

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

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		:
4	ALAMAR RANCH, LLC, an Idaho limited	: Case No. 1:09-CV-00004
	liability company; and YTC, LLC, an	:
5	Idaho limited liability company,	:
		:
6	Plaintiffs,	:
		:
7	vs.	:
		:
8	COUNTY OF BOISE, a political	:
	subdivision of the State of Idaho,	:
9		:
	Defendant.	:
		:
10	- - - - -	x

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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 before B. Lynn Winmill, Chief District Judge,
15 sitting with a jury.

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18 DAY 1, December 6, 2010

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20 VOLUME 1

 Pages 1 to 136

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Tamara I. Hohenleitner

23

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PROCEEDINGS

Monday, December 6, 2010

THE CLERK: The court will now hear Civil Case 09-4-S-BLW, Alamar Ranch, LLC, et al., versus County of Boise, for day one of jury trial.

THE COURT: Good afternoon, ladies and gentlemen.

I wish I could have been here during jury selection. It's one of the parts of the trial that I enjoy the most. But unfortunately, as I think perhaps Judge Bush explained, we had a couple of emergency matters I had to take care of this morning, and Judge Bush was kind enough to fill in for me during the jury selection.

Let me indicate, I'm going to read to you now my preproof instructions. Actually, let me take care of a couple of housekeeping matters, though, first.

First, temperature. I like to keep the courtroom roughly cool enough that we could hang meat in here safely. Obviously, we're not meeting that objective right now, but Ms. Gearhart has alerted the powers that be that we need to get the temperature down. And it may even be almost uncomfortable, so you may want to bring a jacket

or, literally, a sweater at a minimum. Because I've found that to keep a jury attentive and alert, temperatures around 65 degrees seem to do the trick. So be mindful of that.

Second, I think Judge Bush may have advised you that my trial schedule after today will typically be starting at 8:30 in the morning, going through until 2:30, with two breaks roughly about an hour and 15 minutes apart -- hour and 50 minutes apart, and then we'll be done at 2:30 each day.

There may be some exceptions. One may be next Monday when I have a luncheon engagement. In order to accommodate that, we may have to go to the standard trial day, which would be 9:00 to 12:00, and maybe 1:30 to 5:00. But with that exception, we will probably quite uniformly be going 8:30 to 2:30.

And I assume that was not a problem for any of the jurors; is that correct?

(Jurors indicating.)

THE COURT: All right.

Now, with that, let me go ahead and begin with my instructions to you.

PRELIMINARY JURY INSTRUCTIONS

THE COURT: Ladies and gentlemen, you now are the jury in this case and it's my duty to instruct you on the law. These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it.

Now, at the end of the trial, I will give you a final set of instructions. It is the final set of instructions which will govern your deliberations. And I stress this because things occur during the course of the trial that require that I change my instructions as to the law. An issue may arise that I hadn't anticipated, or an issue that I thought was in the case is no longer in the case.

And so it is critical that if there is any inconsistency between what I tell you now and what I tell you at the end of the trial, that you follow my final instructions at the end of the trial and disregard anything to the contrary that I may say over the next few minutes.

Now, you will be allowed to keep and refer to these preliminary instructions throughout the trial.

In fact, Ms. Huang, did we provide to counsel a set of the instructions --

LAW CLERK: We did preproof last week.

THE COURT: Not counsel; I meant the jury.

LAW CLERK: Did not.

THE COURT: Okay. We'll have a set so that you can have those with you throughout the trial. And you may refer to those throughout the trial, but they may not be taken home. They must remain in the jury room when you leave in the evenings. And when we give you the final set of instructions at the end of the trial, we'll take these preliminary instructions away from you.

Now, you must not infer from these instructions, or from anything that I may say or do, as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all of the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not.

And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the

1 case solely on the evidence before you. You will
2 recall that you took an oath to do so.

3 In following my instructions, you must
4 follow all of them and not single out some and
5 ignore others. They are all equally important.

6 We have previously summarized the
7 claims for you and I will remind you of those now.

8 The plaintiffs in this case are Alamar
9 Ranch, LLC, and YTC, LLC.

10 Alamar Ranch is an Idaho limited
11 liability company that sought to develop and
12 operate a residential treatment facility and
13 private school on Klam Ranch Road in Boise County,
14 Idaho. YTC, LLC, is a real estate holding company
15 that owned the property and sought to develop and
16 hold it and then lease to Alamar. However,
17 throughout these instructions the plaintiffs will
18 be referred to collectively as Alamar.

19 The defendant is the County of Boise
20 here in the state of Idaho, whom we'll refer to as
21 Boise County.

22 Throughout these instructions, the
23 plaintiffs again will be referred to as Alamar and
24 the defendant will be referred to as Boise County.

25 Alamar claims that Boise County

1 violated their rights under the Fair Housing Act
2 by effectively denying plaintiffs a conditional
3 use permit to construct a residential treatment
4 center for adolescents. The Fair Housing Act was
5 enacted to eliminate discrimination with respect
6 to housing on the basis of race, color, religion,
7 sex, handicap, familial status or national origin.

8 In this case, Alamar claims
9 discrimination on the basis of handicap. The
10 purpose of the Fair Housing Act is to enable
11 people to live in the residence of their choosing,
12 in the community of their choosing, without regard
13 to their protected status.

14 I'll give you a brief summary of
15 Alamar's claims in this case. This is designed to
16 assist you in evaluating the evidence as it comes
17 in. But you are to remember that my instructions
18 at the end of the trial will be more detailed and
19 will govern your deliberations.

20 Alamar claims that, first, Boise County
21 violated the Fair Housing Act by failing to
22 provide reasonable accommodations so as to allow
23 the development of housing for handicapped
24 individuals. Alamar contends that rather than
25 making accommodations in their rules and

1 procedures to allow the development of handicapped
2 housing, Boise County placed additional burdensome
3 conditions on Alamar's conditional use permit
4 which were intentionally designed to prevent
5 handicapped housing from being built.

6 Alamar's second claim is that Boise
7 County violated the Fair Housing Act by
8 discriminating against Alamar's attempt to develop
9 housing for the handicapped by effectively denying
10 plaintiff's conditional use permit through placing
11 burdensome, arbitrary, and unreasonable conditions
12 on the permit while not placing such conditions on
13 similarly situated developments.

14 Third, Boise County -- Alamar claims
15 that Boise County unlawfully interfered with
16 Alamar's attempt to build housing for the
17 handicapped by obstructing the construction of
18 such housing.

19 And fourth, Alamar claims that as a
20 result of Boise County's violation of the Fair
21 Housing Act, Alamar has suffered damages,
22 including the costs of development, lost profits,
23 lost business opportunities, expenses and other
24 monetary losses.

25 Now, the defendant denies; that is,

1 Boise County denies that it violated the Fair
2 Housing Act in any way. It denies that it
3 subjected Alamar to what's called disparate
4 treatment or that it in any way prevented the
5 construction of housing for the handicapped.

6 Thus, you see the allegations of the
7 plaintiff and the response of the defendant to
8 those claims.

9 When a party has the burden of proof on
10 any claim or affirmative defense by a
11 preponderance of the evidence, it means you must
12 be persuaded by the evidence that the claim or
13 affirmative defense is more probably true than not
14 true.

15 You should not base your decision --
16 excuse me. You should base your decision on all
17 of the evidence, regardless of which party
18 presented it.

19 The evidence you are to consider in
20 deciding what the facts are consists of, first,
21 the sworn testimony of any witness; second, the
22 exhibits which are received into evidence; and
23 third, any facts to which the lawyers have agreed
24 or stipulated.

25 By comparison, the following are not

1 evidence and you must not consider them as
2 evidence in deciding the facts of this case:

3 First, statements and arguments of the
4 attorneys are not evidence and should not be
5 considered by you.

6 Second, questions and objections of the
7 attorneys are not evidence.

8 Third, testimony that I instruct you to
9 disregard is not evidence. And although you may
10 have heard such testimony, if I instruct you to
11 disregard it, you are to put it out of your mind
12 and not allow it to affect you in any way during
13 your deliberations.

14 And finally, anything that you may see
15 or hear when the court is not in session is not
16 evidence, even if what you saw or heard was done
17 or said by one of the parties or by one of the
18 witnesses.

19 Now, during the trial, some evidence
20 may be admitted for a limited purpose only. That
21 will occur -- and it occurs in virtually every
22 trial in which evidence is offered by a party, an
23 objection is made, and then the court will
24 determine that the objection is well-founded, but
25 that it may be considered by the jury for a

1 limited purpose.

2 For example, if a statement is made, an
3 objection may be made that it is hearsay, which
4 means that you can't consider that hearsay
5 statement for the truth of what was asserted. But
6 it may be considered for some other purpose; for
7 example, what notice that statement may have
8 provided to one of the parties.

9 In that circumstance, I would instruct
10 you that you can consider it for the notice that
11 it may have provided the parties, but you are not
12 to consider whether the statement is true or not
13 true. Because whether it's true or not true, it
14 may still have the same effect as far as giving
15 notice to the parties.

16 Now, that's kind of complicated and in
17 the abstract it may not make a great deal of
18 sense, but I hope that as we get into the trial
19 and I provide you with those types of
20 instructions, that you will understand them
21 perhaps a little more clearly.

22 But what is critical is that if I give
23 you that instruction that a piece of evidence is
24 admitted for a limited purpose only, you must
25 consider it only for that limited purpose and for

1 no other.

2 Now, evidence may be direct or it may
3 be circumstantial. Let me try to describe for you
4 what the difference is. Direct evidence is direct
5 proof of a fact, such as testimony by a witness
6 about what that witness personally saw or heard or
7 did.

8 By comparison, circumstantial evidence
9 is proof of one or more facts from which you could
10 find another fact. Let me give you an example.

11 If I were -- in fact, today would have
12 been an appropriate day to use this as an example,
13 because it has been raining here in Boise. But if
14 I were to have -- if I wake up in the morning, I
15 look outside and see drops of precipitation
16 falling from the sky, I could appear in court and
17 testify that on that date it was raining, because
18 I had actually observed it to have occurred.

19 By comparison, if, on the prior
20 evening, perhaps the weather forecast called for
21 rain, it wasn't raining when I went to bed, but it
22 was gray and overcast. When I get up in the
23 morning it again is not actively raining, but I
24 notice that the streets are wet, there are puddles
25 on the sidewalk, the grass is wet, I could then

1 appear in court and testify as a matter of
2 circumstantial evidence that it rained during the
3 preceding evening; not that I had observed it, but
4 I had observed facts from which one can infer that
5 it had rained during the preceding evening.

6 That is the difference between direct
7 and circumstantial evidence, direct evidence being
8 what you physically observed, circumstantial
9 evidence being what you can infer from other facts
10 that a witness has observed.

11 Now, the important point is that the
12 law permits you to consider both kinds of
13 evidence. And in fact, the law makes no
14 distinction between the weight to be given to
15 either direct or circumstantial evidence. It is
16 for you as a jury to decide how much weight to
17 give to any evidence, whether it is direct or
18 circumstantial.

19 Now, there are rules of evidence which
20 control what can be received into evidence.

21 When an attorney asks a question or
22 offers an exhibit into evidence and an attorney on
23 the other side thinks that it is not permitted by
24 the rules of evidence, that attorney may object.
25 If I overrule the objection, the question may be

1 answered or the exhibit received. But if I
2 sustain the objection, the question cannot be
3 answered, and the exhibit cannot be received.

4 Whenever I sustain an objection to a
5 question, you must ignore the question and must
6 not guess what the answer might have been.

7 Likewise, if I sustain an objection to
8 an exhibit, you must ignore the exhibit and must
9 not speculate as to what the exhibit might have
10 shown.

11 Now, sometimes I may order that
12 evidence be stricken from the record and that you
13 disregard or ignore the evidence. That means that
14 when you're deciding the case, you must not
15 consider the evidence that I told you to
16 disregard.

17 Now, in deciding the facts in this
18 case, you may have to decide which testimony you
19 believe and which testimony you do not believe.
20 Now, you may believe everything that a witness
21 says or part of their testimony or none of their
22 testimony. In considering the testimony of any
23 witness, I might suggest that you could ask
24 yourself the following questions:

25 First, what opportunity and ability did

1 this witness have to see or hear or know the
2 things that he or she has testified to?

3 Second, how good was this witness'
4 memory about the events in question?

5 Third, what was the witness' manner, or
6 what we sometimes refer to in a courtroom as their
7 demeanor, while they are testifying? Does it
8 suggest to you that they are or are not telling
9 the truth?

10 Fourth, does this witness have some
11 interest in the outcome of the case or any bias or
12 prejudice for or against one of the parties?

13 Fifth, did the other evidence that you
14 believe contradict what this witness has testified
15 to?

16 Sixth, how reasonable was the witness'
17 testimony in light of all the evidence?

18 And finally, are there other factors
19 from your common sense and common experience which
20 suggest to you that the witness was or was not
21 believable?

22 Now, the weight of the evidence as to a
23 fact does not necessarily depend on the number of
24 witnesses who testify concerning that fact.

25 Let me take a few minutes and discuss

1 with you your conduct as jurors, and this is
2 extremely important.

3 First, you must keep an open mind
4 throughout the trial and do not decide what the
5 verdict should be until you and your fellow jurors
6 have completed your deliberations at the end of
7 the case.

8 Now, this is critical because a
9 trial -- you know, it obviously is not possible
10 during a trial to simultaneously fill your brains
11 with all of the evidence in the trial. It has to
12 come in in stages. Typically, the plaintiff goes
13 first, followed by the defense, perhaps some
14 rebuttal testimony, and then the closing arguments
15 of counsel, and then my instructions as to the
16 law.

17 Until you have all of that, it would be
18 terribly unfair to the parties and to yourself,
19 for that matter, to start to form opinions about
20 the case, because you may later hear additional
21 evidence or perhaps an argument of counsel or my
22 instructions as to the law which would perhaps
23 cause you to rethink that, but you have already
24 developed some momentum towards a particular
25 conclusion.

1 So for that reason, it is critical that
2 you not form any opinions about this case until it
3 is finally submitted to you at the end of the
4 trial. You must keep an open mind until then.

5 Second, because you must decide this
6 case based only upon the evidence received in the
7 case and on my instructions as to the law that
8 applies, you must not be exposed to any other
9 information about the case or to the issues it
10 involves during the course of your jury duty.
11 Thus, until the end of the case or unless I tell
12 you otherwise, you must do the following:

13 First, do not communicate with anyone
14 in any way, and do not let anyone else communicate
15 with you in any way about the merits of the case
16 or anything to do with it. Now, this includes
17 discussing the case in person, in writing, by
18 phone or electronic means: by email, text
19 messaging or any Internet chat room, blog, website
20 or other feature.

21 This applies to communicating with your
22 fellow jurors until I give you the case for
23 deliberation. In other words, you are not to
24 discuss the case among yourselves. And it applies
25 to communicating with everyone else, including

1 your family members, your employer, and the people
2 involved in the trial, although you are, of
3 course, free to notify your family and your
4 employer that you have been seated as a juror in
5 this case.

6 But if you are asked or approached in
7 any way about your jury service or anything about
8 this case, you must respond that you have been
9 ordered not to discuss the matter, and you must
10 report such a contact to the court immediately.

11 Because you will receive all of the
12 evidence and legal instructions that you properly
13 may consider to return a verdict, you are not to
14 read, watch, or listen to any news or media
15 accounts or commentary about this case, or
16 anything to do with it. You are not to do any
17 research, such as consulting dictionaries,
18 searching the Internet or using other reference
19 materials.

20 And you must not make any investigation
21 or in any other way try to learn about the case on
22 your own. For example, you should stay away from
23 any location that is mentioned during the trial.
24 The specific site of the proposed development in
25 this question, for example, should be off limits.

1 Now, let me provide you with just one
2 anecdote that expresses the importance of this. I
3 had a trial a few years ago, where some of the
4 jurors had some contact with one of the parties in
5 the court's parking lot while returning from, I
6 think, a lunch recess. It was unclear whether the
7 contact was just a greeting or something more.

8 But this forced me to hold a hearing on
9 which each of the jurors was called. They were
10 placed under oath, and we spent the better part of
11 a day and a half examining each juror to determine
12 what, if any, contact they had had with the
13 parties. Obviously, this became most difficult
14 for both the jurors and for the court. It
15 jeopardized the proceeding. Fortunately, in that
16 case I was able to avoid a mistrial, but it was
17 perilously close to our having to start over a
18 three-week trial.

19 So it is important that you avoid all
20 contact with the attorneys, the witnesses and the
21 parties. Even an innocent greeting should be
22 avoided. Now this may appear rude to you, but I
23 am telling all participants here -- the attorneys,
24 the parties, the witnesses, to give you a very
25 wide berth. That's why you're to wear your juror

1 You should not even go near the area during the
2 course of the trial.

3 The court maintains a website, and on
4 that website there is information about many of
5 our cases. And for that reason, you must not go
6 to the court's website to investigate this case on
7 your own.

8 Now, the law requires these
9 restrictions to ensure that the parties have a
10 fair trial based upon the same evidence that each
11 party has had the same opportunity to address. A
12 juror who violates these restrictions jeopardizes
13 the fairness of these proceedings, and a mistrial
14 could result that would require the entire trial
15 process to start over.

16 If any juror is exposed to any outside
17 information, you must notify the court
18 immediately. If you need to communicate with me,
19 simply give a signed note to Ms. Huang to give to
20 me.

21 Do not make up your mind about what the
22 verdict should be until after you have gone to the
23 jury room to decide the case and you and your
24 fellow jurors have discussed the evidence. You
25 are to keep an open mind until then.

1 badge quite prominently displayed on you, so that
2 they know that you are a juror and can give you
3 that afore described wide berth.

4 As you leave the courthouse, I'll ask
5 all people here to give the jurors first dibs on
6 the elevators. And you are not to ride on the
7 elevators at all with any of the attorneys,
8 witnesses or parties during the course of the
9 trial.

10 So again, I am cautioning everyone
11 involved in this case to give the jury a great
12 deal of space and to avoid all physical close
13 proximity to the jurors.

14 Now, at the end of the trial, you will
15 have to make your decision based on what you
16 recall of the evidence. Now, you will not have a
17 transcript of the trial. I want to repeat that.
18 You will not have a transcript of the trial
19 testimony. Evidence can be read back to you, but
20 it is very difficult, very time-consuming. I
21 therefore urge you to pay very close attention to
22 the testimony as it is actually given.

23 Now, if you wish, you may take notes to
24 help you remember what witnesses said. But if you
25 do take notes, please keep them to yourself until

1 you and your fellow jurors go to the jury room to
2 decide the case. And do not let notetaking
3 distract you, so that you do not hear other
4 answers by witnesses. And when you leave for the
5 day, your notes should be left in the jury room.
6 You are not to take them home with you.

7 Now, whether or not you take notes, you
8 should rely on your own memory of what was said.

9 Notes are only to assist your memory and you
10 should not be overly influenced by your notes.

11 From time to time during the trial, it
12 may become necessary for me to talk with the
13 attorneys out of the hearing of the jury, either
14 by having what we call a sidebar conference
15 here -- and perhaps you had one or more sidebars
16 during the jury selection, so you're at least
17 somewhat familiar with that -- or we may send the
18 jury out of the courtroom and perhaps declare a
19 recess.

20 But please understand that while you're
21 waiting, we are working. And the purpose of these
22 conferences is not to keep relevant information
23 from you, but to decide how certain evidence is to
24 be treated under the rules of evidence and to
25 avoid confusion and error.

1 evidence, and counsel for the plaintiffs may
2 cross-examine.

3 After the evidence has been presented,
4 I will instruct you on the law that applies to the
5 case. The attorneys will make their closing
6 arguments, and I will give you some brief closing
7 instructions. After that, you will go to the jury
8 room to deliberate on your verdict.

9 We will now hear the opening statements
10 of counsel.

11 Counsel, I did not visit with you about
12 whether you were able to just stay at the lectern
13 to make your opening or whether you wanted to be
14 in the well. If we didn't cover this with you, if
15 you're going to be in the well, we'll need to have
16 you wired up for the court reporter.

17 Mr. Woodard, are you going to make the
18 opening?

19 MR. WOODARD: Yes, your Honor. And I'm fine
20 with the podium.

21 THE COURT: All right.

22 Mr. Brassey?

23 MR. BRASSEY: I'm fine with the podium,
24 Your Honor.

25 THE COURT: Excellent. I prefer that. It

1 Now, I will note that I generally keep
2 these sidebar conferences to a minimum. I can't
3 remember the last time I sent a jury out while we
4 discussed a matter. And I am cautioning counsel,
5 as I think they're all well-familiar, if we have
6 matters that require some serious discussions
7 outside your presence, they need to be scheduled
8 at the end of the day after the jury is sent home
9 and not take up the jury's time with extended
10 argument.

11 So we will try very hard, both court
12 and counsel, to keep such discussions to a
13 minimum.

14 The next phase of the trial will now
15 begin. First, each side may make an
16 opening statement. I'll remind you that an
17 opening statement is not evidence. It is simply
18 an outline to help you understand what that party
19 expects the evidence will show. A party is not
20 required to make an opening statement.

21 The plaintiff will then present
22 evidence, and counsel for the defendant may
23 cross-examine any witnesses called by the
24 plaintiffs.

25 Then the defendants may present their

1 makes it easier for everyone.

2 So, Mr. Woodard.

3 Oh, while Mr. Woodard is getting up, I
4 actually misspoke. I think I told you to not pay
5 any attention to the attorneys. What I really
6 meant to say --

7 (Laughter.)

8 THE COURT: -- was what the attorneys may
9 tell you is not evidence. You can pay attention
10 and listen to them, but remember that what they
11 say, the questions they ask, is not evidence, and
12 you must decide your case at the end of the trial
13 solely upon the evidence presented.

14 What the attorneys will provide you is
15 perhaps a way of considering the evidence, but
16 you -- but it is critical you understand their
17 role here is not to testify; it's to simply help
18 you understand the evidence and perhaps provide
19 their take on what the evidence really means in
20 this case.

21 That applies not to just Mr. Woodard,
22 but to Mr. Brassey and anyone else involved in the
23 case.

24 Proceed.

25 OPENING STATEMENT BY THE PLAINTIFF

1 MR. WOODARD: May it please the court.
 2 Ladies and gentlemen of the jury, it's
 3 a privilege to address you today. Your service as
 4 jurors is one of the things that makes America
 5 great. We thank you for taking two weeks of your
 6 time to listen to my client's case.

7 My name is Wade Woodard, and I
 8 represent the plaintiffs in this case. Our
 9 clients are here. Mr. Oaas is one of the clients,
 10 and Steve Laney is one of the clients.

11 Before I get into the -- go into the
 12 details of the facts of this case I'm going to
 13 tell you about, I want to give you kind of an
 14 overview of what this case is about.

15 The evidence in this case will show
 16 that Boise County politicians and public officials
 17 deprived my clients, the landowner, of their
 18 rights to use their property and to develop their
 19 property as allowed by county ordinances.

20 The evidence will also show that Boise
 21 County discriminated against my clients in
 22 violation of the federal law, the Fair Housing
 23 Act, which protects housing developments for the
 24 handicapped.

25 The evidence in this case will show

1 that the discrimination occurred as a result of
 2 county officials giving in to political pressure
 3 from a very vocal group of homeowners in a nearby
 4 subdivision, who were opposed to the development
 5 and did not want the handicapped living next to
 6 them.

7 The evidence will show that the
 8 opposition was based on stereotypes about the
 9 handicapped. They have no basis in fact.

10 The evidence will show that this
 11 discrimination occurred in the context of backdoor
 12 politics and secret meetings that were hidden from
 13 public view.

14 The evidence in this case will show
 15 that Boise County tried to hide its discrimination
 16 by approving the permit, approving the use, but
 17 loading it with so many conditions that it could
 18 never be profitable to be built.

19 I've got a PowerPoint presentation. I
 20 hope it's not too distracting. But I first want
 21 to let you know who some of the witnesses are that
 22 you will hear from in this case.

23 The first one is, Alamar Ranch is the
 24 entity. The owners, as I just mentioned, are
 25 Steve Laney and Erik Oaas.

1 You will also hear from Chris Tverdy.
 2 He was the project manager. He headed up the
 3 Alamar Ranch project.

4 You will also hear from Amy Jeppesen.
 5 She is a counselor that works with handicapped
 6 youth, and she was going to be the program
 7 director, the executive director of the program.

8 You have been introduced to Boise
 9 County. You will hear about the Boise County
 10 Planning and Zoning Department. You will hear
 11 from Boise County Planning and Zoning
 12 administrator, Patti Burke.

13 You will hear evidence of Boise County
 14 attorney, Tim McNeese, and the Boise County
 15 Commissioners at that time, who are -- the three
 16 of them are sitting here today: Fred Lawson,
 17 Terry Day, Linda Zimmer.

18 You will also hear about the opponents
 19 of Alamar. They are sometimes also called "No
 20 Alamar." Most of them are -- a lot -- or I should
 21 say a lot of them are from the Osprey Subdivision.
 22 Some are from the Clear Creek Subdivision. And
 23 one of the leaders of these opponents of Alamar
 24 Ranch was a woman named Jeri Kirkpatrick, who you
 25 will hear from.

1 You will also hear about the Wilderness
 2 Ranch Fire District and its fire chief, Mr. John
 3 McCarthy.

4 Now, my clients -- and when I refer to
 5 Alamar Ranch throughout addressing you in these
 6 opening statements, I will be referring to two
 7 entities. And Judge Winnmill told you a little bit
 8 about how it worked. Alamar Ranch, LLC, is the
 9 entity that was going to operate this residential
 10 treatment center, and YTC, LLC, is the entity that
 11 was going to own the property. But they're both
 12 owned by the same group of investors, and together
 13 they're Alamar Ranch.

14 Now, let's talk about what Alamar Ranch
 15 was going to be. It was going to be a 72-student
 16 residential treatment center and private school.
 17 So on the campus there would be a school where
 18 these troubled youth would go and receive their
 19 schooling. But there would also be therapy.
 20 There would be psychiatrists and psychologists and
 21 counselors and staff there to help them with their
 22 needs. It was going to be a highly structured
 23 healing environment and a resource for the mental
 24 health needs of Boise County and beyond.

25 The goal and the mission of Alamar

1 Ranch, it was dedicated to helping families change
2 for the better.

3 The Alamar Ranch residents. Each of
4 the residents of Alamar Ranch would have some sort
5 of disability. Most of them would have a
6 psychological or emotional illness that has been
7 diagnosed under the Diagnostics and Statistics
8 Manual. That's what psychologists and
9 psychiatrists use when they diagnose mental
10 illness.

11 The residents would be placed at a
12 residential treatment center like Alamar Ranch
13 because they have disabilities that cause
14 them -- and this is important -- to be unable to
15 function in their home and in school.

16 The reason they're put in an RTC is
17 they're not making it at home. They're not making
18 it in school. Many of the times these kids, they
19 are not going to school. They have not been
20 successful at school. And so they're placed in a
21 residential treatment center.

22 And you will hear that a lot of these
23 youth that are placed in the residential treatment
24 center, that they also suffered from, sometimes,
25 some kind of substance or alcohol abuse.

1 counselors and psychiatrists and psychologists
2 there.

3 They were going to have a highly
4 structured daily schedule. You will hear about
5 this in the evidence, about what they were going
6 to do. They spend time doing chores. They spend
7 time learning -- a lot of these kids don't know
8 how to take care of themselves. They spend time
9 learning how to do basic things like groom
10 themselves, basic hygiene.

11 But they were also going to learn how
12 to take care of animals. There is going to be
13 some equine therapy and other types of things.
14 It's going to be family focused there. The
15 program that was developed by my clients, they
16 believe that the family is the key to saving these
17 youth and that the family needs to be involved.

18 There is going to be master's level
19 clinicians, so that they are going to be highly
20 educated, these therapists that help the children.
21 They were going to have small caseloads. Each
22 therapist wasn't going to have more than six
23 students.

24 There was going to be family group and
25 individual equine and recreation therapy. We'll

1 And this is a little small, so if you
2 can't read it, I'll tell you about it. It's an
3 overview of Alamar Ranch. There was going to be
4 small communities of 12 students. I said overall
5 they planned to have 72 students, but they're
6 going to be put in almost self-contained units of
7 12 students. They would have their own dormitory,
8 their own therapist, their own counselors. And
9 then they would get together for the cafeteria for
10 things like mealtime and some of the schooling.

11 And this is critical. There is a low
12 student-to-staff ratio, or in other words, there
13 was a high staff-to-student ratio. So there was
14 going to be a lot more staff than there were going
15 to be students.

16 And that was one of the plans that my
17 clients had, is they wanted to have a very
18 high-end, top-notch facility. And the key
19 component to that is the number of staff you have
20 for each student, so that you have enough staff
21 there to meet the individual needs of the
22 students.

23 There was going to be a
24 multidisciplinary team. That's what I talked
25 about, there was going to be different types of

1 get in later and I'll show you where the project
2 was going to be, but it was important for it to be
3 out in nature because of the therapy that was
4 going to be provided.

5 They are going to have psychiatrists
6 that see all the students. And these
7 psychiatrists would control the medications and so
8 forth that these students received and also help
9 with their care.

10 They were going to do a research
11 partnership with Boise State University. One of
12 the things that they wanted to do is they had
13 researched residential treatment centers, and they
14 saw that there was a low success rate in some of
15 them. And they wanted to have a residential
16 treatment center that had a very high success
17 rate.

18 They were going to have an accredited
19 education, so that the time that these youth spent
20 in school while they were in the residential
21 treatment center, it applies, and they will get
22 the credits that they need to graduate.

23 This is very important. These are the
24 students that Alamar Ranch would not accept. They
25 wouldn't accept the medically unstable. They

1 wouldn't accept arsonists. They wouldn't accept
2 sexual perpetrators, the actively psychotic, those
3 with conduct orders, violent or aggressive
4 history.

5 So when a student would come in,
6 they're going to do a whole background check on
7 them and talk with -- a lot of these youth would
8 have a therapist before, and they would talk to
9 the therapist and they would find out these
10 backgrounds. They weren't going to take any
11 students that had antisocial disorders or who were
12 convicted felons that had been in the judicial
13 system.

14 I talked about this a little bit, but
15 why are students placed in an RTC?

16 Typically, these teens have mental or
17 emotional issues, social phobias, substance abuse
18 issues, that they can't go to school anymore.
19 Typically, the parents have tried everything,
20 including counselors and psychiatrists, to help
21 the kids and they need to move to another level of
22 structure to help their child.

23 Now, it's important that we weren't
24 going to take those who were actively addicted to
25 drugs. Typically, what would happen is if they

1 have got a drug addiction where they're using
2 every day, they are placed in a detox center
3 first. So they will go to a detox center before
4 they are sent to a residential treatment center.
5 So they detox them before they send them to a
6 residential treatment center.

7 This is the property. This is the Klam
8 Ranch property. The road up at the top, it's that
9 island there. This road is -- I've got too many
10 marks there, but that road is Highway 21. The
11 road right here is Grimes Creek Road, that you've
12 heard about. It's 123 acres of property.

13 Like I said, this was going to be a
14 top-notch, classy, high-end facility. And this is
15 what the dormitories were going to look like.
16 This is the architectural elevation drawings for
17 the buildings. It was designed to blend in with
18 the natural environment so that they would not
19 stand out. It looks a lot like a very nice cabin.

20 I have shown you this slide so I can
21 show you the -- that right there, that's the
22 Osprey Subdivision that I told you about at the
23 beginning. It's across the highway and another
24 butte over to where Alamar Ranch was going to be.

25 And the buildings on Alamar Ranch were

1 not going to cover the whole property, but were
2 going to be up here in this top, kind of top
3 corner. They are going to be clustered as far
4 away from the Osprey Subdivision as possible.

5 Let me undo this.

6 Here is the master site plan. And this
7 shows you how those buildings were going to be all
8 clustered up at the far end of this property. I
9 can show you right there, and right there, those
10 are the six dormitories. And you also have some
11 horse stables, the cafeteria, a large field for
12 recreation.

13 Now, Alamar Ranch hired a lot of smart
14 people to do an impact study. One of them was an
15 economist from NNU. And he conducted a study, and
16 one of the things they found is that there be an
17 immediate spending impact of between 800,000 to
18 1.5 million. So that's from people coming up to
19 the facility, working at the facility, that there
20 would be spending in Boise County, that there
21 would be the creation of between 60 and 90 jobs
22 for Boise County, that there would be tax revenue
23 for the county.

24 And one of the things that Alamar Ranch
25 was going to do that was going to be of great

1 benefit to Boise County was they were going to set
2 up a nonprofit. And this nonprofit was going
3 to -- one of the things that they were going to do
4 is they were going to have their therapists and
5 counselors be available for providing therapy for
6 free to Boise County residents. And they have
7 done some research and found that there was a need
8 for that in Boise County.

9 They were going to have people that had
10 emergency training on staff, and those people were
11 willing to volunteer for the Mores Creek Ambulance
12 Service. And they were going to have the youth
13 that stayed in this facility do service projects:
14 cleaning the highways, you know, clean up a park,
15 that type of stuff.

16 This impact study also showed that
17 there was going to be no change in property values
18 from this residential treatment center to these
19 nearby homes, and that it was going to have almost
20 no impact on county emergency services.

21 Now this is important. Alamar Ranch
22 was an approved use. Boise County is different
23 from some other places in that they have
24 determined to zone the entire county as a mixed
25 use. You can have agricultural, rural,

1 commercial, residential. It's all mixed. They
2 don't have specific zonings for each type of use.

3 The way this coexistence is ensured is
4 through this conditional use permitting process.
5 So if you want to develop a property, you go in
6 for a conditional use permit, and they -- they put
7 conditions on that property to make sure it's
8 compatible.

9 The area of impact. You will be shown
10 evidence that the area of impact, as the -- at
11 least one of the commissioners will testify that
12 the area impact under the Boise County Zoning
13 Ordinance is 600 feet. So they have determined
14 that, you know, when there is going to be a new
15 development we look at, okay, what's within
16 600 feet of that development?

17 Now, Alamar Ranch, they filed
18 two -- and "CUP" is an acronym for conditional use
19 permit. So if you hear me say CUP, that's what I
20 mean, a conditional use permit.

21 They filed two conditional use permit
22 applications. The first one was for a property
23 called Green Ranch. That was a first one. They
24 filed that in December of 2006. What happened
25 with the Green Ranch was a little bit different

1 than the piece of property I showed you.

2 The Green Ranch property, which is in
3 this red outline, it was right next door to
4 Osprey. So they adjoined each other. And what
5 they found when they applied for the conditional
6 use permit for the Green Ranch property is that
7 there was a huge outcry from the Osprey
8 Subdivision. They didn't want it right next to
9 their subdivision.

10 So my clients, being sensitive to that,
11 Alamar Ranch being sensitive to that, what they
12 decided to do is they pulled that application and
13 they decided to purchase another piece of
14 property, which was -- this is that property I
15 showed you earlier. This is a smaller -- a
16 smaller map of it. But they decided to purchase
17 the Klam Ranch property, which was across the
18 highway and on another plateau from where the
19 Osprey Subdivision was.

20 The buildings were going to be over a
21 mile and a half, basically, from where the Osprey
22 Subdivision is. The red line on this slide that
23 I'm showing you, that's the Klam Ranch property
24 line. So my clients' property was going to be
25 above that line. And the yellow lines are

1 600 feet from that property line. And you will
2 see that 600 feet doesn't get near the Osprey
3 Subdivision.

4 This is from the instruction the judge
5 gave you just a few minutes ago, and I just want
6 to point out one thing. The Fair Housing Act was
7 enacted to eliminate discrimination. And you see
8 I have underlined there, one of the groups of
9 individuals that it protects is the handicapped.
10 You will be hearing a lot about the students at
11 Alamar Ranch and their handicaps.

12 And the purpose of the Fair Housing Act
13 is to enable people to live in the residence of
14 their choosing, in the community of their
15 choosing, without with regard to their protected
16 status. That means that the handicapped should be
17 able to live wherever they want to live. They
18 shouldn't be precluded from living someplace
19 because of their handicap.

20 And you will hear reference in the
21 evidence of a thing called NIMBY. It's an
22 acronym. NIMBY means not in my back yard, which
23 is, it's kind of the corollary [sic] of the Fair
24 Housing Act.

25 Now, there was strident opposition to

1 Alamar Ranch, and it was mostly from the residents
2 of the affluent Osprey Subdivision and also from
3 some residents in the Clear Creek Subdivision, and
4 elsewhere.

5 And they were a strong opposition, and
6 they were highly organized. They had a core group
7 of leaders that each performed a function, much
8 like a business. They had their own attorney.
9 They had a treasurer. They had a website, where
10 they posted blogs about Alamar Ranch. And they
11 had an email group, and they emailed dozens of
12 people with this email group about what was going
13 on with the application.

14 And I'm going to give you some sense
15 for the positions they took, but the evidence will
16 show that they had a not-in-my-back-yard position.
17 It wasn't based on any legitimate concern. It was
18 based on, they just didn't want these kids, these
19 type of kids, in their backyard. They had
20 petitions, signs on Highway 21. They held
21 concerts to oppose our project.

22 In some of the testimony and the
23 petitions, there were things like, "I don't think
24 Boise County is the place for a facility of this
25 nature."

1 There was people that would say, "Put
2 it in Ada County. We don't want it in Boise
3 County. Put it in Ada County."
4 "I think it would be hard to live with
5 if some kid came crawling through my window and I
6 blew his head off."
7 Other people would say things like,
8 "Put it out by the pen. Tell them, 'You mess up,
9 you go next door.'"
10 Or things like, "Put them in desert."
11 "Chain gangs." "Get old school on them."
12 This was the opposition.
13 "No room in the community for
14 noncontributors."
15 "Let them go to jail like poor people."
16 "Beat them when they're young."
17 Other things, like, "Take your jail
18 back to where they came from. Why should we,
19 Boise County, have to deal with them?"
20 Actually, "Why should we, Boise County,
21 have to take care of this crap?" is what some of
22 the stuff said.
23 "No way. Keep your kids home."
24 "Find another county, preferably Ada
25 County."

1 "Use the old prison in Boise."
2 "Put it out in a desert area between
3 Boise and Mountain Home."
4 "No rich brats."
5 "Put it in Canyon County."
6 "No hoodlums here."
7 "No juvie suckas'." At least I think
8 that's how that's pronounced.
9 Well, who were some of the opponents of
10 Alamar Ranch?
11 Now, I'm not saying these people had
12 any of the statements that I just talked about,
13 but these are some of the people that signed
14 petitions or otherwise showed that they were
15 opposed.
16 We had Commissioner Terry Day's wife
17 sign a petition opposed to it. Lynnette Robich,
18 who is Commissioner Day's election treasurer,
19 signed a petition.
20 Jim McCain, who is Commissioner Day's
21 campaign committee member and house guest, signed
22 a petition.
23 Jani Sims, she is the P & Z
24 administrator, Patti Burke's sister. She signed a
25 petition against it.

1 And we talked a little bit earlier
2 about Jeri Kirkpatrick. She is also P & Z
3 administrator, Patti Burke's good friend. And she
4 was opposed.
5 And Dirk Meyers, the Mores Creek
6 Ambulance Service administrator.
7 There is a two-step -- well, I guess
8 the first step when you file for a conditional use
9 permit is it goes before the Planning and Zoning
10 Committee. And so Alamar Ranch applied for a
11 conditional use permit for that Klam Ranch
12 property. This is the second application, because
13 they pulled the first one.
14 And it was denied. It was denied on a
15 three-to-three vote. And under the county's
16 rules, when there is a three-to-three vote, when
17 there is a tie, it results in a denial. So it was
18 denied.
19 And the next step when you have an
20 application that's denied is you can appeal to the
21 county commissioners. But before we get to there,
22 I want to talk a little bit about the denial.
23 The evidence will show that the denial
24 was not based on any of the standards of the Boise
25 County Zoning Ordinance. That's an important

1 point. Instead, the denial was based on three
2 reasons not found in the ordinance: That Boise
3 County does not have the infrastructure to support
4 the facility, that Boise County does not have the
5 infrastructure to support the conditions of
6 approval, and that the location was inappropriate;
7 not in my back yard.
8 The P & Z commissioners did not make
9 negative findings regarding the BCZO -- means the
10 Boise County Zoning Ordinance. They didn't find
11 any findings in their zoning ordinance that this
12 doesn't meet the ordinance.
13 The three commissioners that voted in
14 favor of Alamar's application noted in their
15 decision that there were no objections from any
16 county agency. They noted the lack of factual
17 evidence that Alamar Ranch would cause adverse
18 effects. And they thought that the application
19 should be approved.
20 Indeed, what they said is, "We think
21 that the denial" -- those that voted against the
22 application, that their decision to vote against
23 it would not pass what's called the arbitrary and
24 capricious test, meaning that there is no
25 reasonable basis for their decision.

1 The three P & Z commissioners -- I just
2 told you that one. Sorry.

3 They also noted the three commissioners
4 that voted in favor, that they were hesitant to
5 put in writing and note on the record that they
6 were voting in favor because of fear of backlash
7 from the vehement opposition, who they said many
8 of whom were their neighbors.

9 So after it was denied, what you can do
10 is appeal to the county commissioners, the Board
11 of County Commissioners. As a matter of fact,
12 that happens if your permit is approved, the
13 opponents can appeal the approval, too. But in
14 this case we were denied, and we appealed the
15 denial.

16 The opponents of Alamar Ranch had two
17 allies within Boise County government. One was
18 Planning and Zoning administrator Patti Burke.
19 Ms. Burke's job duties on this -- during this
20 appeal process included assisting the
21 commissioners through the appeal process. The
22 other ally that they had was Boise County
23 Commissioner Terry Day.

24 Now, Patti Burke, let's talk a little
25 bit about Ms. Burke. She had a serious conflict

1 of interest. Her father was a developer of the
2 Osprey Subdivision that was next door. And there
3 were still open lots in that subdivision.

4 This is key. At a lunch -- let me back
5 up a little bit. She became the Planning and
6 Zoning administrator after our permit was denied
7 by P & Z, but at the beginning of the appeal
8 process. So she was only the P & Z
9 commissioner [sic] during the appeal process.

10 While our permit was in front of the
11 Planning and Zoning Department, she had a
12 lunch -- the evidence will show she had a lunch
13 where she, with her good friend, Jeri Kirkpatrick,
14 and another one of the opponents for Alamar Ranch,
15 and they discussed strategies for opposing our
16 application and how to get it denied.

17 OAR, when I refer to them, that's the
18 opponents of Alamar Ranch -- and one of the things
19 that she did after she became the P & Z zoning
20 administrator is she would provide information to
21 the opponents of Alamar Ranch that came from
22 executive sessions.

23 Now, executive sessions are these
24 meetings that are held by the commissioners that
25 are behind closed doors. Nobody is supposed to

1 know what goes on in those meetings. But she was
2 feeding information from those meetings to the
3 opponents of Alamar Ranch.

4 One of the things that she told the
5 opponents of Alamar Ranch is, "The county may have
6 to approve this CUP application." She recognized
7 that. But she says, "They don't have to ensure
8 the project. The county doesn't concern itself
9 with the profitability of the proposed use." And
10 she coached these opponents of Alamar on how to
11 put conditions into the record that the
12 commissioners could then use to ensure that the
13 project would not be profitable and would have to
14 be placed someplace else.

15 She was -- Ms. Burke was given an
16 acronym by the opponents of Alamar Ranch, and it
17 was called TOTSRU. And you will hear evidence of
18 TOTSRU, according to them, means The One Who [sic]
19 Shall Remain Unnamed.

20 Ms. Burke provided the commissioners
21 with recommended conditions, and these conditions
22 were designed to ensure that Alamar Ranch would
23 not be built. She prepared a script for the
24 commissioners that contained these conditions,
25 that they would use in their deliberations to read

1 from.

2 Commissioner Terry Day. Boise County
3 Commissioner Terry Day was openly opposed to the
4 Alamar Ranch application. He stated his position
5 was -- this in the public deliberations -- that
6 his position was the same as that of the
7 opponents. He compared the proposed residents of
8 Alamar Ranch, these troubled youth, to a toxic
9 waste, and he lamented that there are laws to
10 prevent toxic waste from coming in the county but
11 there were no laws to keep these kids out.

12 In another part of the public
13 deliberations, he likened them to -- the Alamar
14 Ranch to a prisoner-of-war camp, referred to
15 Stalag 17.

16 The evidence will show that his family,
17 friends, and political supporters opposed Alamar
18 Ranch.

19 He admitted in the public deliberation
20 that he was voting -- this will become key later,
21 reducing the size of the project -- he was voting
22 to reduce the size of the project because that was
23 what the opposition wanted, the NIMBY opposition.

24 So what happened?

25 Just as Patti Burke had predicted to

1 the opponents of Alamar Ranch -- that's, she told
2 them what would happen -- is, yes, the application
3 was approved, but it was loaded with so many
4 conditions that it could not be profitable.

5 There was 31 conditions placed on our
6 project. What's interesting about these
7 conditions is they are restrictions and conditions
8 that were never before used in Boise County.
9 We're the only project that they did some of these
10 conditions to. And they were conditions that they
11 knew would kill the project and make it
12 unprofitable.

13 And probably the single most harmful
14 condition was they reduced the size of our project
15 of the number of students who could attend from 72
16 to 24. And this is critical, because I told you
17 about this program that we wanted to have, and
18 there was going to be a lot of therapy and
19 recreation. We needed this big piece of property
20 to have them out in nature, and we needed 72
21 students to be able to afford the number of staff
22 that would make the project safe for everybody at
23 the project and the neighboring areas. We needed
24 to have the therapists there to provide the
25 therapy that we wanted.

1 Seventy-two was the number that my
2 clients put a lot of time and effort going into,
3 to figure out what it would take to make this
4 project go. The commissioners knew they couldn't
5 make it work at 24, and they reduced it to 24.
6 And while reducing it to 24, they also loaded on a
7 bunch of conditions to make it even more
8 expensive.

9 You will hear that the commissioners
10 overrode the Fire District, the Wilderness Ranch
11 fire chief. He said that everything looks great
12 with Alamar Ranch. He approved of it. He put
13 conditions on us that we were supposed to do,
14 which we agreed with.

15 But they said, "No, he didn't do
16 enough. We're going to do more. And we're going
17 to make them have their own fire station. They
18 are going to pay for it. We're going to make them
19 pay for their own fire truck."

20 That was never done to any
21 subdivisions, which would have just as many people
22 living in them as our residential treatment
23 center.

24 They were going to make them have a
25 helicopter pad.

1 "We're going to make them have" -- and
2 this is important -- it may not sound important,
3 but -- "a two-lane, paved, secondary access."

4 And the way this property was sited,
5 that was going to be very expensive. And there
6 was no other project in Boise County that has to
7 have a secondary access that's two-lane paved. We
8 agreed to make our first, primary access, two
9 lanes, double wide and paved, but not the
10 secondary access.

11 There were procedural irregularities in
12 what the commission did. There was no P & Z staff
13 report. This is typical when they -- the
14 commissioners decide on a project, there is a
15 P & Z staff report. There wasn't one here.

16 The commissioners met behind closed
17 doors in executive session and planned their
18 decision before they had their public
19 deliberations. And I have a quote around
20 "deliberations." The reason is because they
21 weren't really deliberations. When they had
22 public deliberations, they already had it decided
23 through the script that they had from the
24 decisions they made in these closed-door meetings.

25 We talked about this a little bit

1 earlier, but this is a procedural irregularity, is
2 that the opponents of Alamar Ranch were provided
3 backdoor information from Ms. Patti Burke about
4 what occurred in these executive session
5 discussions.

6 This is an irregularity. The decision
7 was scripted before the public deliberation.

8 And here is some more. At the public
9 deliberations, the commissioners read from the
10 script prepared by Patti Burke, containing the
11 excessive conditions.

12 The script was not made part of the
13 record. Typically, everything that's done in
14 these processes are made part of the public
15 record. The script was not put into the record.
16 And versions of the script have been lost.

17 I talked about this a little bit, but
18 there were unprecedented conditions. These
19 conditions had never been placed on a project
20 before. That was an irregularity. And some of
21 the conditions overrode county agency
22 recommendations.

23 Now, as I said, the single-most
24 critical condition that really prevented this
25 project from being built was the reduction from 72

1 students to 24. The county can articulate no
2 basis for reducing the reduction of students that
3 has any factual support. Boise County identified
4 no local, state or federal ordinance, statute or
5 other code that would limit Alamar to 24
6 residents.

7 No county agency opposed the project,
8 and no agency found that the size needed to be
9 reduced. There was nothing from any other county
10 agency saying, "You need to reduce the size."

11 Commissioner Day, in the public
12 deliberations, admitted that the size had no
13 effect on compliance with the comprehensive plan.

14 Commissioner Zimmer will testify that
15 there is absolutely no support in the record for
16 imposing an occupancy restriction of 24. Indeed,
17 Commissioner Zimmer stated in the public
18 deliberations that the reason for reducing the
19 number was to appease the NIMBY concerns of OAR,
20 the opponents of Alamar. She wanted to make the
21 project acceptable to these opponents.

22 Then Project Patch. During the
23 voir dire you heard mention of Project Patch.

24 I'll tell you real quick about Project Patch.

25 It's in Garden Valley, which is part of Boise

1 County, but it's way on the other end of Boise
2 County.

3 Our project was going to be on the
4 Idaho City side, and Project Patch is on the
5 Garden Valley side. And it's been there for a
6 long time. And the county has had no problems
7 with it. It was approved for 40 students. And
8 what they did to us is they knocked us all the way
9 down to 24.

10 Now, this is important. Boise County
11 knew reduction to 24 would prevent Alamar Ranch
12 from being built. You might hear claims that they
13 didn't know, but the evidence will show that they
14 did know.

15 Boise County attorney, Tim McNeese, was
16 told that Alamar Ranch needed 72 students to be
17 financially viable. And he was specifically told
18 that reduction to a smaller number, including 24,
19 would prevent the project from being built. So
20 they knew that.

21 In the hearings, Tim McNeese, the
22 county attorney, told the commissioners that,
23 "If you reduce the size of the project, you will
24 adversely affect their ability to have an economic
25 benefit, and also seriously call into question the

1 entirety of the application based on the model
2 that's been presented."

3 So Mr. McNeese, the county attorney, he
4 understood that if you reduced us to 24, it would
5 prevent our project from being built. He is
6 telling the commissioners that.

7 They still reduced us.

8 When the decision that the county
9 commissioners -- when they issued the decision
10 approving our permit, but loading it with these 31
11 conditions, the decision was written. There was a
12 written decision. There is no mention of the Fair
13 Housing Act in the decision. Nowhere in the
14 decision do they say that, "We recognize that
15 there is going to be handicapped children there.
16 We recognize that there is duties under the Fair
17 Housing Act, and here is how we address them."

18 Instead, they ignored it, even though
19 the commissioners were told by the attorney that
20 the Fair Housing Act applied, and that reasonable
21 accommodations should be made; were told by Alamar
22 Ranch's attorney that the Fair Housing Act
23 applied, and that the county would be required to
24 relax standards to provide facilities for the
25 handicapped; that if they had some standard that

1 would prevent this project from being built, they
2 needed to look at relaxing it so that the
3 handicapped could have a place to live in the
4 community of their choosing.

5 They knew they had a responsibility to
6 assure that Fair Housing Act-covered projects were
7 not adversely impacted by NIMBY, the
8 not-in-my-back-yard attitude.

9 The commissioners knew what NIMBY was.
10 You will hear testimony of that; knew that the
11 positions advanced by the opponents of Alamar
12 Ranch or No Alamar were based on a NIMBY
13 perspective. Yet the commissioners, in their
14 decision, adopted the No Alamar position.

15 In fact, in the written decision, where
16 they reduced our project from 72 to 24 and they
17 tried to justify that, it's virtually cut and
18 pasted from the opponents' brief; completely took
19 the opponents' position.

20 Now, Alamar Ranch, at the hearings,
21 they asked the commissioners, they said, "Make
22 your decision -- if you're going to load us with
23 conditions, make it preliminary. Make it a
24 preliminary decision, so that we can talk about
25 those conditions and we can determine whether

1 those conditions will prevent us from building the
2 project."

3 The commissioners ignored this request.
4 You know what they did? They made the decision
5 final. They cut it off. They said, "It's final.
6 This is it."

7 I talked to you a little bit about how
8 these conditions are unprecedented, and they
9 don't -- they weren't done to any other
10 developments. And this chart, it may be a little
11 bit hard for you to read, but there on the
12 left-hand column is different projects, the first
13 one being Alamar Ranch. The others are
14 subdivisions in the area.

15 The second column over from the column
16 on the far left, the next right, is the number of
17 lots, residents. You will notice Alamar has 72
18 residents, plus they were going to have a
19 hundred-plus in staff.

20 And what Boise County determined is
21 that, as far as impact on the county, roads and
22 that type of stuff, that they were roughly --
23 Alamar Ranch would be roughly equivalent to a
24 37-home subdivision. So you will notice these
25 subdivisions we have in here are pretty close to a

1 37-home subdivision.

2 And then I have the conditions listed.
3 First, on Alamar Ranch, they overrode the decision
4 of the fire chief. They didn't do that on any of
5 these other projects.

6 Alamar Ranch, they required them to
7 have a 300,000 gallon water tank for fire
8 suppression. The other subdivisions have water
9 tanks in the neighborhood of anywhere from 5- to
10 25,000 gallon.

11 Have a fire truck storage and crew on
12 their property. Alamar, yes; these other
13 subdivisions, no. They might have had a plot of
14 land that was designated, where they would lease a
15 firehouse to some fire station. But they weren't
16 required to buy the firehouse, buy the truck.

17 Paved secondary access. Yes, with
18 Alamar; no, with all these other subdivisions.

19 Indeed, at the commission hearings,
20 Commissioner Day said that, "You know, some of
21 these subdivisions have, for their secondary
22 access, have no more than" -- what he called a
23 skid trail with little trees growing in the middle
24 of them.

25 Reduce the number of residents. They

1 reduced Alamar Ranch by two-thirds. I mean, this
2 wasn't a small reduction. This was a huge
3 reduction, by two-thirds. They never have reduced
4 the size of any of these subdivisions. They were
5 never reduced in size.

6 Now, something that they did after the
7 Planning and Zoning Commission denied our
8 application, the commissioners went out and told
9 the sheriff, "Hey, we want you to go out and we
10 want you to conduct a study and find out if this
11 residential treatment center, because of the kids
12 that are housed there, there is going to be too
13 much of a hassle for you, and there is going to be
14 too many calls to the sheriff. Why don't you go
15 out and conduct a study?" They had never done
16 that before with any subdivisions.

17 I'll tell you one thing, that the study
18 came back and the sheriff found that there was no
19 significant relationship between the size of a
20 facility and the number of calls.

21 I'm winding up, ladies and gentlemen.
22 Thank you for being patient with me.

23 As a result of Boise County's decision,
24 the Alamar Ranch RTC was not built. All of the
25 employees that my clients had hired had to be laid

1 off. Hundreds of youth lost a place where they
2 could find relief from their suffering.

3 And you will hear about this, but my
4 clients really did plan for this to be just a
5 top-notch facility. They wanted a place -- and
6 you will hear testimony that Mr. Laney had a son
7 who fits the description of the residents of RTC,
8 and it was his plan that his son may one day first
9 attend the RTC, and hopefully it could be a place
10 where he could work and function in society.

11 Boise County would have had what would
12 have been a great asset to their community. We
13 talked about the money that would have been pumped
14 into the community. And also, it would have been
15 a resource for a community that is lacking in
16 therapists.

17 And then, because of what happened, my
18 clients lost several million dollars in
19 out-of-pocket expenses that they paid to put into
20 the development of this plan, this program, this
21 RTC, and then the lost profits that they would
22 have gained from building this facility.

23 You have been patient. I thank you,
24 and I look forward to presenting the case to you.

25 THE COURT: Thank you, Mr. Woodard.

1 OPENING STATEMENT BY THE DEFENDANT

2 THE COURT: Mr. Brassey, I'm going to give
3 you the option. We're about 15 minutes away from
4 where I would normally take the break. We can
5 either do it now --

6 MR. BRASSEY: Your Honor, now would be
7 great.

8 THE COURT: All right. I think that might
9 be preferable. I don't want to cut you off in the
10 middle of your opening statement. I think that
11 may be --

12 MR. BRASSEY: Fine, Your Honor.

13 THE COURT: -- preferable.

14 Ladies and gentlemen, we'll take the
15 first break, and perhaps the only break, of the
16 afternoon.

17 As we take this break, I'll remind you
18 of the admonition which I gave you about juror
19 conduct. Don't discuss the case among yourselves
20 or with anyone else, and do not form or express
21 any opinions about the case until it is finally
22 submitted to you.

23 We'll be in recess for 15 minutes.

24 (Recess.)

25 (Jury present.)

1 commissioners who made this decision are here,
2 Linda Zimmer at the table, Terry Day on the left,
3 and Fred Lawson on the right.

4 As you'll hear right now, but also as
5 you'll hear throughout this trial, the reason
6 we're here is because there's a dispute, and
7 there's a dispute on what the facts are in this
8 case, and there's a dispute on what happened in
9 this case.

10 In a nutshell, the plaintiffs contend
11 that the three commissioners that are here, when
12 they approved the plaintiffs' conditional use
13 permit discriminated against the plaintiffs in a
14 process where the county commissioners actually
15 overturned the decision of Planning and Zoning.

16 I'm not going to talk to you a lot
17 about Boise County. When we were questioning the
18 jury and I asked the question of how many of you
19 had been up and down Highway 21, most of you had
20 raised your hand. But I think it's important that
21 you know a little bit about Boise County.

22 As you probably know, or you may know,
23 it's not particularly populated. It's rural. A
24 lot of it's mountainous. With regard to Alamar
25 Ranch and the proposed RTC, the residential

1 THE COURT: For the record, I'll note that
2 all jurors are present.

3 Mr. Brassey.

4 MR. BRASSEY: Thank you, Your Honor.

5 THE COURT: Offer your opening statement to
6 the jury.

7 MR. BRASSEY: May it please the court,
8 Counsel, Mr. Oaas, Mr. Laney, Commissioners,
9 ladies and gentlemen.

10 We appreciate your service. I know
11 both sides do in this case, because if you don't
12 have a system like this and people who are willing
13 to serve, then our system of justice, so to speak,
14 and the ability to come to court and plead your
15 case simply couldn't be done, so we appreciate it.

16 I understand you've been here a long
17 time today, and I'm going to try to not talk too
18 long, but I've made some notes, and I think it's
19 important that you hear from the county's side in
20 this litigation.

21 One thing I did want to do is I wanted
22 to introduce Pat Roden, at the end of the table,
23 who wasn't here this morning, but is helping us
24 out with our computers.

25 As I indicated this morning, the three

1 treatment center, would have been the largest, by
2 some degree, commercial activity in Boise County.

3 Commissioners -- there are three
4 commissioners in Boise County, and they're
5 essentially part-time. With regard to this
6 conditional use permit, it, again, was by far the
7 largest project that had ever been presented.

8 I want to talk to you a little bit
9 about the plaintiffs, and the proof will show, as
10 His Honor has told you, that there are two limited
11 liability companies, Alamar Ranch and YTC. Two of
12 the principals are here, Mr. Laney, who is sitting
13 back here, I think you may hear from. Mr. Oaas
14 who is at the table. They were both Micron
15 executives.

16 They left, started a development
17 company called Oaas Laney. They're a
18 sophisticated company. They have a lot of
19 developments that I think you'll probably hear
20 about in this case, and they have a variety of
21 interests.

22 When this project was conceived,
23 it -- I think what the evidence will show is it
24 came about because they were working with a
25 company in town called Ashley Manor, that had

1 businesses here and in Oregon, that had
2 Alzheimer's centers and assisted living centers.

3 Prior to this project, Oaas Laney had
4 never been involved directly in building a
5 residential treatment center. This was their
6 first go at it. They had a business plan, and
7 what you'll hear is the business plan was
8 prepared, and it was prepared, as a lot of
9 business plans are, for investors that were going
10 to be involved in this particular project.
11 Because the investors weren't simply Mr. Oaas and
12 Mr. Laney, it's a little more complicated than
13 that.

14 As you'll hear in this case, there are
15 allegations, that Mr. Woodard just talked to you
16 about, about the profitability or lack of
17 profitability because of the conditions that were
18 imposed by the county. The business plan was not
19 provided to the county, and I suppose there are a
20 lot of reasons for that.

21 One of the things you're going to hear
22 about -- because I think you're going to get to
23 see the business plan -- is Oaas Laney has an
24 investment fund. And it's literally called
25 "T.H.E. Fund," and best as I can recall it stands

1 for Mr. Oaas's middle name, Thorville, and
2 Mr. Laney's middle name, which is Howard. And in
3 April of 2007, that investment fund had about 30
4 investors, and it included Oaas Laney.

5 I think the evidence will show that
6 they had a variety of interests and were
7 guaranteeing profits of 7.5 percent.

8 For the business plan, the plan was
9 that the fund would own 51 percent of Alamar Ranch
10 and YTC. YTC was a business formed to acquire the
11 property. Alamar Ranch was formed to run it. And
12 that's kind of an overview of how this project
13 came about. They got into -- Oaas Laney got into
14 the so-called healthcare industry because, I think
15 you'll hear, they had to diversify, which was
16 something they'd learned from Micron, and it was a
17 good industry for growth and income.

18 They were familiar with Boise County
19 because Oaas Laney's involved in a big project.
20 It's a planned unit development in Garden Valley
21 called South Fork Landing. Judge Bush asked you a
22 question during voir dire about whether any of you
23 had heard of South Fork Landing. It's a planned
24 unit development that you'll probably hear a
25 little bit about. It's on the south side of the

1 South Fork of the Payette River just outside of
2 Garden Valley. Actually, what you do is you cross
3 the bridge, it goes on the road, it's the Elder
4 Creek Road from Garden Valley to Placerville. And
5 that's where that's located.

6 And so the reason that may be important
7 is -- there may be a number of reasons -- but I
8 think the proof will show that they dealt, on a
9 number of occasions, with Planning and Zoning and
10 were familiar with the rules and regulations that
11 existed in Boise County.

12 Now, I'm not going to talk to you a lot
13 about the zoning ordinance and the comprehensive
14 plan, but I'm going to talk to you a little bit
15 about it. Mention was made to you just a little
16 bit ago about the plan.

17 Boise County, not too all many years
18 ago, has what's called a Boise County Zoning and
19 Development Ordinance. And under that ordinance,
20 there are allowed uses, and there are conditional
21 uses. And so the reason that Alamar Ranch had to
22 get what's called a "conditional use permit" is
23 because they are a conditional use. And it's a
24 commercial use, and so they had to file an
25 application. They had to go to Planning and

1 Zoning, and then, because of circumstances,
2 appealed that decision to the Boise County
3 Commissioners.

4 But to give you some background, the
5 proof will be that's why that was done, because
6 they have to go through the permit process, given
7 the type of entity that they were, in order to
8 build this project in Boise County.

9 Boise County also has what's called a
10 comprehensive plan. And the evidence will be that
11 every county in Idaho has one, and the legislature
12 has designated that everybody has to have one, and
13 every so often it changes. And people will talk
14 to you about that. And what they do is they get
15 citizen input into it about things they like,
16 don't like in their county. It has citizen input,
17 and it's called a comprehensive plan.

18 The comprehensive plan is a guideline,
19 it's not an ordinance, but the comprehensive plan
20 is provided for in the zoning ordinance I just
21 mentioned to you and is one of what are called
22 nine standards the county commissioners are
23 required to look at and review under the zoning
24 ordinance.

25 So roughly stated, ladies and

1 gentlemen, that's how all this came about, and
2 that's why Alamar Ranch, LLC, went before the
3 Planning and Zoning Commission to obtain this
4 conditional use.

5 It's important that you have a little
6 bit of history of Alamar Ranch. Prior to the time
7 that they made an offer on the Green Ranch
8 property that Mr. Woodard showed you on the Google
9 map, which is on the east side of Highway 21, just
10 by the Grimes Creek cutoff, before they did that,
11 they made an offer on some property at Garden
12 Valley and, actually, marketed that a little bit
13 to some investors to, perhaps, build a project in
14 Garden Valley. Now, the offer wasn't accepted and
15 never went through.

16 After that, they made an offer on the
17 Green Ranch property, and you'll hear about that.
18 And they actually filed a conditional use permit
19 request with Planning and Zoning. And the
20 evidence will be they withdrew it, I believe, in
21 2007.

22 But that -- one of the important things
23 about that that you'll hear about was the
24 so-called Green Ranch Alamar Ranch project was for
25 108 beds, not 72 beds. So 36 beds more than the

1 at Klam Ranch was one reason some of the
2 conditions were put in place. And I'm going to
3 talk to you about that in a little bit.

4 The Klam Ranch that they purchased was,
5 roughly, 123 acres, and they purchased it for
6 between about 1.2 and \$1.3 million. They reduced
7 the size of the project to 72, and the plan that
8 Mr. Woodard described to you was for what I guess
9 people might call a high-end project in the
10 residential treatment center business in that the
11 cost per month was going to start at \$7500 per
12 month, per student and increase to \$12,000 per
13 month, per student.

14 Now, you're going to hear a lot, and
15 you already did, about opposition to both the
16 Green Ranch, but also the Alamar Ranch at Klam
17 Ranch. You're also going to hear about people who
18 were in favor of the project.

19 One of the things -- and I think the
20 evidence will show -- is this: When you have a
21 conditional use permit, the rules and the
22 ordinance and the law requires that you have a
23 public hearing. When you have a public hearing,
24 commissioners, I think the law will say, have no
25 right to quash public opinion. So you need to

1 Alamar Ranch project at the Klam Ranch.

2 Now, the Klam Ranch came about after --
3 let me step back. We're talking about this ranch
4 and that ranch. The project was going to be
5 called Alamar Ranch. Green Ranch is called that
6 because a family named Green bought a bunch of
7 property up on the bluff off Highway 21, so it's
8 called the Green Ranch. So it was Alamar Ranch on
9 the Green Ranch property.

10 The property that's in dispute here is
11 on Klam Ranch. It's on the west side of the
12 highway, and to get there, you have to turn left
13 on the Grimes Creek Road, you cross a bridge, and
14 you go up a bluff. And when you saw that picture
15 Mr. Woodard showed you in his opening about the
16 project itself and the land, it's surrounded by
17 timber, a lot by Forest Service ground, but a lot
18 by private ground. And it also has steep cliffs
19 on the east side of the property that make it hard
20 to access.

21 At the time they bought it, there was a
22 road that went across the Grimes Creek Bridge and
23 went up the -- kind of the southeast side of the
24 hill. And you'll talk about that. And it's
25 important because the location of the Alamar Ranch

1 take that into account as you're listening to the
2 evidence in this case.

3 Was there opposition to the Klam Ranch
4 project that's at issue in this litigation? Sure
5 there was. And was some of it opposition that
6 none of us would like? Probably.

7 I think the proof will be there's not
8 anything the commissioners can do about that to
9 quash comment from either side, either from
10 opponents of Alamar or those people for Alamar,
11 and you need to take that into account.

12 You're going to hear a little bit about
13 the Planning and Zoning Commission hearings that
14 were held in August of 2007, and there were two of
15 them. One was on August 2nd, 2007, and the other
16 one was on August 15, 2007. And there are some
17 reasons that's important.

18 But one of the reasons is because there
19 were No Alamar folks there in opposition, but also
20 there were representatives of Alamar who were
21 there, including the lawyers they'd hired to help
22 them through the conditional use process with the
23 county.

24 And that will be important because I
25 think you'll have an opportunity to be presented

1 with certain representations that were made at
 2 Planning and Zoning with regard to what Alamar
 3 Ranch was willing to do and what they weren't
 4 willing to do with regard to the project at the
 5 time Planning and Zoning considered it in the two
 6 hearings. There were the two hearings in August,
 7 and then Planning and Zoning rendered a decision.

8 Because it was a three-three vote,
 9 because there was a recusal of one of the
 10 commissioners, the law deems that a denial, so to
 11 speak, and the appeal is then made by either side,
 12 but in this case by Alamar Ranch because it's a
 13 denial to the Board of County Commissioners.

14 What you also need to know and what
 15 you'll hear about in this case is at that point in
 16 time, actually before the county commissioners
 17 ever heard it, the No Alamar group had a lawyer, a
 18 lawyer by the name of Dennis Charney. The Alamar
 19 group had lawyers, not the individuals that are
 20 here today. It was a different law firm. They
 21 also hired a Fair Housing Act lawyer out of Utah
 22 to come talk to the commissioners.

23 Throughout the process, bluntly, there
 24 was threat of litigation from both sides, both the
 25 Alamar folks and the No Alamar folks.

1 As I'll talk about in a minute, the
 2 commissioners granted the conditional use permit,
 3 but in the process, the contention is these three
 4 discriminated against the plaintiffs in this case,
 5 and that's why we're here in this Fair Housing Act
 6 case.

7 One of the things you'll hear about is
 8 that the commissioners are charged with public
 9 health and safety. And I don't know if any of you
 10 have ever been to commissioner hearings or council
 11 hearings, but there are a lot of issues raised
 12 about public health and safety.

13 Now, I want to talk to you a little bit
 14 about the conditions, and you're going to be able
 15 to see the decision that was rendered by the
 16 county commissioners in this case and the 31
 17 conditions that were imposed on Alamar when the
 18 conditional use Permit was actually granted.

19 What you need to keep in mind is at the
 20 time of the Planning and Zoning hearing, the
 21 Planning and Zoning Commission, in a letter dated
 22 August 2nd, 2007, from one of the lawyers for
 23 Alamar Ranch, proposed 22 conditions. One of
 24 those conditions was a secondary ingress and
 25 egress from the property.

1 And the reason that was done was people
 2 were worried about fire. They're worried about
 3 snow, and they're worried about getting kids,
 4 employees, and folks off that hillside if
 5 something happens.

6 So what you need to know and what the
 7 evidence will show is 22 of the conditions were
 8 imposed by Alamar on themselves. Now, they were
 9 reworded some by the county commissioners, but the
 10 first 22 conditions were proposed by Alamar.

11 One of those conditions was to place a
 12 helipad, a landing site, a helicopter landing site
 13 on the project, which they were going to use in
 14 conjunction with Life Flight from Saint Al's and
 15 St. Luke's for emergency services.

16 Now, the conditions that -- I think
 17 you'll hear testimony that -- from Alamar and from
 18 people on the witness stand -- that they don't
 19 like a lot of these conditions. But the four that
 20 seemed to be most at issue are a helipad, that
 21 you'll get to see in the conditions, which is
 22 condition 21; a fire protection vehicle the
 23 commissioners recommended and made a condition be
 24 on site; the number of beds, which I'll come back
 25 to in a little bit; and also a secondary ingress

1 and egress.

2 I'm not going to -- you're going to
 3 hear a lot of evidence about all four of those,
 4 but I'm going to talk to you a little bit about
 5 the secondary ingress and egress.

6 At the time of the Planning and Zoning
 7 Commission hearings, particularly the hearing on
 8 August 15, the representatives of Alamar Ranch,
 9 including their lawyers, agreed, because the
 10 subject came up and was deliberated by the
 11 commissioners, that they'd have two ways in and
 12 out that would be different ways. And the
 13 representation was made that for the secondary
 14 ingress and egress the Grimes Creek Bridge, that
 15 was there before they ever bought this property,
 16 would not be used for the secondary ingress and
 17 egress.

18 Another point that was raised and was
 19 discussed by a number of the commissioners, but
 20 one of them -- this is Planning and Zoning -- one
 21 of the commissioners that discussed the road was
 22 Commissioner McCain. And one of the concerns was,
 23 given where this project is, and given Boise
 24 County, and the difference, for example, in snow
 25 between sitting here at the federal courthouse and

1 if you drive 25 miles up that road, they wanted
2 that road accessible 365 days a year, 24 hours a
3 day, 7 days a week, and Alamar agreed.

4 Now, when the application was appealed
5 and brought to the county commissioners, Alamar
6 had gone and had been annexed by what's called
7 Wilderness Ranch Fire District. And I anticipate
8 you'll probably hear from John McCarthy, who is
9 the chief of the fire district. And what they
10 came up with is a so-called loop road, and you'll
11 see it, I anticipate, during this trial.

12 If you take into account or keep in
13 mind the view looking down that Mr. Woodard gave
14 you, the road came up from the highway, crossed
15 Grimes Creek, went up the side of the hill over to
16 where the dorms and other buildings would be, and
17 then it came east and back south, but the road met
18 at a certain location, and the plan was the same
19 bridge would be used, the Grimes Creek Bridge.
20 Wilderness Ranch, I think the evidence -- well, I
21 don't think the evidence will be -- the evidence
22 is signed off on that plan, which was a different
23 plan than had been presented at Planning and
24 Zoning.

25 Now, what the county commissioners did

1 when this got appealed -- they had a lawyer, they
2 have a county lawyer that happened to be, at that
3 point in time, an attorney by the name of Tim
4 McNeese. And what they charged Mr. McNeese with
5 was coming up with some suitable conditions for
6 the project.

7 Mr. McNeese enlisted the help of Patti
8 Burke, who you've heard about. I anticipate
9 you'll hear from Ms. Burke, most likely, by
10 deposition. You need to be prepared. She
11 can't -- she has bad vision, so she can't read,
12 and there's -- you'll get to hear about why she
13 won't be here, but you'll get to hear from her by
14 a video deposition.

15 So that was the charge that the county
16 commissioners gave Mr. McNeese, and it was
17 Mr. McNeese who came up with those conditions and
18 presented them to the county commissioners.

19 Now, in that process, part of what they
20 did was they did go to Sheriff Roeber, as they
21 should have done, to figure out whether this
22 project would, in any way, affect the Sheriff's
23 Department or not. It seems to me it's a -- I
24 think the evidence will be it's a reasonable thing
25 to do when you're a commissioner and trying to

1 decide whether the biggest commercial project in
2 the county is going to affect your services.

3 Those of you who know about Boise
4 County know, it's spread out, and it's hard to get
5 to, particularly this time of year. The evidence
6 is going to be you have Idaho City, which is the
7 county seat. Over Mores Creek Summit, you have
8 Lowman. You have Garden Valley on the other side,
9 and then you have Horseshoe Bend.

10 One of the other things that they did
11 was they went to a gentleman by the name of Gordon
12 Ravenscroft. Gordon Ravenscroft is their
13 emergency services director, and he also runs
14 dispatch. And they asked what he thought with
15 regard to emergency services. And I anticipate
16 you'll see the letter that Mr. Ravenscroft wrote
17 to Planning and Zoning in July of 2007 and also
18 the letter that he wrote to the Boise County
19 Commissioners after the appeal had been made in
20 January of 2008.

21 And the important things that the
22 evidence will show from Mr. Ravenscroft,
23 Mr. Ravenscroft wanted two ways in -- one way in,
24 one way out, and a secondary way in and a
25 secondary way out that didn't meet and didn't use

1 the same bridge. Because one of the things he's
2 charged with is emergency services. And one of
3 the things the evidence will show that he's
4 concerned about is getting kids, teachers, whoever
5 happens to be up on top of that plateau, off if
6 there's a fire, snow. Grimes Creek Bridge is
7 actually in the flood plain. So you'll get to
8 hear from him. And the recommendation for that
9 was made to the county commissioners by Gordon
10 Ravenscroft.

11 So the evidence is going to show the
12 first 22 conditions had initially been proposed by
13 Alamar. I think there are four more conditions
14 that were put in that are taken directly from
15 Alamar's application -- I think it's four; it
16 might be three -- literally, just what type of
17 students would be here and certain other things
18 Alamar would do that was contained directly in
19 their application.

20 One of the things that Judge Winmill
21 talked to you about in the preproof instructions
22 is the concept called a reasonable accommodation.
23 And you're going to hear the word "accommodation"
24 and "reasonable accommodation," I think, it's safe
25 to say, a lot in this particular case.

1 And one of the things that the evidence
2 is going to show is that after the decision was
3 made by the Boise County Commissioners, and they
4 had a public hearing on January 28, 2008, they
5 then had a deliberation hearing on March 10, 2008,
6 and their written decision was then rendered in
7 April of 2008.

8 After the decision was made, what the
9 proof will be is no one from Alamar, not Mr. Oaas,
10 not Mr. Laney, not Mr. Tverdy -- who you will hear
11 from -- not Amy Jeppesen, who was the executive
12 director, and not their lawyers ever asked Boise
13 County for a reasonable accommodation. They never
14 went to them and said, "This won't work. What you
15 have imposed on us simply won't work." The proof
16 will be that never occurred. Nothing. Zero.

17 Now, what did occur was after the
18 decision -- and I think the proof will be that the
19 county commissioners assumed the project would get
20 built -- there was a discussion about the Planning
21 and Zoning Commissioner who -- or excuse me --
22 administrator who had been the administrator at
23 the time of the initial application to Planning
24 and Zoning. His name was Craig Wolford. He
25 actually knew Mr. Oaas because they had a

1 connection from Micron.

2 And following the hearing and following
3 the decision by the county commissioners, we think
4 the evidence will show that Mr. Wolford, as a
5 former Planning and Zoning administrator, actually
6 emailed Mr. Oaas and congratulated him on getting
7 the project approved through the Boise County
8 Commissioners.

9 You're going to hear some testimony
10 about what type of project this was, and a
11 high-end project and the plan that Alamar Ranch
12 had. I don't know for sure -- she lives in
13 Utah -- but they may call -- Alamar Ranch may
14 call as -- and I anticipate they will -- as one of
15 their witnesses, a woman named Amy Jeppesen who
16 was to be the executive director. She's going to
17 talk to you about her experience with residential
18 treatment centers.

19 And one of the things that we think the
20 evidence will show is that a 24-bed facility was
21 actually therapeutic, meaning the kids who were
22 going to be there could receive the benefit that
23 the plan had projected.

24 You're also going to hear about size of
25 RTCs she had been involved in. And there was

1 evidence in the hearing before the commissioners
2 of other RTCs, Project PATCH, which is in Garden
3 Valley, and also an RTC that's just outside of
4 Emmett.

5 You need to know, Project PATCH was
6 mentioned a little bit ago. Project PATCH
7 actually came into being -- it's a church-based
8 RTC in Garden Valley. If you're driving north out
9 of Banks to Garden Valley, there's a big flat to
10 your right, next to the South Fork of the Payette
11 River, and it's off on that flat.

12 It actually came into being, initially,
13 before Boise County had a conditional use permit
14 process, although it's changed a little bit
15 through the years, I think the evidence will show.

16 So, ladies and gentlemen, in closing --
17 and I've bluntly talked a little bit longer than I
18 thought -- there's a dispute in this case about
19 what occurred and why, what the facts are in this
20 case, why the decision of the county commissioners
21 was made in the fashion that it was.

22 We believe the proof will be that the
23 conditions were imposed that were imposed by the
24 county commissioners that it made sense to the
25 commissioners, it made sense for the health and

1 safety of the community, but also, primarily, the
2 people in that project and, particularly, the
3 ability to get those kids and anybody else up
4 there off that plateau.

5 We think the evidence will show the
6 commissioners listened to both sides, as they
7 should, and made a decision they thought was right
8 and not a decision based on discrimination.

9 Thank you.

10 THE COURT: Thank you, Mr. Brassey.

11 Plaintiffs -- are the plaintiffs
12 prepared to call their first witness?

13 MR. WOODARD: We are, Your Honor.

14 THE COURT: All right. If you would
15 announce the name of your first witness.

16 MR. BANDUCCI: Your Honor, before we do, I
17 think we need to empty the courtroom.

18 THE COURT: Exclude witnesses?

19 MR. BANDUCCI: Yes, Your Honor.

20 THE COURT: Ladies and gentlemen, under Rule
21 615 of the Federal Rules of Civil Procedure, upon
22 request, the court is required to direct that all
23 witnesses who have been identified or who may
24 testify should be excluded from the courtroom and
25 also instructed not to discuss their testimony

1 with witnesses while they're waiting to testify.

2 The only exception would be each party
3 is allowed to keep one representative here to
4 assist them in trial, even though they may also
5 testify.

6 So I'm assuming you've all agreed and
7 identified who you'll have as your representative.

8 Mr. Woodard.

9 MR. WOODARD: Your Honor, the plaintiffs
10 would like to call Mr. Steven Laney as our first
11 witness. Steven Laney.

12 THE COURT: Sir, would you please step
13 forward here before Ms. Gearhart and be sworn.

14 STEVEN LANEY,
15 having been first duly sworn to tell the whole
16 truth, testified as follows:

17 THE CLERK: Please state your complete name
18 and spell your last name for the record.

19 THE WITNESS: Steven Howard Laney,
20 L-A-N-E-Y.

21 THE COURT: Mr. Woodard, you may inquire.

22 Mr. Laney, I think if you stay just
23 about that distance, you shouldn't have to get too
24 close to the microphone.

25 Ladies and gentlemen, if you have a

1 Mr. Laney, where did you first go to work?

2 **A. I first went to work at a company**
3 **called Preco, Incorporated, doing design work for**
4 **robotic systems. And then from there went to a**
5 **company called Micron Technology, here in the**
6 **valley, as a systems design engineer, where my**
7 **first project was to design, essentially, a pocket**
8 **PC. And this was in the late '80s, so it was a**
9 **little ahead of its time. But we, actually --**

10 **Q.** I'm sorry. Let me interrupt you. Did
11 you get any other -- obtain any other patents
12 while you were at Micron?

13 **A. Yeah. In other projects filed several**
14 **other patents, two of which issued, one for a type**
15 **of SIM module and the way it accesses memory and**
16 **the other was for a military application on a**
17 **ceramic encapsulation process.**

18 **Q.** How long did you work for Micron
19 Technologies?

20 **A. Worked for Micron for 13 years. And**
21 **when I retired from Micron, my last role was vice**
22 **president of corporate communications. Over time,**
23 **my partner, Erik Oaas, and I worked together,**
24 **actually, the entire time we were there at Micron**
25 **and were responsible for raising over 300 million**

1 hard time hearing the witness, either now or at
2 any time, please let me know, and we'll either
3 adjust the volume on the microphone or ask them to
4 move either closer or further away from the mic.

5 Mr. Woodard, you may inquire of the
6 witness.

7 MR. WOODARD: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. WOODARD:

10 **Q.** Mr. Laney, where do you currently
11 reside?

12 **A. I live in Boise, Idaho.**

13 **Q.** How long have you lived in Boise,
14 Idaho?

15 **A. I was, actually, born and raised in**
16 **Boise, so I'm one of the few natives of the area.**

17 **Q.** Thank you. Can you briefly describe
18 for the jury your educational background?

19 **A. I graduated from Boise High School and**
20 **then went to Brigham Young University where I**
21 **studied electrical engineering and got a degree, a**
22 **bachelor's degree of science in electrical**
23 **engineering with a minor in mathematics, and**
24 **that -- that's where I concluded my education.**

25 **Q.** And after you concluded your education,

1 **in capital for Micron Technology and Micron**
2 **Electronics.**

3 **Q.** So if I understand it correctly, you
4 started out at Micron as an engineer, but you
5 moved into more of the business side as your
6 career progressed there. Would that be accurate?

7 **A. That's correct.**

8 **Q.** And how long were you at Micron?

9 **A. Thirteen years.**

10 **Q.** Okay. And when did you leave Micron?

11 **A. I left Micron in the spring of 2001.**

12 **Q.** And why did you leave Micron?

13 **A. Micron Electronics was looking to move**
14 **their corporate headquarters to Atlanta, Georgia,**
15 **and I was offered the opportunity to go. But**
16 **because of my family and my roots here in Boise, I**
17 **chose to stay and retire.**

18 **Q.** Okay. I think you mentioned earlier
19 that you worked for Micron Technologies. Did at
20 some point you start working for a subsidiary of
21 Micron, Micron Electronics?

22 **A. Yes. In the early part of 1990, we**
23 **formed a subsidiary of which we had some**
24 **ownership. Our revenue for the subsidiary started**
25 **out at zero, which we grew that subsidiary into a**

1 NASDAQ-100 company with revenue over a billion
2 dollars.

3 **Q.** And after you left Micron Technologies,
4 Micron Electronics, what did you do next as far as
5 work?

6 **A.** Well, my partner, Erik Oaas, and I have
7 had great success working together, and that's
8 pretty rare to find in business, so we decided to
9 form a company that was focused on initially
10 development, office development, and then as we
11 started to diversify, we got involved with a few
12 start-ups, as well as a golf course. We did hotel
13 development. We also were involved with the
14 Gateway mall, which is south of the Auto Mall, and
15 we did the Hampton Inn and Suites and that whole
16 office development that's adjacent to it.

17 **Q.** What was Mr. Oaas's position when you
18 and he worked together at Micron?

19 **A.** Mr. Oaas was the chief financial
20 officer.

21 **Q.** Was that for Micron Technologies or
22 Micron Electronics?

23 **A.** It was Micron Electronics.

24 **Q.** Okay. And what made you and Mr. Oaas
25 decide that you could successfully get into the

1 And now it's cash-flow positive. They've got
2 several contracts with the Air Force. They're in
3 a collaborative project with Boeing and
4 Vanderbilt. And for the first time in the history
5 of its company, it can sustain itself.

6 **Q.** And I want to focus, going back a
7 little bit to the properties you've developed.
8 You talked about hotel -- has there been more than
9 one hotel or just one?

10 **A.** Just one that's -- that we've built and
11 completed. We have two other hotels that we're
12 working on.

13 **Q.** Okay. And which hotel have you
14 completed?

15 **A.** The Hampton Inn and Suites. It's north
16 of the Auto Mall in Nampa.

17 **Q.** I think you also mentioned a golf
18 course. Why don't you describe for the jury what
19 the golf course development was.

20 **A.** It's the -- it's the old Cherry Lane
21 Golf Course. Because of our experience and
22 reputation, the mayor of the City of Meridian
23 called my partner, Mr. Oaas, and pleaded with him
24 to have us take over the management of the golf
25 course because they were -- they were in dispute

1 developing occupation?

2 **A.** Well, a lot of the skills necessary for
3 development we both had collectively. We had a
4 great ability to raise money, get financing. Our
5 personal ability to invest was strong, and we'd
6 been successful at all of our ventures in the past
7 that we'd worked together with, so we felt very
8 confident that we could be successful.

9 **Q.** You mentioned start-ups, that you have
10 developed some start-up companies. I take it
11 that's different from developing a piece of
12 property. Why don't you tell us about some of
13 those?

14 **A.** That's dramatically different. And
15 it's, essentially, what we did at Micron
16 Electronics, which was a start-up company by all
17 standards and measures because it had no revenue.
18 We had to raise capital. We had to personally
19 invest in the company, and we grew it to an
20 over-a-billion-dollar company in sales.

21 The companies we're involved with now,
22 one is Positron Systems, which uses positronic
23 annihilation to detect flaws in certain types of
24 metals. And we've been involved with that company
25 for over nine years, through its ups and downs.

1 with the current operator, and the status of the
2 course was in serious disrepair.

3 And so we agreed to, even though it's
4 been -- it's been very difficult. We've had to
5 invest a significant amount of cash into the golf
6 course. But it's really starting to bear fruit.
7 And the neighborhoods that are around the golf
8 course are very pleased with what we have done.
9 We've been congratulated by the city and the mayor
10 for our efforts there.

11 **Q.** Mr. Laney [sic] in his opening
12 statement mentioned Alzheimer's facilities.
13 Describe for the jury the Alzheimer's facilities
14 that your company has developed.

15 **A.** We purchased 13 facilities in Oregon
16 that were being shut down by the State of Oregon.
17 They, in a lot of cases, either had no residents
18 or very few. And so our challenge was to, first,
19 get them financed; and then, second, to get them
20 occupied and generating revenue, which we were
21 able to do. Within a year's period of time, we
22 had over 95 percent occupancy of these facilities
23 that, basically, offer care for people with
24 Alzheimer's.

25 **Q.** Did you have a partner helping you out

1 with these Alzheimer's facilities or did Oaas
2 Laney do those on their own?

3 **A.** We did. We purchased the real estate
4 and then leased the real estate to an operator
5 called Ashley Manor. And Ashley Manor is the
6 largest assisted living provider in the state of
7 Idaho. They have a great reputation and a great
8 track record.

9 **Q.** And how did you split the
10 responsibilities with Ashley Manor?

11 **A.** We were in charge of the real estate,
12 and they were taking responsibility for the
13 operations of the facilities.

14 **Q.** Mr. Laney, please give a brief
15 explanation to the jury of what an RTC is and how
16 you -- what Alamar Ranch was going to be.

17 **A.** Okay. Well, a residential treatment
18 unit -- or center is a facility where -- in this
19 particular case since it was youth, where children
20 can go and try to get, I guess, their needs met,
21 their families repaired, and their self-esteem
22 boosted.

23 We, initially, looked at youth
24 treatment facilities because I have a son that has
25 Asperger's and, by definition, is disabled. And

1 center?

2 **A.** Yes, it did. The Alzheimer's
3 facilities are structured into pods. Typically,
4 five to six units of 15 residents comprise a pod.
5 And the operating structure that is used to run
6 those facilities is very similar to what we were
7 planning to set up for Alamar Ranch, in that we
8 would have the six buildings, that we were looking
9 at, with 12 residents in each building. And the
10 piece that was missing that we needed to add to
11 that was the expertise in the management of the
12 facilities and the treatment of the youth.

13 **Q.** Was Ashley Manor going to be involved
14 in the RTC with your group like they were with the
15 Alzheimer's?

16 **A.** They were going to be involved because
17 they have a great ability to manage -- to oversee
18 and manage the facilities as a group.

19 **Q.** And how were you going to use their
20 expertise with this project?

21 **A.** We were going to use their expertise
22 with the contacting the educational consultants,
23 because they have a great infrastructure for
24 bringing into their facilities Alzheimer's
25 patients and screening them so you get the right

1 so we've looked, as a family, at facilities and
2 found -- at least in the state of Idaho -- that
3 there were no facilities that would, in our mind,
4 meet the needs of children that had Asperger's or
5 children that have the disabilities that my son
6 faces every day.

7 We have been able to get him on an IEP,
8 which is a federally mandated program that defines
9 his issues, the Asperger's, and that -- as a
10 disability, and they provide programs for him
11 under the Individuals with Disabilities Education
12 Act. And that's been helpful, but there still is
13 no real solution here in the state of Idaho.

14 **Q.** And so how did your son's Asperger's
15 and his disability affect your decision to develop
16 an RTC, residential treatment center?

17 **A.** Well, we looked at it as a way for him
18 to be involved, first as a resident, and if that
19 meant that I needed to live up there on site, I
20 was willing to do that. And then our plan was
21 that he would evolve, as his confidence grew, into
22 a counselor and be employed by Alamar Ranch.

23 **Q.** Did your involvement with Alzheimer's
24 facilities, did that have any impact on your
25 decision to develop a residential treatment

1 type of patients into their facilities. We were
2 going to use that same infrastructure with
3 educational representatives to bring in patients
4 into Alamar Ranch.

5 **Q.** Mr. Laney, have you heard of Mr. Lorn
6 Adkins?

7 **A.** Yeah. Lorn Adkins is a counselor here
8 in Boise. He was referred to us for our son by a
9 local principal, who indicated to us that he had
10 great expertise in helping children with
11 Asperger's, autism, those sorts of disabilities.

12 And as we spent more time with him, we
13 realized that he had expertise beyond anybody in
14 the valley, and he had a great interest in working
15 with us to create a residential treatment unit.

16 **Q.** Was he going to be involved with Alamar
17 Ranch?

18 **A.** Yes. In fact, he worked with us as we
19 went around the Northwest and toured facilities.
20 He went, and we were able to, essentially, review
21 all of the different types of facilities, all the
22 way from the facilities that relied on
23 court-remanded kids to high-end facilities that
24 deal with movie stars and famous individuals and
25 were able to find the elements that made the

1 facilities successful and those that didn't work.
2 And the real issue for a residential
3 treatment program is that the success rate is very
4 low. Typically, only 25 percent of the kids that
5 go into a facility are able to stay in their
6 family unit and function normally after they're in
7 a facility.

8 So our goal was to dramatically improve
9 upon that number and help families to recover.

10 **Q.** The therapeutic program that you were
11 planning to provide at Alamar Ranch, who developed
12 that program?

13 **A.** It was a combination of several
14 psychiatrists here in town, counselors. We also
15 visited Lon Woodbury up in Northern Idaho, who was
16 considered to be one of the biggest experts in the
17 nation. He writes a report called "The Woodbury
18 Report" that is highly read and viewed as the
19 publication in the industry.

20 **Q.** And what did your consultation with
21 these therapists and educational consultants and
22 Mr. Woodbury -- well, strike that.

23 Let me ask you this: Did you go to any
24 educational conferences or anything like that as
25 you were in the planning stages of Alamar Ranch?

1 their own projections, their own thoughts as to
2 how successful they thought they would be, I'll
3 sustain the objection. But at this point I'll
4 allow the witness to answer.

5 THE WITNESS: We were very confident that we
6 would be successful because we -- we knew by our
7 feedback from the educational consultants that
8 what we were offering was very unique in the
9 industry and, in a lot of ways, probably
10 break-through therapies, and the state of Idaho
11 has no programs or any facilities that work in
12 this fashion.

13 BY MR. WOODARD:

14 **Q.** You mentioned Amy Jeppesen. Tell me a
15 little bit about her and why you hired
16 Ms. Jeppesen.

17 **A.** Ms. Jeppesen has extensive experience
18 in residential treatment. Her educational
19 background is focused in that area. But she has a
20 proven track record of running facilities and of
21 providing or proving that she can have an impact
22 on individuals and change their lives.

23 **Q.** Describe for the jury what role she was
24 going to play once Alamar Ranch was up and
25 running.

1 **A.** We did. We went to several educational
2 conferences. And, actually, as -- we also, early
3 in the process, hired Amy Jeppesen, who was
4 considered to be one of the most outstanding
5 counselors in her field, and so much to the fact
6 that she was invited to speak at one of these
7 educational conferences after we hired her.

8 But those were pretty valuable in
9 helping us determine what needs the kids would
10 have, what therapies were of interest, and what
11 was working.

12 **Q.** From going to these different
13 facilities, meeting with therapists, talking with
14 Mr. Woodbury and going and meeting -- going to
15 educational conferences and meeting with
16 educational consultants, what feeling did you guys
17 develop for how successful Alamar Ranch would be?

18 MR. BRASSEY: Your Honor, I object. I think
19 that question calls for speculation.

20 THE COURT: Just a moment, Counsel.

21 Well, the question is -- the question
22 is how -- what their own subjective view was as to
23 how successful the ranch would be. I'll overrule
24 the objection.

25 If we get into anything other than

1 **A.** Her role was to be the director of the
2 operation.

3 **Q.** And what does that mean? What's the
4 director of the operation?

5 **A.** She would oversee the entire program,
6 which include the -- the education portion, the
7 outdoor therapies, the individual therapy plans,
8 the food plans, nutrition plans. She would
9 oversee the entire treatment process.

10 **Q.** Thank you.

11 MR. WOODARD: Your Honor, I want to
12 introduce an exhibit right now.

13 And, Mr. Brassey, it was going to be
14 the CUP application, which is our Exhibit 1029.

15 MR. BRASSEY: No objection.

16 MR. WOODARD: Your Honor, may I show the
17 witness Exhibit 1029?

18 THE COURT: Yes. I think the jury --

19 MR. BRASSEY: I think it's 1089.

20 THE COURT: Counsel, give me just a moment.

21 I'm trying to -- Counsel, the -- what is the
22 exhibit number?

23 MR. WOODARD: 1029, Your Honor.

24 THE COURT: 1029. All right. Is there any
25 objection?

1 MR. BRASSEY: No, Judge.
2 THE COURT: 1029 will be admitted and
3 published to the jury.

4 (Plaintiff's Exhibit No. 1029
5 admitted.)

6 BY MR. WOODARD:

7 **Q.** You don't need to look behind you,
8 Mr. Laney. It's right in front of you.

9 Mr. Laney, do you recognize this
10 document?

11 **A.** Yes, I do.

12 **Q.** And what is it?

13 **A.** It's the conditional use permit
14 application.

15 **Q.** In the olden days, we used to hand you
16 the document. But your recollection, about how
17 many pages was this document? Was it a big
18 document?

19 **A.** Yeah, it was a big document.

20 MR. WOODARD: Okay. Kathy, if you can turn
21 us to page 87 of the application.

22 THE COURT: Ladies and gentlemen, as we go
23 through these, it may seem a little bit cumbersome
24 to go through documents this way, but it's much
25 faster, plus you can see what it is the witness is

1 **Alamar Ranch. I think that such a facility would
2 be of great benefit to the community. The
3 programs they plan to offer are truly on the
4 cutting edge of adolescent residential treatment."**

5 **Q.** Now, let me ask you this: Why did you
6 attach this letter to your conditional use permit
7 application?

8 **A.** Well, other than the obvious reasons of
9 support, you know, I think one of the key areas is
10 that there was another professional in the
11 industry that was validating the cutting-edge
12 therapies that we were working on.

13 MR. WOODARD: Kathy, could you highlight
14 that last paragraph, please?

15 I'm sorry, I should have said expand
16 it. I can read it. Let's just go from here. You
17 don't need to -- thanks.

18 BY MR. WOODARD:

19 **Q.** I hope that -- this states this is from
20 the same author. "I hope that Boise County" --
21 oh, I'm sorry. I wanted to read the paragraph
22 above that one, which states, "One program I'm
23 especially excited about is the Equine Assisted
24 Psychotherapy, EAP, was originally developed for
25 use in residential treatment facilities like

1 looking at as he or she is looking at the exhibit,
2 so you can see what they're referring to. But it
3 may require a little bit of patience on the part
4 of the jury and with counsel and the court as we
5 go through this.

6 Mr. Woodard.

7 BY MR. WOODARD:

8 **Q.** Mr. Laney, this is page 87 from the
9 conditional use permit application that Alamar
10 Ranch filed. Do you recognize this document?

11 **A.** Yes, I do.

12 **Q.** And what is this?

13 **A.** It was a letter that was submitted in
14 support of Alamar Ranch.

15 **Q.** Okay. Will you read the first two
16 paragraphs of the letter?

17 **A.** "I am writing this letter in support of
18 Alamar Ranch. I am a licensed clinical
19 professional counselor in private practice and
20 have considerable experience working with
21 adolescents and their families in both residential
22 and outpatient treatment programs. In addition, I
23 have known Lorn Adkins professionally for many
24 years and have great respect for him.

25 "Recently, Lorn spoke with me about

1 Alamar Ranch. It has proven to be an effective
2 and powerful therapeutic tool for rehabilitating
3 and healing troubled youth and their families."

4 Was Alamar Ranch going to have horse
5 therapy at its project?

6 **A.** Yes. Lorn Adkins, in fact, had
7 developed or -- and is still using equine therapy
8 with his patients.

9 **Q.** Let's turn to --

10 MR. WOODARD: Kathy, if you could, please,
11 to page 88, the next page.

12 BY MR. WOODARD:

13 **Q.** Mr. Laney, do you recognize this
14 letter?

15 **A.** Yes, I do.

16 **Q.** Okay. Do you know the author of this
17 letter?

18 **A.** Yes. Dr. Jane Stevenson.

19 **Q.** What kind of doctor is she?

20 **A.** She is a psychiatrist that came from
21 Australia, studied in San Francisco, moved to the
22 Boise area, and is outstanding.

23 **Q.** Okay.

24 MR. WOODARD: Kathy, can you highlight -- or
25 expand the two paragraphs there? I'm sorry. The

1 top two, the big ones.

2 BY MR. WOODARD:

3 **Q.** She says, "I am writing to endorse the
4 proposed Alamar Ranch Residential Treatment
5 Center. I have been a psychiatrist in Boise for
6 three-and-a-half years and have worked with Lorn
7 Adkins in caring for many patients. His
8 involvement in this project results in my being
9 able to endorse this project without reservation.

10 "This project will help not only many
11 adolescents and their families in reducing the
12 likelihood of chronic mental illness ensuing, but
13 also a wonderful opportunity for training
14 therapists and psychiatrists in Idaho. As I am
15 involved in planning and interviewing psychiatry
16 resident applicants for the University of
17 Washington training program in Idaho, involvement
18 in this program for trainees is likely to help in
19 attaining top-quality candidates in Idaho. This
20 is very important, as we are one of the most
21 underserved states in the country in terms of
22 access to psychiatrists."

23 Was one of the things that you were
24 going to do at Alamar Ranch is allow -- have
25 interns, psychiatry interns, work at Alamar Ranch?

1 which integrates the family into the care.

2 "I have utmost confidence in Lorn
3 Adkins, the program designer for Alamar Ranch.
4 Lorn's years of experience in schools and in
5 private practice provide an astute awareness of
6 what is lacking in other residential treatment
7 centers. He has the expertise to insure the
8 quality of services at Alamar Ranch."

9 Now, I want to ask you a couple things
10 about what I just read there. She says in that
11 first sentence, "I believe our resources are
12 woefully inadequate." Is that something that you
13 found as you were doing your research on the need
14 for a residential treatment center?

15 **A. Absolutely. I mean, not only from the
16 professionals in the state of Idaho and the lack
17 of just numbers of professionals to facilities.
18 They're just -- the state is very underserved in
19 both those areas.**

20 MR. WOODARD: Kathy, can you expand the
21 paragraph right below that.

22 BY MR. WOODARD:

23 **Q.** And I want to direct you to the -- it
24 looks like it's the last sentence, the one that
25 says, "The opportunities, particularly for

1 **A. Yes. In fact, Dr. Stevenson was very
2 excited about utilizing her role with the
3 University of Washington in getting residents to
4 work at Alamar Ranch.**

5 MR. WOODARD: Kathy, could you turn to page
6 90? The second paragraph, the big paragraph.
7 Right there. Thank you.

8 BY MR. WOODARD:

9 **Q.** Did you -- by the way, I forgot to ask
10 you this, did you recognize this letter before we
11 expanded the paragraph?

12 **A. Yes, I did.**

13 **Q.** And in this letter, the health
14 professional, which in this case is Roberta
15 Crockett says, "As a mental health professional
16 with 29 years of experience working with youth and
17 their families, I believe our resources are
18 woefully inadequate. As today's families are more
19 and more stressed, we find that children and youth
20 are bearing the consequence. Providing a quality
21 residential intervention is a crucial component of
22 the overall continuum of care. A relatively small
23 number of the youth need the structure of
24 residential care, but when they do, they need a
25 program that is based on the best practices and

1 marriage and family therapy interns to develop
2 their family therapy skills will be an asset to
3 our community and, reciprocally, to the youth and
4 families served by Alamar Ranch."

5 And she talked up in the earlier
6 paragraph about family involvement. Explain to
7 the jury your program and what the family
8 involvement was going to be and why that was
9 important.

10 **A. Well, one of the -- one of the key
11 issues and the experiences in my own family is
12 that when you have a youth that has a disability,
13 it puts a real strain on the family and,
14 oftentimes, the family unit will break, and that's
15 often why, excuse me, families are looking for
16 solutions, is to try to repair the family unit.
17 If that's not repaired, even if we're successful
18 in rehabilitating the youth and we send them back
19 to a broken family, they're not going to be
20 successful.**

21 **Q.** Thank you. Can we now turn to page 91.

22 And do you see the -- about the middle
23 paragraph, "I wish to stress," it starts with?
24 This is from -- actually can we back out just real
25 quick?

1 Do you recognize this letter?

2 **A. Yes, I do.**

3 **Q.** And Ms. Andrews, is she a psychiatrist?

4 **A. Yes.**

5 **Q.** In this letter she states, "I wish to
6 stress that the target population is young people
7 with neurological problems, such as Oppositional
8 Defiant Disorder and nonviolent behavior problems,
9 such as eating disorders in Phase 2 of the
10 project. These youth are not dangerous. They are
11 simply lost, in pain, and deserving of quality
12 treatment."

13 Is that an accurate description of the
14 type of youths that you were planning to take into
15 Alamar Ranch?

16 **A. Yes. In fact, I would say that my son
17 would be a perfect example of what we're looking
18 to bring into the program. He's very
19 compassionate. He wants to fit in, but he just
20 doesn't know how and, as a result, has a tendency
21 to disrupt or even break a family. And that's --
22 that's the target individual.**

23 **Q.** Thank you.

24 MR. WOODARD: Kathy, we can bring that down.

25 BY MR. WOODARD:

1 **Q.** We talked a little bit about Ms. Amy
2 Jeppesen. Who else did you hire at the beginning
3 of this project?

4 **A. We also hired Chris Tverdy.**

5 **Q.** And who is Chris Tverdy?

6 **A. Chris Tverdy worked with us at Micron.
7 His role was, when he worked with us, was
8 operations and manufacturing. Over time, at
9 Micron, he was charged with bringing up new
10 facilities all over the world, essentially, in
11 trying to get the operations to run smoothly, to
12 fix any employment issues on newly acquired
13 operations, and he had a real knack for making
14 daily operations run smoothly.**

15 **Q.** And what was his position going to be
16 at Alamar Ranch?

17 **A. His role, initially, was to get the
18 property developed.**

19 **Q.** Okay. And then what was his role going
20 to be after that?

21 **A. I think he was going to continue in
22 oversight with the project.**

23 **Q.** Okay. So he was going to get it up and
24 running, and then afterwards he was going to have
25 some type of oversight?

1 **A. That's correct.**

2 **Q.** Mr. Laney, as you've been talking about
3 this, it sounds like you were involved in the
4 beginning of this project and the idea for the
5 project. Were you involved throughout the
6 conditional use permit process in overseeing this
7 project?

8 **A. I was involved in the early stages, and
9 then as we transitioned into the conditional use
10 and those sorts of things, I stepped back from the
11 project in more of an oversight role, and that's
12 where Chris Tverdy and my partner, Erik Oaas, took
13 a more active role, and I took less of a role.**

14 **Q.** Okay. If you had been able to build
15 Alamar Ranch, what were your plans? And what I
16 mean is were you planning to sell it after a few
17 years or were you planning to keep it? What were
18 your plans?

19 **A. Well, our plans were to build it and
20 create the operational company and hold it
21 indefinitely. But as developers and as our
22 experiences told us, you always need to have an
23 alternative exit strategy. And oftentimes, banks
24 and investors require that you have some sort of
25 exit strategy.**

1 **Q.** What do you mean by an "exit strategy"?

2 **A. Exit strategy would be how you would
3 transition the property, meaning selling it or
4 merging it with another entity. I guess that's
5 what I mean by exit strategy.**

6 **Q.** How involved were you in the financing
7 of the project?

8 **A. I -- again, Eric and Chris Tverdy,
9 primarily Chris Tverdy, took over those roles. I
10 knew that they were exploring several options, and
11 we were very confident about the financing of the
12 project.**

13 **Q.** And why were you confident that the
14 project would be financed?

15 **A. Because during that time frame, we had
16 successfully obtained financing for 12 million for
17 an Alzheimer's -- the group of Alzheimer's
18 facilities that we sold. And also a project at
19 INL, that was a \$20 million project that we were
20 able to get a letter of intent, a letter of
21 support from a funding operation.**

22 **Q.** What was the time frame of this
23 \$20 million project for INL? When did you get
24 that commitment letter?

25 **A. That was in 2009.**

1 **Q.** Okay. And I think you guys were
2 looking at financing for the Alamar project in the
3 2008 time frame; correct?

4 **A.** Well, again Chris Tverdy would be a
5 better one to answer that. I believe that he was
6 sort of looking into that in 2007 and followed
7 into 2008.

8 **Q.** Why did Alamar Ranch not get built?

9 **A.** Well, the biggest reason was the
10 reduction of number of beds. To offer
11 break-through therapy that we were looking at and
12 the programs that we were looking at and the
13 teacher-to-student ratio, 72 was an optimum
14 number, and anything below that would
15 significantly reduce, one, the ability for the
16 project to be economically viable, but also for
17 the therapy to work to have enough resources to
18 make it work.

19 **Q.** And explain that. Why did you need the
20 number for the therapy?

21 **A.** A combination of things. One,
22 obviously, the Alamar Ranch was going to rely on
23 tuition to fund the operation. You know, without
24 the right tuition, you can't -- the outdoor
25 activities, the therapies, the number of

1 counselors and psychiatrists that would be
2 involved would dramatically drop to the point
3 where, you know, the program wouldn't be viable.

4 One of the other key elements -- and,
5 again, this is from a -- that I've observed
6 personally -- is that most of these kids struggle
7 with social awareness or social interaction. And
8 the thought was if we had the pool of 72 students,
9 we could more accurately match groups together and
10 help them gain confidence in social interaction
11 and then better enable them to go back to their
12 family and to their original place of origin and
13 fit in with that confidence.

14 MR. WOODARD: Thank you, Mr. Laney.

15 THE COURT: No further questions?

16 MR. WOODARD: No further questions,
17 Your Honor.

18 THE COURT: Mr. Brassey.

19 MR. BRASSEY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. BRASSEY:

22 **Q.** Mr. Laney, you and I have met before?

23 **A.** That's correct.

24 **Q.** Okay. I don't have a whole lot of
25 questions for you. Let me ask you this: One of

1 the things you mentioned today, just a little bit
2 ago, was that Idaho with regard to RTCs was
3 underserved; correct?

4 **A.** That's correct.

5 **Q.** All right. Now with regard to Alamar
6 Ranch, itself, Alamar Ranch wasn't designed to
7 serve local kids with issues, was it?

8 **A.** Well, that's not necessarily true. Our
9 intent was to find a certain population that would
10 fit our criteria. We also were working on a
11 scholarship program for local kids, "local"
12 meaning to the Boise County area, that would have
13 allowed them, if they were not able to pay the
14 tuition, to participate in the program.

15 **Q.** Sir, are you telling the jury that the
16 scholarship program that you're talking about was,
17 for example, Boise County kids to attend Alamar?

18 **A.** And, again, not specifically Boise
19 County, but local area kids, it would allow them
20 to attend.

21 **Q.** I want to ask you about Boise County
22 kids. Are you telling the jury that the program
23 was designed so that Boise County kids could get a
24 scholarship to attend Alamar Ranch?

25 **A.** No, that's not what I'm saying.

1 **Q.** That wasn't the design or the plan, was
2 it?

3 **A.** Maybe I can rephrase that. Our intent
4 was.

5 MR. BRASSEY: Judge, I object.

6 THE COURT: Do you want me to restrict the
7 witness?

8 MR. BRASSEY: I think it's unresponsive,
9 Judge.

10 THE COURT: Rephrase the question.

11 And I'll ask the witness to listen
12 carefully to Mr. Brassey's question and answer it
13 as directly as possible, and Mr. Woodard will give
14 you a chance to clarify anything you feel needs to
15 be clarified.

16 Mr. Brassey, restate the question.

17 MR. BRASSEY: Thank you, Your Honor.

18 BY MR. BRASSEY:

19 **Q.** I didn't mean to quibble with you,
20 Mr. Laney. But my question is: The program
21 wasn't designed to provide scholarships to Boise
22 County kids to go to Alamar Ranch; isn't that
23 true?

24 **A.** I guess I'm not real clear on your
25 question, of what you're asking.

1 **Q.** Well, in --

2 **A.** What does "design" mean, I guess? What
3 are you referring to when you say whatever it was
4 that was designed?

5 **Q.** Excuse me. I didn't mean to interrupt
6 you.

7 Mr. Woodard mentioned in his opening
8 statement, and you've talked about, a scholarship
9 fund. But that scholarship fund wasn't designed
10 for Boise County kids to have therapy in the
11 program you've been talking about for Alamar
12 Ranch.

13 **A.** Well, I think what I said was that we
14 designed the scholarship program to facilitate
15 local kids, which could be Boise County, Ada
16 County, to be able to go to the facility if they
17 were -- demonstrated a need, financial need.

18 **Q.** But not to Alamar Ranch?

19 **A.** No, to Alamar Ranch.

20 **Q.** Okay. And so with regard to presenting
21 this to Boise County Planning and Zoning and Boise
22 County Commissioners, that's how it would have
23 been presented, that one benefit to the county
24 would have been that Alamar Ranch would have given
25 scholarships to kids in Boise County to attend

1 Alamar Ranch?

2 **A.** Was that a question?

3 **Q.** Yeah. Maybe not a very good one. Do
4 you need me to rephrase it?

5 **A.** Well, yeah. I wasn't sure exactly what
6 you're --

7 **Q.** I'll rephrase it, Mr. Laney. Sorry.

8 It may have been a little more of a statement than
9 a question.

10 Here's my question: Are you telling
11 us, then, that when the Alamar Ranch CUP
12 application was made, part of the presentation, if
13 you will, to the county, whether it was Planning
14 and Zoning or the commissioners, was to provide
15 scholarships to Boise County kids to go to Alamar?
16 Was that part of the presentation?

17 **A.** As I mentioned to Mr. Woodard, when the
18 CUP process was started, I had transitioned out of
19 a day-to-day role, so a better person to ask that
20 would be Chris Tverdy, as far as -- I was not part
21 of the CUP presentation.

22 **Q.** Okay. But you did just tell us that
23 your understanding is scholarships would be given
24 to Boise County kids to go to Alamar whether that
25 was presented to the county or not; correct?

1 **A.** That was my understanding, but I was
2 not part of the presentation process.

3 **Q.** Am I correct that with regard to
4 residential treatment centers, this was -- and I'm
5 going to say Oas Laney -- and you tell me if
6 that's wrong -- but was this Oas Laney's first
7 venture, so to speak, into an RTC?

8 **A.** As far as an enterprise, yes.

9 **Q.** I understand you'd been involved with
10 some other projects, but in terms of an enterprise
11 on your own, this was the first RTC?

12 **A.** Well, we've had -- as I mentioned, we
13 owned and successfully operated Alzheimer's
14 facilities, which, if you look at the operation
15 and the business dynamics, are very similar. In
16 fact, we were planning on using some of the same
17 resources. Obviously, the therapies are different
18 and the modalities are different, but the
19 operations are very similar.

20 **Q.** But you'd never -- with regard to
21 Ashley Manor, in most of those circumstances, your
22 company bought the land, developed the land and
23 the building, so to speak, and Ashley Manor ran
24 the center?

25 **A.** That's correct.

1 **Q.** Okay. So this was your -- Oas Laney's
2 first venture into an RTC or an enterprise, as
3 you've described it?

4 **A.** Yeah. I would say, more specifically,
5 a youth treatment facility.

6 **Q.** Okay. Alamar Ranch was going to be
7 built in phases, wasn't it?

8 **A.** Yes.

9 **Q.** And was it three phases?

10 **A.** I'm not sure how many phases were
11 planned. Again, that would be a better question
12 for Chris Tverdy to answer.

13 **Q.** And at least the application was for 72
14 beds to be available at the end of however many
15 phases it was. Would that be a fair statement?

16 **A.** That's correct. The target was 72
17 beds.

18 **Q.** And with regard to this exit strategy,
19 do you remember telling me in your deposition that
20 part of the strategy, in terms of an exit
21 strategy, was once there were 72 beds and the
22 project was monetized, you'd look for a potential
23 exit, or the company would, from Alamar Ranch?

24 **A.** Well, as I testified earlier --

25 MR. WOODARD: Your Honor, if he's going to

1 impeach him with his deposition, he needs to show
2 him the deposition.

3 THE COURT: Well, let's -- it was
4 nonresponsive. The question was do you recall
5 telling Mr. Brassey that during your deposition.
6 Let's just answer that yes or no.

7 THE WITNESS: I believe so. I mean, I --
8 his -- the verbiage, I guess, I couldn't --

9 THE COURT: But the substance --

10 THE WITNESS: But the substance is.

11 THE COURT: All right. Now let's ask the
12 follow-on question, Mr. Brassey.

13 MR. BRASSEY: Thank you, Your Honor.

14 BY MR. BRASSEY:

15 Q. Do you remember telling me that when
16 the project reached capacity and you, essentially,
17 had filled the beds, at that point in time the
18 project would be under consideration to monetize.
19 Do you remember telling me that?

20 A. I do remember, I guess, the general
21 idea there.

22 Q. And so the jury knows what we're
23 talking about, when you say "monetize," that's
24 when the project reached its capacity, at least
25 under the plan, for 70 -- filling 72 beds?

1 Proceed.

2 MR. BRASSEY: Thank you, Judge.

3 BY MR. BRASSEY:

4 Q. Mr. Laney, it's kind of a general
5 question, but in 2008 and 2009, what was happening
6 in our economy as it affects developments?

7 A. Well --

8 THE COURT: Counsel, in light of counsel's
9 prior objection, I think that is an objectionable
10 phrasing of the question. It should be phrased in
11 terms of the witness's understanding at that time.

12 MR. BRASSEY: Thank you, Judge. I just
13 couldn't remember what I asked. And I apologize.
14 I should have had the court reporter read it back.

15 BY MR. BRASSEY:

16 Q. I think -- let me try it this way,
17 Mr. Laney, in 2008 and 2009, how was our economy
18 doing?

19 A. In my opinion, it wasn't doing very
20 well.

21 Q. Okay. Mr. Laney, with regard to why
22 the project wasn't built, in response to your
23 counsel's question, isn't it true that you,
24 personally, nor did you authorize anyone working
25 for Alamar Ranch or YTC, to go to Boise County or

1 A. That's correct.

2 Q. You mentioned a little bit about some
3 financing, Mr. Laney, and some other projects you
4 had. With regard to the economy, how was the
5 economy doing in 2008 and 2009?

6 MR. WOODARD: Your Honor, I guess I'm going
7 to object to -- he's asking him for an expert
8 opinion on what the economy was doing. I'll
9 stipulate that the economy was bad in 2008 and
10 2009.

11 THE COURT: Well, I think the witness --
12 similar to our discussion earlier, in response to
13 a similar objection interposed by Mr. Brassey, I
14 think the witness can testify as to what his
15 understanding was, but it's limited only to his
16 understanding. The only relevance is what he
17 perceived, in any event, and he's not testifying
18 as an expert as to the economic condition of the
19 United States or Southwestern Idaho or anywhere
20 else.

21 So I'll allow the witness to proceed,
22 but with the jury's understanding that it's
23 limited only to this witness's personal
24 understanding, and it is not being offered as
25 expert opinion.

1 any of its representatives and indicate to them
2 this condition or that condition simply won't
3 allow us to go forward with this project. That
4 never happened, did it?

5 A. Could you repeat all that? There were
6 a lot of conditions in there.

7 Q. Sure. Here is my question: Roughly
8 stated, you were asked that the project didn't go
9 forward because of the conditions placed on the
10 project -- and I think you may have indicated,
11 primarily, the number of beds. And my question
12 is: Isn't it true that neither you or anyone else
13 from Alamar Ranch or YTC went to Boise County and
14 said, "Because of the number of beds, we can't
15 make this project work. You need to help us"?
16 That never happened, did it?

17 A. Well, I can only answer it for myself.
18 Like I say, I didn't -- I did not --

19 Q. And you're not aware, as you sit here
20 today, that anybody else from Alamar Ranch did
21 that either, are you?

22 A. Well, I can't answer that.

23 Q. Do you know of anyone who was employed
24 by Alamar Ranch or Oaas Laney or YTC that went to
25 Boise County and said, "Given this condition and

1 the number of beds, we can't go forward with this
2 project"? Do you know of anyone?

3 **A. I know there were discussions with the**
4 **county. I'm not -- I don't know the details of**
5 **those discussions. I wasn't present, but I know**
6 **there were discussions with the county.**

7 **Q.** You can't -- you can't name anyone --
8 or maybe you can -- but you can't name anyone who
9 went to Boise County and said, "You have to
10 accommodate us and give us more beds"?

11 **A. Well, again, I can't specifically tell**
12 **you what was said in those discussions, so I**
13 **can't -- I don't feel like I can answer that**
14 **question. I was not present in those discussions.**

15 **Q.** And -- sorry. As one of the owners in
16 Oaas Laney, and as a result one of the owners in
17 Alamar Ranch and YTC, you didn't authorize anyone
18 to go make that request to the county, did you?

19 **A. I did not personally ask anybody to go**
20 **do that.**

21 MR. BRASSEY: Thank you, Mr. Laney.

22 That's all I have, Your Honor.

23 THE COURT: Any redirect?

24 MR. WOODARD: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 encouraging donations from Alamar Ranch employees.
2 Isaiah's Ranch, the Basin School District,
3 preschool programs, juvenile justice systems, and
4 other community family services are just a few who
5 could benefit from the foundation. Funds will
6 also be used to provide scholarships to allow
7 students to attend Alamar Ranch who could not
8 otherwise qualify financially. This nonprofit
9 foundation will not only supplement and strengthen
10 many programs already existent in Boise County,
11 but will also encourage new services to be
12 developed."

13 Mr. Laney, does that comport with your
14 understanding of what this nonprofit and
15 scholarships were going to be?

16 **A. Yes.**

17 **Q.** Mr. Laney, were you heavily involved in
18 the scholarship program?

19 **A. I wasn't. Again, once we kind of got**
20 **the basics of the program together, I transitioned**
21 **out of the day-to-day and decision-making.**

22 **Q.** Who is it in your organization that
23 would know the details of the scholarship program?

24 **A. It would be either Chris Tverdy or Amy**
25 **Jeppesen.**

1 BY MR. WOODARD:

2 MR. WOODARD: May the witness please be
3 shown Exhibit 1029 again?

4 THE COURT: 1029? Is that the exhibit we
5 had earlier?

6 MR. WOODARD: Yes, Your Honor. That's the
7 conditional use permit application.

8 Kathy, if you could please go to page
9 38, which is actually, I think, page 22 on the
10 thing, but page 38 in the number of pages. If you
11 could expand that, blow up the bottom paragraph.
12 Thank you.

13 BY MR. WOODARD:

14 **Q.** Mr. Laney, this is from the conditional
15 use permit application. It says, "Alamar Ranch
16 plans to sponsor the development of a nonprofit
17 foundation, earmarking a significant portion of
18 the funds for Boise County youth and family-
19 helping services. This nonprofit fund will be
20 separate from Alamar Ranch, its organization,
21 employees, and funds; an independent board will be
22 created and appointed to govern the distribution
23 of funds. Alamar Ranch will contribute to the
24 foundation through sponsoring fund-raising
25 activities, making financial contributions, and

1 **Q.** Okay. Thank you. Mr. Brassey asked
2 you about your understanding of what the economy
3 was in 2008 and 2009. I think you said it wasn't
4 doing well. However, when it wasn't doing well,
5 you were able to find financing for other
6 projects; correct?

7 **A. That's correct.**

8 **Q.** And he asked you about a series of
9 questions about whether you had ever gone back
10 after they issued their decision and asked for
11 accommodations and talked to them about the
12 reduction to 24. The decision that the county
13 entered, what was your understanding of whether
14 that decision was final or was it preliminary and
15 open for negotiation?

16 **A. Well, the sense I had was that it was a**
17 **final decision, that there was no room to**
18 **negotiate.**

19 MR. WOODARD: No further questions,
20 Your Honor.

21 THE COURT: Mr. Brassey, anything else?

22 MR. BRASSEY: Just one.

23 THE COURT: It will have to be very brief
24 since we're close to the end of the day.

25 RECROSS-EXAMINATION

1 BY MR. BRASSEY:

2 **Q.** Mr. Laney, with regard to the last
3 question Mr. Woodard just asked you, no one went
4 back and asked if they'd change anything, did
5 they?

6 **A.** Well, I would echo the same thing I
7 said when you asked it, is that I personally
8 didn't ask, nor did I authorize anybody to, but I
9 know that there were others that spoke to the
10 county. I just don't know what the specifics were
11 of their conversations.

12 MR. BRASSEY: Thank you. That's all I have,
13 Judge. Thank you.

14 THE COURT: I assume the witness can step
15 down?

16 MR. BRASSEY: Yes, Your Honor.

17 MR. WOODARD: Your Honor, may he be
18 released?

19 THE COURT: Do you intend to re-call?

20 MR. BRASSEY: I might, Your Honor, but I'll
21 let counsel know.

22 THE COURT: Mr. Laney, you may be excused.
23 We'll see if Mr. Brassey is going to need your
24 attendance later in the proceedings. Thank you,
25 though, for being here.

1 Ladies and gentlemen, we'll take the
2 evening recess at this time and reconvene tomorrow
3 morning at 8:30. Again, we'll go straight through
4 until 2:30 with two 15- to 20-minute breaks midway
5 through that day. The good news you get out
6 early, the bad news is you don't get a lunch
7 break.

8 As we take this break, I would, again,
9 remind you of your obligation to follow the
10 court's admonition: Do not discuss the case among
11 yourselves or with anyone else. Do not visit any
12 websites or otherwise research any matter relating
13 to the case. Do not contact any location --
14 excuse me -- do not visit any location mentioned
15 in the testimony. Simply put the matter out of
16 your mind. And we can take the matter up again
17 tomorrow morning at 8:30.

18 Also, be very careful to avoid all
19 contact with the attorneys, witnesses, and parties
20 as you leave the courthouse this evening and
21 return tomorrow morning. I would suggest that you
22 proceed directly to your vehicle and then tomorrow
23 morning proceed directly to fifth floor jury
24 assembly room.

25 Ms. Huang, do you know?

1 LAW CLERK HUANG: I think the sixth floor.

2 THE COURT: The problem -- we might have you
3 gather -- why don't you wait for just a moment in
4 the jury room. I want to visit concerning that.

5 The problem is if you are in the lobby
6 here, then people coming up on the elevator will
7 necessarily come in contact with you. And I think
8 unless we have a way in which we can shuffle you
9 rather quickly into the jury room -- we might have
10 you gather on the fifth floor jury assembly room,
11 and then we'll bring you all up as a group when
12 you're all here. I'll visit with Ms. Huang and
13 see what we can arrange.

14 Counsel, if there's anything that you
15 feel we need to take up -- I might note that I
16 intend to have, even though we're quite early in
17 the game, have a preliminary set of final
18 instructions for you, perhaps by tomorrow or the
19 next day. Because of the nature of the case, I'd
20 like to take some time to work with you on that
21 and not wait until the last minute. I think it
22 would be helpful to all concerned to know, pretty
23 much, the rules of the road going forward. And
24 they will be subject to discussion, of course, but
25 at least give you a preliminary indication of what

1 my inclination is in terms of how to charge the
2 jury at the end of the case.

3 We'll be in touch and contact with you
4 over the next few days.

5 Ladies and gentlemen, we'll see you
6 tomorrow morning at 8:30. We'll be in recess.

7 (Court recessed at 5:05 p.m.)
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1 REPORTER'S CERTIFICATE

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I, Tamara I. Hohenleitner, Official Court Reporter, State of Idaho, does hereby certify:

That I am the reporter who transcribed the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing transcript, pages 5 to 136, contains a full, true, and accurate record of the proceedings had in the above and foregoing cause.

IN WITNESS WHEREOF, I have hereunto set my hand December 15, 2010.

_____-s-_____
Tamara I. Hohenleitner
Official Court Reporter
CSR No. 619

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