a plan

1 to address -- it's similar to the housing elements.
2 Imagine the State -- in Southern California, you're
3 covered with so many of these different things. But in
4 many states there aren't housing elements, so it was
5 basically sort of a housing elements type plan that would
6 apply to places that don't have the benefit of that, such
7 as we have in California.

8 Once the Con Plan is passed, and you list your
9 needs -- the point I'm trying to make is that the City
10 has listed the need of substance abuse, recovery and
11 housing for many, many years.

12 Once you pass that, each year, Staff has to
13 prepare what's called a Performance Report. And that's
14 when essentially the Staff writes a report, which you
15 certify, which comes to you as a vote, Staff brings it to
16 you and you vote on it saying, "Yes, we're doing these
17 things," in order to say -- in order to get the money
18 from HUD.

19 I don't know how much you get. I know it's
20 significant. But essentially, you make a promise to the
21 Federal government to honor what you put in the Con Plan
22 and in your performance audits. And in exchange for
23 that, the Federal government gives you money to spend to
24 address those needs that you've identified in the Con
25 Plan.

1 MS. GARDNER: Okay.

2 MR. BRANCART: Does that make sense?

3 MS. GARDNER: It does make sense, except that I
4 guess I'm still --

5 MR. SELICH: Well, why don't we -- why don't we
6 get all the questions for him out of way, then we'll get
7 to Staff questions.

8 MS. GARDNER: All right.

9 MR. SELICH: So any other questions for the
10 Appellant?

11 MR. BRANCART: I will say the reason I
12 mentioned this of significance, as City Attorney will
13 advise you, recently there's been cases, Equal Rights
14 Center versus Westchester County, in which Westchester
15 County was sued for failing to abide by their Con Plan
16 under a false claim act.

17 And I know the City -- the City Attorney's
18 advised you of that, and the significance of the
19 certificates that have been made by the Council to the
20 Federal government.

21 MR. SELICH: Okay. Thank you. Now ask the
22 question.

23 MS. GARDNER: Didn't I see something in the
24 record about those grants and the way we apply them and
25 the way you interpreted it?

1 MS. WOOD: Well, first, I would disagree that
2 the five-year Consolidated Plan and the one-year Action
3 Plan are kind of similar or a Federal equivalent to the
4 State's requirement for housing element.

5 Years and years and years ago when I started
6 doing CBEG, there was something called a Housing
7 Assistance Plan, and maybe that was something similar to
8 a house element. But the Consolidated Plan is a
9 discussion of the City's goals for the next five years
10 for how they are going spend the block grant.

11 There is still a housing component in the
12 Community Development Block Grant program, but it's not
13 as strong as it used to be in the early days. And some
14 cities will have a Community Development Block Grant
15 program that more focuses much more on capital
16 improvements, such as we did when we were spending some
17 of that money on the Balboa Peninsula, and still are, to
18 repay that loan.

19 So what we do, in terms of citing the need for
20 assistance for persons with substance abuse problems, is
21 to say that we will use some of our public service money
22 to provide those services. And we have done that by
23 providing funding to serving people in need for the past
24 several years. It's one of our ongoing funding
25 mechanisms.

1 MR. SELICH: Council Member Daigle?

2 MS. DAIGLE: Yes. Question for the Staff. I
3 have a difficult time with the statement that all quality
4 of life infractions should be reported to the police. I
5 mean, I get those kind of concerns all the time, traffic
6 flow, aviation noise or whatever. Could you kind of
7 comment on if that's a standard, or what your thoughts
8 are on that?

9 MR. HUNT: I would suggest that -- well, I
10 understand what Mr. Brancart is saying, and
11 essentially his position is that his client cannot
12 respond to these situations unless they go to the police.

13 I would have to respectfully disagree. I do
14 believe that there's substantial evidence in the record
15 based upon the testimony of the neighbors and the people
16 who observed these situations.

17 To be sure, it's more advantageous if it's
18 reported to the police. I would suggest, however, it's
19 not the thing that happens most of the time. Most people
20 don't report small quality of life infractions to the
21 police.

22 It's when those issues start to cumulate and
23 they are concerned about the existence of a facility,
24 whether it's this type of facility or any other kind of
25 facility, then we tend to hear those things in the

1 context of our hearings, CUP regarding alcohol use, or
2 sale of sex, or alcohol sales and accessory to business
3 uses, we hear them here, and they may not have gone to
4 the police.

5 I would suggest that, in fact, it's not the
6 predominant practice of people to actually make that
7 phone call. It is a good practice, and we encourage the
8 residents that if they see these quality of life issues
9 to contact the police, so that we can enforce the issues
10 in the context of any facilities such as this or other
11 facilities where there are violations of the law. But I
12 don't think it happens on a regular basis, whether it's
13 regarding a sober living facility or any other kind of
14 use.

15 MR. SELICH: Okay. Any other questions of
16 Staff?

17 (No audible response.)

18 MR. SELICH: All right. Seeing none, I'll open
19 the public hearing and invite anyone who wants to speak
20 to the Council to step forward and state your name.

21 Please be mindful of the three minute time
22 limit. And there's a blue box on the podium. When the
23 yellow light comes on, you have one minute left, and when
24 the red light comes on, your time has expired.

25 So anyone wishing to address the Council,

1 please step forward.

2 MS. OBERMAN: Good evening, Mayor, Council,
3 Staff. Denys Oberman, resident of Newport Beach.

4 I'm speaking on behalf myself and others in the
5 community that have requested that I speak to the Council
6 on their behalf. Firstly, I realize -- and I ask that I
7 be given an additional minute to address the 1216 West
8 Balboa use.

9 There was no opportunity provided for public
10 hearing, and there are questions with regard to both the
11 facts that associate of the situation. So may I have an
12 additional minute to address that use?

13 MR. SELICH: Well, I don't think that's
14 appropriate in the context of this hearing at all, but
15 I'll defer to the City Attorney on that. Give me some
16 advice there.

17 MR. HUNT: I'd be happy to address other
18 questions -- you're talking about Newport Coast Recovery?

19 MS. OBERMAN: I am.

20 MR. HUNT: I'd be happy to address them in
21 another context. But let's focus our questions on this
22 hearing at this stage, and I'll be happy to address any
23 questions you have on that facility later.

24 MS. OBERMAN: I appreciate that. However,
25 those questions I feel need to be addressed within the

1 public forum. So will you reconsider?

2 MR. HUNT: It's not appropriate in this
3 hearing. It's a different matter. If you'll ask me the
4 questions at another point, we'll see how we can get to
5 that issue for you, Mrs. Oberman.

6 MS. OBERMAN: For everybody, thank you.

7 MR. HENN: Is there an opportunity to raise an
8 issue at public comment, or I guess we already had that?

9 MR. SELICH: We've already had public
10 comments.

11 Go ahead. We'll give a little bit of latitude
12 here, so if you get too far astray, we'll say
13 something.

14 MS. OBERMAN: Okay. Well, these questions are
15 for the City's benefit too, not just for the City's
16 constituents, so I appreciate that.

17 Relative to Newport Coast, first of all, has
18 there been, in fact, any kind of formal verification that
19 that facility is completely vacated, not only with
20 respect to the residential aspects of the use, but with
21 respect to conducting meetings and other types of
22 treatment activities?

23 The reason I ask that question is that there
24 are a number of residents, including at 6 o'clock p.m.
25 tonight, the residents immediately behind the facility,

1 that indicated that yesterday, and other days prior to
2 that, there had been groups of people at the facility,
3 and there was also vehicles --

4 MR. SELICH: I think you're getting beyond the
5 scope of the hearing.

6 MS. OBERMAN: I just want to know, has the City
7 verified --

8 MR. SELICH: I think you should discuss that
9 with the City Attorney separately. Let's focus on
10 Pacific Shores, if you would, please.

11 MS. OBERMAN: Okay. For the record, there have
12 been -- complaints been made to the City and to
13 Councilwoman Daigle and Mr. Hunter at this point. The
14 citizen have made complaints to a variety of Staff
15 departments within the City over the past six-plus years,
16 per the City's direction.

17 Complaints have been made to the City Attorney
18 and citizens were directed to make complaints there since
19 the time Mr. Burman (phonetic) was the City Attorney.
20 Complaints have been made to Code Enforcement, complaints
21 have been made to the Assistant City Manager, and
22 complaints have been made to the police, and complaints
23 to all these departments both orally and in writing.

24 We had been advised until very recently by the
25 police for a number of years that, quote, there was

1 nothing that they could do, end of quote, in the way of
2 enforcement. And then also we were advised occasionally
3 that the radios were perhaps broken, so that was the
4 reason that there was no record of the complaints, okay?

5 So we do ask that there be some consideration
6 to that. And the City's already admitted that there is
7 testimony that they were willing to consider.

8 The other thing we asked the Council to do is
9 to consider overconcentration in the Peninsula and in
10 this surrounding area, because the overconcentration
11 continues to exist despite the reduction of some
12 facilities and some beds in the area.

13 There's still remains an overconcentration, and
14 that is something that does create a burden on the City
15 and is a detrimental to both the residents and the
16 community as well as to the disabled seeking legitimate
17 recovery.

18 So we ask that the City affirm the findings of
19 the Hearing Officer, and deny all applications for use.

20 And then lastly, we did want to remind the
21 Council that sober living facilities are legally not
22 supposed to provided treatment.

23 So in the comments that were made by the
24 Counsel, if there were to be an allowance of a
25 six-and-under right next to a non-state licensed

1 facility, it would be very difficult to monitor and
2 differentiate between the treatment provided in the
3 six-and-under, and whatever supervision may be provided
4 in the non-licensed facility that is integral to the one
5 that is requested to be six-and-under licensed.

6 Thank you. And I would like to have a time to
7 have that discussion.

8 MR. SELICH: Thank you.

9 MS. KOHLER: Good evening. It's Cindy Kohler,
10 West Newport.

11 Mayor, Council, I've been following this issue
12 with Pacific Shores for sometime now. And for the
13 record, I find it insulting and ridiculous that this
14 Operator and your Council are accusing us, our City, of
15 being discriminatory.

16 The Operator, Pacific Shores, has had an
17 arrogant position for years with our City and residents,
18 and it seems it still does. They develop their business
19 operations and operation without permits on the backs of
20 the residents, all the while thumbing their nose at our
21 local laws and communities.

22 They have already negatively impacted the
23 neighborhood and its residents for years now, and
24 burdened our City services time and time again.

25 The Council of this Operator claims that we,

1 the City, are discriminatory. How dare they make these
2 claims. Our City and its residents have documented and
3 put up with this unscrupulous Operator, and they have
4 never once been discriminated against. But boy, our
5 residents have been and still are. And that seems to be
6 okay with the Pacific Shores.

7 If Pacific Shores is so concerned with
8 anti-discrimination, you would think they would follow
9 the laws and codes of our City and not overconcentrate
10 our neighbors for the sake of their business for profit.

11 But then, I guess, discrimination only applies
12 to Pacific Shores clients, their group, not to us
13 residents, who have to raise families in these
14 overconcentrated neighborhoods, who are invested in our
15 neighborhood emotionally and financially and deal with
16 the negative impacts daily.

17 I don't know about any of you, but it seems to
18 me like this is a real double standard, and I am sick to
19 death of the Operators using the discrimination card just
20 because they want to operate a big business in our
21 neighborhood.

22 And its Pacific Shores own business operations
23 that led them to where they are today with the City, and
24 not any discriminatory action towards any -- any one
25 client or the owner. It is against their business. It

1 is about their business and greed.

2 I'm requesting that you deny all uses. Thank
3 you.

4 MR. SELICH: Thank you.

5 MR. WILCOX: Good evening. My name is James
6 Wilcox. I'm a resident of Pacific Shores in Costa Mesa.

7 I've got almost three years of sobriety. And
8 during that three years, I've gone through a lot of
9 hardships, both physically and otherwise, for employment
10 and whatnot.

11 And because of the ownership and management of
12 Pacific Shores, I've been doing a heck a lot better than
13 I should be. And I just want to say they do a really
14 good service for people, and essentially that's what I've
15 got to say. Thank you very much.

16 MR. SELICH: Thank you.

17 MS. MORRIS: Good evening. Lori Morris, West
18 Newport. I am here tonight to support our Council and
19 our City Manager and Staff in this request to protect our
20 neighborhoods from the overconcentration of rehab
21 facilities here in Newport Beach.

22 And yes, Mr. Polin, there is overconcentration
23 in this City. This has been a long and arduous task. I
24 do not believe this City or its residence has been
25 discriminatory in any way.

1 As a matter of fact, I believe this City has
2 crafted an illegally defensive Ordinance to facilitate a
3 balance between decent operators and abusive operators
4 and residents who are affected by both types.

5 I believe this Operator has demonstrated that
6 they are, indeed, incapable of managing a facility in a
7 safe and conducive manner with the surrounding
8 neighborhoods.

9 Mr. Polin has been inflammatory in his
10 statements to the press, claiming that concerned citizens
11 have come forward and accused both programs of creating
12 problems in the neighborhoods, but none of these
13 allegations were ever documented or reported to police.

14 His statements that our claims were not
15 documented has some truth to it, but not for the lack of
16 our trying to get them documented. The police during
17 those days weren't even sure how to document the
18 nuisances and crimes committed by the clients of these
19 rehab because they are considered disabled.

20 Our police force walked on eggshells trying do
21 everything in their power to do the right thing and
22 not -- and they erred on the side of the patients and the
23 residents, and they bent over backwards to not
24 discriminate.

25 Mr. Polin was not here when we, the residents,

1 came before the Council pleading for relief from the
2 overconcentration of businesses, yes, businesses, being
3 runned in your neighborhoods. He flies in from D.C. to
4 claim we are discriminatory.

5 This attorney is amending his appeal without it
6 being heard first. This is a typical bait-and-switch
7 tactic. He's trying to bait this Council into denying
8 his reasonable accommodation and thus claim
9 discrimination. This is always done at the last minute
10 to try and continue this again and again. And that way,
11 his client can continue running his business in a
12 residential area.

13 Yet, he always also wants you to ignore fire
14 codes and not call him a treatment center. That would be
15 unconscionable, because this is -- part of the City's
16 mandate is to protect its residents. So they want it
17 both ways.

18 They want you to waive the fire codes; they
19 want you to waive the overconcentration of their use;
20 they want you to consider them a single family unit and
21 not hold them to fire codes. So how is this City
22 supposed to protect not only them but also the residents
23 that live around them?

24 Plain and simple, Mr. Polin is throwing a bunch
25 of new garbage at you, to threaten you, throwing up red

1 herrings, red herrings, changing up the game so he can
2 then claim that you're discriminatory.

3 You, this City, has not in any way been
4 discriminatory against this Operator, but this Operator
5 has proven to be incapable of following City rules and
6 regulations, and wants you to allow him to continue to
7 run his business and ignore any City regulations.

8 So please, uphold the Hearing Officer's denial.
9 Thank you.

10 MR. SELICH: Thank you.

11 Any other speakers? Come forward.

12 MR. MATHENA: Larry Mathena, M-a-t-h-e-n-a.
13 Newport Beach Peninsula resident.

14 Very briefly, I just wanted to echo what
15 Mr. Hunt laid out. You did install this arduous hearing
16 process at which you did encourage the input of evidence,
17 and who else are you going to get the evidence from but
18 from the direct neighbors?

19 In particular because -- and even though, yes,
20 you should call the police, but the reality is, frankly,
21 most of us don't want to burden the police for the
22 incidents that have been described that are just
23 extremely tough to live with, but aren't necessarily
24 things that the police are going do much about in any
25 case.

1 I think all of us aware of many times the
2 police have been involved. And if you've ever bothered
3 to look on the Web site or otherwise, more than half the
4 time, a lot of the things don't end up as part of an
5 official record anywhere. And most people don't call the
6 police for that reason, because they are not thinking
7 that ultimately "I need to do this to build a record so
8 that, ooh, I can add that weight to this."

9 That public testimony -- and it was very deep,
10 substantive and included many issues that arose, is valid
11 evidence. It is not, by any definition, hearsay. The
12 Appellate was given the opportunity to respond.

13 Generally, at those hearings, if there was any
14 lack of understanding, there was a potential for dialog
15 back and forth with the Hearing Officer or otherwise.

16 Ultimately, we do have a problem. We do have
17 overconcentration. We did invest a huge amount of
18 resources, both in terms of effort, both in terms of the
19 City, to have this law complied with, as well as the
20 residents who took the time to become a part of the
21 process.

22 And ultimately, I recommend that you simply
23 uphold the denial that the Hearing Officer decided.

24 Thank you.

25 MR. SELICH: Thank you.

1 MR. OBBAGE: David Obbage, Newport Heights.
2 Mayor and City Council, thank you for giving us the
3 opportunity to talk this evening.

4 Can you imagine moving into Newport Beach and
5 buying a home, and two years later, finding out that an
6 Operator has bought the house next to you and the house
7 next to that, and decides to build this massive compound
8 holding 30 residents for drug and alcohol rehabilitation?
9 We thought those were going to be two homes.

10 I'm here actually tonight representing two
11 Homeowners Associations, Casa San Miguel and Casa Santa
12 Rosa in Newport Heights. We want you to know that we are
13 not opposed to existence of this facility; however, what
14 we are opposed to is overconcentration in our
15 neighborhoods.

16 If they have six people that are going through
17 the legitimate treatment, we're okay with that. Fifty
18 people? Now they are going to hold 30 people on that
19 compound on the corner? You're all familiar with that.

20 What I want you to know is that this entire
21 situation is nothing more than a ruthless and relentless
22 pursuit of profit at the expense of our community and our
23 neighborhood.

24 We really urge you to uphold the decision of
25 the Hearing Officer, and we really appreciate all the

1 time and effort that you put into this. Thank you so
2 much.

3 MR. SELICH: Thank you.

4 Any other speakers?

5 MS. KERN: Members of Council, my name is Laura
6 Kern (phonetic). I want to note that I agree with
7 Staff's comment that the financial viability issue was
8 not well addressed. And I want to say that in part,
9 because I often come in front of Council and ask for more
10 analysis and say the analysis is not thorough.

11 But in this case, you know, the Staff has
12 pointed out economic viability with the request for
13 accommodation is based, in part, on their business model,
14 which provides scholarships. And those may be very
15 worthwhile, but at the end of the day, in a commercial
16 venture, that's their business decision. And if they
17 make less profit because of that, that's part of the
18 business decision.

19 And furthermore, as Staff pointed out, there's
20 no basis in the letter, or any other information that
21 I've seen, as to the impact of the scholarships and the
22 scope of need that would be supported in that discussion.

23 So the Staff is correct in saying that
24 financial viability has not been demonstrated, and that
25 finding should not be considered. Thank you.

1 MR. SELICH: Thank you.

2 Any other speakers?

3 (No audible response.)

4 MR. SELICH: Okay. Seeing none, I'll close the
5 public testimony.

6 Mr. Hunt, is there anything the Staff would
7 like to add at this time.

8 MR. BOBKO: Good evening, Council. My name is
9 Kit Bobko, and I'm outside Counsel for the City.

10 You heard a lot tonight, and I want to just hit
11 on a couple quick points. The first thing is that
12 there's no doubt -- there's no doubt -- I don't think
13 anybody on this Council, or in this room probably, would
14 question the fact that folks with this disability who are
15 trying to recover from drugs and alcohol are an
16 underserved population, probably even here in Orange
17 County. But that ain't the case in Newport Beach.

18 Of the eight percent that Mr. Brancart pointed
19 out on the slide, that's in the entire County. Also in
20 the entire County, 34 cities in Orange County -- of the
21 34 cities in Orange County, 18 have no licensed ADP
22 facilities whatsoever.

23 Here in Newport Beach, we have 28. We have 48
24 unlicensed facilities. And when you passed the
25 Ordinance, there were over 500 beds for recovery right

1 here in Newport Beach.

2 So while I think that the statistics may be
3 true overall for the County, they certainly aren't true
4 here in Newport Beach. And Newport Beach is the
5 Ordinance -- and Newport Beach has got the Ordinance that
6 we're talking about.

7 Substantial evidence. I just want to touch on
8 this briefly. Substantial evidence basically means
9 something that's meaningful, meaningful evidence. And
10 all of you sit tonight as an Appellate body. Now
11 normally, as the Council, you are the first finder of
12 fact. It might come up from the Planning Commission or
13 whatnot.

14 But tonight, you're sitting as an Appellate
15 body. And what that means is, is that you have -- you
16 are at a disadvantage. Mr. Brancart is also at a
17 disadvantage. He did not get to see, nor will you get to
18 see, the people who came up to this podium and testify
19 about the direct impact that these facilities are having
20 on their lives.

21 Nothing that was said tonight is evidence that
22 you can consider independent of what's in the record.
23 And the record, ladies and gentlemen, is replete, replete
24 with incidents of how these facilities are negatively
25 impacting people's lives.

1 I would -- I can point you towards specific
2 instances in the record. Mr. Soylemez at 244, from lines
3 13 to 17, talked about a systemic failure in the City.
4 And he says, and I'm quoting now, "I live 25 yards away
5 from the Clay facility." It's altered the composition of
6 my neighborhood, and I've seen these things up close and
7 personal. I'm paraphrasing now, but there's paragraphs
8 about this.

9 Mr. Obbage or Obbage has already come up to the
10 podium this evening. He testified as well, page 248, 247
11 and 248, lines 8 to 21, talked about the Sheriff coming
12 to his home. He's not talking about the Sheriff, hearing
13 about the Sheriff going to somebody else's home.

14 He said that on a particular day, a guy with a -- I
15 assume they're wear green uniforms here in Orange
16 County -- but a green uniform knocked on his door looking
17 for somebody, and identified the particular house as the
18 place where he was looking for that person.

19 Now, that's not hearsay. That is direct,
20 substantial evidence about a negative impact that has
21 happened to this person on a particular date.

22 Mr. Fabian -- again, I'm referencing all of
23 these because my colleague, Mr. Brancart, identified a
24 bunch of this as substantial evidence -- that things that
25 we identified as substantial evidence that he believes

1 were not substantiated.

2 Mr. Fabian, who lives at 3101 Clay Street, he's
3 in your record at 249 and 250, said "that he saw a guy
4 doing drugs in the car, and he was trying to catch this
5 gentleman for two weeks before finally the cops were able
6 to get to him."

7 Now again, that's not someone talking about
8 something that they heard at a coffee shop. That's a
9 particular guy talking about something that he saw. I
10 can keep going. There's more and more of this. But that
11 alone, I think, is substantial.

12 And certainly, that is something that the
13 Hearing Officer had an opportunity to see in the first
14 instance that you haven't, and you have to take the
15 Hearing Officer's word for that.

16 Another point, Mr. Brancart says that he's at a
17 disadvantage because they weren't able to cross-examine
18 all of this nebulous stuff that's going on. His
19 colleague, Mr. Polin, was here, and he certainly had an
20 opportunity to cross-examine any of these people that he
21 wanted to. He also had the opportunity to make any
22 argument that he wanted to to the Hearing Officer.

23 So this idea that somehow there was some
24 miscarriage and this is all smoke and mirrors below is
25 simply not the case.

1 The Good Neighborhood Policy. I want to just
2 touch on that. While we approve -- applaud that, and we
3 think that that's probably a great idea, again, that
4 ain't evidence. That wasn't presented in the Hearing
5 Officer below. That is something that now is coming in
6 at this level. And again, you are not hearing this in
7 the first instance as the Trier of Fact.

8 The housing element. I just want to touch
9 briefly on this. Ms. Wood is obviously the resident guru
10 on housing elements. But we talked about this in another
11 context with regards to Newport Coast. And the same
12 argument was made, that HCD has notified the City that it
13 is out of compliance, and there was a finding of such.

14 I think this is not the case. In fact, the
15 letter didn't find anything but simply asked the City
16 for -- and now I'm quoting from the letter -- "a detailed
17 description of the City's recently adopted policies
18 regarding group home development, and analyze this policy
19 for requirements that may constrain housing for persons
20 with disabilities."

21 That's a long way from finding you're out of
22 compliance. All that's saying is that, "You passed this
23 new Ordinance. Would you please tell us how this is
24 going to affect your housing element."

25 Lastly, with regard to the burden on the City,

1 the only use -- the only use that is allowed in a R1 and
2 R2 zone is this use. If it is a sorority, not allowed.
3 If it's a fraternity, not allowed. If it's a boarding
4 house, it's not allowed. The only use -- the only use is
5 this particular use.

6 So to say that there's no reasonable
7 accommodation being made I think is a bit of an
8 overstatement. But moreover, Staff has just recommended
9 to you that you can still -- even though they're treated
10 so specially, you still have an opportunity to let them
11 exist in this particular zone when no one else gets that
12 opportunity.

13 So I think that it is, again, a bit of an
14 overstatement to say that there is no burden on the City,
15 and that because you have any Ordinance at all, you are
16 not reasonably accommodating.

17 I had one more point, and I can't seem to find
18 it. I will be happy to entertain any questions if you
19 have any for me.

20 MR. SELICH: Any questions for Mr. Bobko?

21 (No audible response.)

22 MR. SELICH: Okay. I don't see any.

23 Thank you.

24 MR. BOBKO: Okay. Thanks.

25 MR. SELICH: We'll allow the Appellant to come

1 back up. You have three minutes left, and we'll give you
2 five and hope you can contain yourself within that
3 period.

4 MR. BRANCART: I'll try. Thank you very much,
5 Mr. Mayor. Chris Brancart on behalf of the Appellate.

6 A couple of points of corrections. Obviously,
7 you'll defer to Ms. Woods regarding what HCD said that
8 their non-compliance letter, in terms of the status of
9 the housing elements. I believe the representation that
10 was just made to you by Counsel at this podium is not
11 accurate.

12 Second, this is not a trial proceeding. This
13 is an administrative proceeding. Counsel indicated that
14 witnesses were called and cross-examined. That is not
15 what happens in a Hearing Officer hearing proceedings
16 here.

17 Third, I asked that you vacate the Hearing
18 Officer's determination as to the first finding in which
19 we request reasonable accommodation to be treated as a
20 single housekeeping unit. I have provided you with the
21 definition of single housekeeping unit and shown you its
22 idiosyncrasies, to put it kindly, but also its unusual
23 aspects as it applies to rental housing.

24 I've shown you that there are 4,000-some
25 dwelling units to which it applies, but it only seems to

1 be applied to a handful of those that classify themselves
2 has group homes serving disabled persons in recovery.

3 There is no substantial evidence, that is, not
4 individuals complaining about events that occurred in the
5 neighborhood, but actual substantial evidence that ties
6 these specific events to people that are tied to the
7 Pacific Shores facility.

8 As much as we would like to credit Pacific
9 Shores with all the bad things that happened in Newport
10 Heights, we need to have some causal connection between a
11 person that the Sheriff is looking for and individuals
12 who are using drugs a block down the street.

13 And that's why, when these types of things
14 occur, it is time to call the police so that we can get
15 to the bottom of it. There's no way an Operator is able
16 to come before this Council a year and two years later,
17 and respond to these types of allegations.

18 Second, there is no substantial evidence of
19 fundamental alteration. The City Staff misstates the law
20 to you. It is incumbent upon the City and it is the
21 burden upon the City to show fundamental alteration.
22 Fundamental alteration is not established by simply
23 saying, "We'll have to take an exception to our policy."
24 That is what reasonable accommodations is all about.

25 Similarly, it is not an establishment with

1 substantial evidence to say there's an undue burden
2 simply because individuals with disabilities live in the
3 neighborhood. There's been no evidence in this record
4 that establishes either of those component parts.

5 I'm going to take a little bit of time to talk
6 about overconcentration, because, again, I think that
7 you're applying the wrong legal standard.

8 Overconcentration is a concept in which the Courts will
9 allow the City to consider if it is shown that the
10 overconcentration injures the individuals with
11 disabilities.

12 We keep on speaking about the overconcentration
13 as being something that should go in the undue burden
14 category in terms of the secondary effects that are
15 caused by group homes. Complete misapplication of the
16 legal concept.

17 If you will not vacate the determination of the
18 Hearing Officer and grant us the reasonable accommodation
19 to be treated as a single housekeeping unit, then what I
20 would ask of the Council is this:

21 I would ask you to take up what is represented
22 to you by Counsel and first presented to the City on May
23 28, 2009, which is the 12-12-6 solution. I'd ask that
24 the Council vacate the findings and remand back down to
25 Staff to negotiate with the Applicant on the 12-12-6

1 proposal.

2 And if those negotiations --

3 MR. SELICH: One minute.

4 MR. BRANCART: And if those negotiations are
5 successful, to return back here to the Council with a
6 Resolution that reflects adoption of the 12-12-6
7 reasonable accommodation.

8 The last thing I'd ask, Mr. Mayor, is, to avoid
9 any confusion, I'd ask that the clerk enter into the
10 record the May 28, 2009, letter that was sent to the
11 City's outside Counsel that proposed the 12-12-6. This
12 is not a 11th hour, Friday, October 23rd, idea. This has
13 been around for months.

14 MR. HUNT: With respect, I need to see what
15 document he's looking at, Mr. Mayor, before I can make
16 that determination. I suspect I know what he's talking
17 about.

18 MR. BRANCART: I don't want to delay us any
19 further. It's just -- so I don't want to delay us any
20 further.

21 If it's not -- what I would propose, so that we
22 don't cause any problems in terms of entering those
23 things into the record, what I would suggest is this:

24 I will make it available to your Counsel, and
25 if he feels -- if you'd like to take a look at the

1 letter, it will be there in the City Attorney's office.
2 We won't enter it into the record.

3 MR. SELICH: Okay. Thank you.

4 MR. BRANCART: Thank you very much. I
5 appreciate your time.

6 MS. DAIGLE: I had one question.

7 MR. SELICH: Yes, Councilwoman Daigle?

8 MS. DAIGLE: In terms of the 12-12-6 solution
9 that you are offering with regards to the Clay Street
10 property, there's some understanding there could be as
11 many as 30 people. Could you clarify the intent for the
12 Clay Street property?

13 MR. BRANCART: Yes. The 12-12-6 is -- in each
14 of the two larger homes that appear there on Orange
15 Avenue, they would accommodate 12 individuals, which is
16 significantly less than what the City imposes under, for
17 example, the Uniform Housing Code, and is consistent with
18 the occupancy restrictions that we all have to live under
19 under the Department of Fair Employment and Housing.

20 As to the Clay Street property, that would not
21 have 30 individuals. That would be six or fewer. And so
22 what we're talking about here is not 30 people in one
23 house. Six in Clay, as a licensed facility carved out
24 and protected under State law; 12 individuals in the
25 Orange Avenue, 492 and a half, and 49 -- and 492. So

1 when you say 12-12-6, those are the allocations of
2 persons in the houses.

3 Any other questions?

4 MR. SELICH: I don't see any. Thank you.

5 MR. BRANCART: Thank you very much, Mr. Mayor.
6 Thank you very much.

7 MR. SELICH: Okay. With that, I'll close the
8 public hearing.

9 Mr. City Attorney?

10 MR. HUNT: Thank you, Mr. Mayor. If I may just
11 clarify a number of things, so that Council has the
12 issues framed up for you.

13 First, perhaps I should address the issue of
14 the May 28, 2009, correspondence that we do, in fact,
15 have that in our records. It is not offered in the
16 context of this proceeding. It was not an amendment to
17 the reasonable accommodation request.

18 While I respect Mr. Brancart's indicating we're
19 aware of the 12-12-6 option, it was raised in a
20 completely different context and did not change the
21 request for reasonable accommodation.

22 The first time that we received the request to
23 amend -- the request to amend the request for reasonable
24 accommodation was the 23rd. A completely different
25 context. And frankly, a confidential context that we're

1 not entitled to discuss with you, nor is it entitled to
2 be in this record.

3 Secondly, if I may, just a couple of different
4 issues. I certainly understand the concerns of the
5 citizens regarding the complaints. There are multiple
6 places they can complain. One is the police department.
7 But I understand their concerns, because the officers
8 sometimes are at a loss how to deal with it.

9 I can also assure them if they contact our Code
10 Enforcement Officers, then they are fully apprised of the
11 situation and are moving into a more active code
12 enforcement role to enforce the conditions of any granted
13 reasonable accommodation or continued conditional Use
14 Permit. And I'll be happy to meet with the citizens to
15 assist in providing them that information.

16 With respect to the overall issues before you
17 tonight, yes, it's accurate you are considering what is
18 in the record before you that was presented to the
19 Hearing Officer. Further testimony tonight does not
20 change what was in the record to the Hearing Officer.

21 There has been a significant change in the
22 actual request for reasonable accommodation. That
23 significant change went from 50 to 12-12-6. That's a
24 significant change.

25 The Council has a number of options as a result

1 of that change. The general options you have available
2 under our Ordinance are, one, is to deny the appeal and
3 uphold the Hearing Officer's decision.

4 The next options you have, generally speaking,
5 are to reverse the Hearing Officer's decision, and
6 authorize the issuance of one or more requested
7 reasonable accommodation. You can do that.

8 You can modify the Hearing Officer's decision
9 also, based upon -- but all this must be based upon the
10 evidence that was presented at the hearing.

11 Or third, you can remand it to the Hearing
12 Officer for further consideration.

13 Because of the unique situation you are placed
14 in now because an amended application that came in at the
15 11th -- well, perhaps the 10th and a half hour, you have
16 a couple of different concepts that are before you.

17 You are authorized and able to analyze an
18 amended application in the context of the evidence that
19 was provided to you -- provided to you through the record
20 of proceedings here.

21 You could -- if it was your decision that the
22 substantial evidence supported it, you could grant the
23 reasonable accommodation requested as modified by the
24 Applicant, and condition that reasonable accommodation in
25 your discretion as to how you felt was appropriate.

1 You can conditional the reasonable
2 accommodation to the fire code. The analysis under the
3 fire code would allow nine to potentially 12 people to
4 live in the two Orange Street houses, depending on the
5 different conditions that were outlined to you by
6 Ms. Wolcott.

7 We are not in a position and we recommend
8 against accommodating the fire code as a health and
9 safety issue. So any accommodation which would be
10 granted, if that were your desire, would at least be
11 bounded by the fire code.

12 Secondly, you have the ability, we believe, to
13 condition any type of reasonable accommodation upon the
14 showing by the Applicant/Appellate here, Pacific Shores,
15 of the financial necessity of such a change.

16 No, there's not evidence in the current record.
17 I do believe that you can grant -- you can reverse and
18 grant subject to the Hearing Officer's determining that
19 financial necessity.

20 You could create a condition that states that
21 you would grant it, while subject to the fire code
22 approval and inspections by our Fire Marshal to identify
23 the appropriate occupancy of these limits, not to exceed
24 the 12-12-6 requested.

25 Two, you could condition it upon Pacific Shores

1 providing economic information to the City within 10 days
2 of the grant of the permit for analysis by our
3 Administrative Services Director, and report it to the
4 Hearing Officer.

5 And if it meets with the Hearing Officer's
6 determination of reasonable necessity for financial
7 reasons, then the condition would be met. And that would
8 allow us to move this matter to conclusion tonight, if
9 that were your choice, and have it have definite
10 conditions for application to the Appellate's reasonable
11 accommodation request.

12 MS. GARDNER: Just a question. What is the
13 minimum number of people they could have and not have to
14 worry about any fire code?

15 UNIDENTIFIED SPEAKER: Six.

16 MR. HUNT: Well, fire code -- an ADP licensed
17 facility or six-and-under --

18 MS. GARDNER: Right.

19 MR. HUNT: -- facility is the same as
20 residential care.

21 MS. GARDNER: Right, right.

22 MR. HUNT: So they can have up to nine at this
23 point in time without any -- nine residents and one
24 resident manager without further fire code inspection.
25 And we don't know, because Mr. -- our Fire Marshal has

1 not been present in those facility about that.

2 MR. SELICH: Council Member Henn?

3 MR. HENN: Yeah. I have a question. There
4 were other reasonable accommodation requests, though,
5 associated with this hearing. There was the request to
6 not apply the single house definition, single
7 housekeeping unit. There was a request to waive
8 completely the fire codes, et cetera.

9 So I don't understand quite what your
10 suggestion is for this as it relates to those other items
11 that were requested.

12 MR. HUNT: I don't believe -- the Hearing
13 Officer made a determination with prejudice, so we can't
14 waive the single housekeeping unit requirement.
15 We're not required to waive the single housekeeping unit
16 requirement in order to grant a reasonable accommodation
17 in this situation. You may actually grant a reasonable
18 accommodation upon conditions as identified.

19 With respect to fire codes, I believe -- you
20 are not required, and I don't believe there's evidence in
21 the record that would support the waiver of fire codes,
22 and we don't recommend waiving fire code requirements in
23 any group facility, much less in a sober living
24 facility.

25 MR. HENN: So under any circumstance here,

1 given the outline of the alternatives, those issues would
2 continue to be denied?

3 MR. HUNT: They are off the table, yes.

4 MR. HENN: So they are off the table. So there
5 would be --

6 MR. HUNT: Unless you find that the Hearing
7 Officer --

8 MR. HENN: Yeah.

9 MR. HUNT: -- was not supported by substantial
10 evidence.

11 MR. HENN: So in effect, upholding the view of
12 the Hearing Officer as it relates to those items?

13 MR. HUNT: Yes.

14 MR. HENN: Okay.

15 MR. SELICH: Okay. Does someone want to take a
16 crack at this one?

17 MR. HENN: I would like to have the City
18 Attorney to summarize once again the path that you
19 suggested here a minute ago.

20 MR. HUNT: You have a number of options
21 available to us -- to you for determination based upon
22 reasonable evidence.

23 One unique path available to you based upon the
24 amendment to the application that we received Friday
25 morning allows you, if you wish, based upon that change

1 of circumstance, to consider and grant a reasonable
2 accommodation to what Mr. Brancart has identified as the
3 12-12-6 option, and to conditionally grant that.

4 The conditional grant, if it were your choice,
5 would be conditioned upon, one, that the
6 Applicant/Appellate here provide financial information
7 sufficient for the Administrative Services Department to
8 make a recommendation to the Hearing Officer on financial
9 necessity.

10 I would suggest within 10 days of the actual
11 grant, if it were granted a reasonable accommodation, and
12 that the Hearing Officer make a determination as to
13 whether financial necessity exists, or if it does not
14 exist, a reasonable accommodation could not be granted.

15 Secondly, that you identify an amount of people
16 that would be entitled to reside in these premises based
17 on the limitations that exist in the fire code. As we
18 currently know it, the property could support the
19 nine -- the two Orange Street properties could support a
20 9-9, plus a residential manager in each.

21 If, in fact, the doorways meet fire code
22 clearances, 32 -- going from a 32 to a 36, I believe the
23 Fire Marshal would allow 10-10, plus the residential
24 manager.

25 In addition, there are a number of other

1 potential changes that could allow as much as 12, as
2 requested by the Applicant. But again, we recommended
3 against waiving any fire code requirements. You could,
4 therefore, condition the amount, albeit 10 to 12, based
5 upon Fire Marshal clearance for that occupancy.

6 MR. HENN: Okay. So if we were to choose that
7 path tonight, and the Applicant would refuse, that's the
8 end of it.

9 MR. HUNT: That's the end of it.

10 MR. HENN: This is not a negotiation. That
11 path is not a negotiation, as suggested by Mr. Brancart?

12 MR. HUNT: That path is not a negotiation.

13 MR. HENN: This is a take-it-or-leave-it
14 arrangement?

15 MR. HUNT: If the Council chose that direction,
16 yes, it would be a take-it-or-leave-it situation. You
17 are hearing an appeal, not a negotiation at this stage.
18 You have it within your authority to grant the reasonable
19 accommodation upon condition.

20 If that's your choice, that is not an
21 negotiation. That's take-it-or-leave-it. The way it
22 would be structured, would be my suggestion, is that we
23 bring back to you in two weeks a Resolution of Findings
24 for your adoption, those Findings and Adoption of the
25 permit.

1 The grant of a reasonable accommodation on
2 condition then would be presented to Pacific Shores.
3 They could either accept or deny the conditions of the
4 reasonable accommodation. If they chose to deny it,
5 game's over. If they chose to accept it, they have a
6 reasonable accommodation subject to the two conditions I
7 have articulated.

8 MR. HENN: All right. Well, based upon my
9 understanding that there is no waiver of fire code
10 associated with this, and that there is still a
11 requirement to prove financial need, I'll move what you
12 are suggesting.

13 MS. GARDNER: And the Hearing Officer would
14 then -- the Hearing Officer would make the determination
15 of financial need?

16 MR. HUNT: Right. The way I would suggest that
17 be worded, we'll put it to a point where it's the
18 recommendation condition, is that the Applicant/Appellate
19 be required to submit financial information to be
20 analyzed by Administrative Services, and to -- sufficient
21 to convince the Hearing Officer financial necessity
22 exists for a reasonable accommodation.

23 MR. CURRY: Second it.

24 MR. SELICH: Any discussion on that motion?

25 (No audible response.)

1 Okay. Please vote.

2 MS. BROWN: Motion carries.

3 MS. WOLCOTT: Staff requests a clarification.

4 I believe that you just made a decision as to
5 reasonable accommodation request number five. There were
6 five separate accommodation requests. They were analyzed
7 separately, and the Hearing Officer passed five separate
8 Resolutions. So I believe that you just made a
9 recommendation as to reasonable accommodation request
10 number five.

11 Some of the other options we discussed were
12 that if you were to uphold the Hearing Officer's
13 determination as to request number one, which was denying
14 the request that the use be treated as a single
15 housekeeping use;

16 The request number two, which did not -- would
17 deny their request that the use not be classified as a
18 residential care facility;

19 The request number three, which was granting
20 the Hearing Officer's determination that we could
21 continue to treat it as a non-conforming use, since we
22 were treating it as all non-confirming uses are treated;

23 And request number four, which was that the
24 City would -- the Hearing Officer deny the request that
25 the City treat -- apply the building code, zoning code,

1 and fire codes to Pacific Shores' facilities as it would
2 be applied to single- and two-family uses.

3 All of those reasonable accommodation requests
4 had separate Resolutions. And Staff was requesting
5 clarification as to whether or not you were voting to
6 uphold those requests?

7 MR. HENN: It was the intent of my motion to
8 uphold those first four requests.

9 MS. WOLCOTT: Thank you. So you would like
10 Staff to prepare Resolutions for Council to
11 adopt -- reflecting that, that you are upholding them?

12 MR. SELICH: Upholding the Hearing Officer's
13 determinations.

14 MS. WOLCOTT: Thank you.

15 MR. SELICH: Okay. Anything else on that one?

16 MR. HUNT: No, Mr. Mayor.

17 MR. SELICH: Seeing none, we have one item left
18 on the agenda this evening.

19 (Ending time: 9:00 p.m.)

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I, the undersigned, a Certified Shorthand Reporter for the State of California, do hereby certify:

That prior foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: NOV 09 2009



Laura A. Rutherford, RPR
CSR No. 9266

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