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PROCEEDINGS

Tuesday, December 7, 2010

(Jury absent.)

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

THE COURT: Good morning, Counsel.

MR. BRASSEY: Good morning, Your Honor.

MR. BANDUCCI: Good morning, Your Honor.

THE COURT: I understand there is an issue that counsel wants to address before the jury --

MR. BANDUCCI: Yes, Your Honor.

THE COURT: -- Mr. Banducci?

MR. BANDUCCI: Yes, Your Honor. Thank you very much.

One of the questions asked yesterday of Mr. Laney was whether or not he had either personally or had authorized someone from Alamar to go to the Commission after the order had been entered -- which by its terms is a final order -- and ask for some sort of accommodation from that final order.

And by asking that question, Your Honor, that implies some sort of duty on the part of Alamar to seek reasonable accommodation

request" or "we are requesting" -- and I think there is a little dispute about whether it was "we will" or "we are" -- "requesting a reasonable accommodation as to any point which you base a denial upon."

Now, at that point -- and I think it's fair to say that, at least as I recall from reading some of the depositions and as cited in the briefs, that both statements were made: "We will request" or "we are requesting," at different times.

Now, at that point, a decision is made. Now, we're dealing here -- you know, typically, these types of situations arise more in an employment context, in which there is an opportunity for an employee and an employer to talk.

Unfortunately, political subdivisions and counties and cities, and whatnot, they make decisions by issuing decisions in kind of a legislative capacity. And so I think that makes the case somewhat unique.

My concern is that there is the requirement that the defendant engage in this interactive process of seeking an accommodation,

after the entry of this order.

The record is very clear that, in both the brief filed prior to the hearing by the Commission and also in a presentation made before the Commission on January 28th, that a reasonable accommodation was requested.

Now, if the defendants are allowed to ask each of our witnesses -- and I suspect it will be each Alamar representative is going to be asked, "Did you go back after the entry of this order and seek some sort of accommodation or modification or amendment of the final order," that is going to imply to this jury that we didn't do something we should have done.

And there is, of course, nothing under the law that requires you to go back repeatedly to ask for a reasonable accommodation. We asked for a reasonable accommodation. We got no reasonable accommodation; and, in fact, what we got was a final order.

THE COURT: Mr. Banducci, let me -- my understanding of the way this all played out is that during -- well, repeatedly during the kind of run-up to the final decision, Alamar indicated that, "If you turn us down" -- or, "We will

but what triggers that is a reasonably specific request for an accommodation.

And that's why in my response to, I think it's motion in limine 95, I indicated that I think this is an issue of fact for the jury: Is this -- was the request made by Alamar during the run-up to the decision a sufficiently specific request, given the unique context that we are in where there was a kind of quasi-legislative decision made by the County, or -- and if so, then did the county appropriately respond?

And that was my take on it. That's why we issued the decision that we did.

Now, I understand your concern, that it's going to become like a broken record. But, of course, on rebuttal -- or I guess redirect of your witnesses, you're free to ask, "Now, even though you indicated you didn't request a request for an accommodation, but isn't it true that the county was advised repeatedly in the run-up to the decision that an accommodation was being requested," which would then seem to balance out, and then let the jury ultimately decide, as I really think at the end of the day they're going to have to decide, was a reasonably specific

1 accommodation requested by Alamar, and did the
2 county appropriately respond?

3 So could you play off from that?

4 I mean, I know I haven't really asked a
5 question, but I'm just trying to explain my sense
6 of this, that I think there is a disputed issue of
7 fact lying beneath all of this.

8 MR. BANDUCCI: I'm going to let Mr. Woodard
9 respond to this. He is -- he is familiar with the
10 rebuttal brief and the iterative -- or interactive
11 process that was requested there. He is also more
12 familiar with the terms of the --

13 THE COURT: All right. Mr. Woodard?

14 MR. WOODARD: I'm sorry for switching,
15 Your Honor.

16 I think you got the issue right. The
17 issue is between those, you know, didn't we say,
18 "Give us reasonable accommodation," or did we say
19 we would go back. I mean, the issue is: Did we
20 ask for one before the decision was entered?

21 The issue is not: Did we ask for one
22 after this final decision was entered?

23 THE COURT: But I think the question is:
24 Should you have renewed the request, or to give
25 the county fair notice as to what it is you were

1 requesting?

2 MR. WOODARD: Yeah. And I guess I think
3 that's where that's a legal issue, is whether -- I
4 mean, before the decision, to prove our claim, we
5 have to show, right, that it's our burden to show
6 that we requested a reasonable accommodation. And
7 we need to do that before they issue their final
8 decision.

9 I guess what really bothers me about
10 this, Your Honor, in the rebuttal brief that we
11 wrote to the county, what we say is,
12 consequently -- so this is -- what they point to
13 as saying we said we were going to do it after the
14 decision, that's in our first brief. We wrote a
15 rebuttal brief, and we say: "Consequently, if the
16 board finds that Alamar Ranch does not satisfy one
17 or more of the nine criteria, it could issue a
18 provisional decision, subject to further study or
19 hearing, on the issue of whether a reasonable
20 accommodation can or ought to be made on those
21 specific criteria."

22 And --

23 THE COURT: Wait just a second. Are you
24 referring to a rebuttal brief filed with the
25 county, or --

1 MR. WOODARD: Okay. Yes.

2 THE COURT: I thought you were referring to
3 a rebuttal brief filed with regard to the motion
4 in limine, and I was trying to rack my brain
5 for --

6 MR. WOODARD: Yeah. And I'm sorry,
7 Your Honor. So, yeah, we had our first brief to
8 the county. The opposition did theirs. We had
9 our rebuttal brief. And this is in our rebuttal
10 brief. And that's what we asked them to do.

11 They then issue a -- well, they didn't
12 issue a preliminary decision. They issued a final
13 decision.

14 And for them to then imply that we had
15 some duty to come back after that, I mean, the law
16 doesn't require us to do that. I guess that's
17 where my struggle is.

18 MR. BANDUCCI: One moment.

19 (Counsel conferring.)

20 MR. WOODARD: Yes. And I guess that's the
21 other thing, is Tim McNeese, who is the county
22 attorney, told them -- and this is in the record
23 at the hearing -- that they needed to make
24 reasonable accommodations.

25 So the county attorney understood that.

1 When they're talking and going through the
2 conditions, he tells them that. And so to say
3 that -- to imply to the jury that we had some duty
4 after this final -- I mean, the jury doesn't
5 understand how that process works.

6 THE COURT: Well, I think maybe a way to
7 address that is for the court to instruct the
8 jury -- I'm not sure I can put one together today,
9 but to kind of instruct the jury that this is an
10 issue in the case that they're going to have to
11 decide. It's going to come down to: Was the
12 plaintiff -- did the plaintiff make a reasonably
13 specific request for an accommodation and, if so,
14 did the defendant, in fact, provide or engage in
15 an interactive process to seek out such an
16 accommodation; and that there is -- and that when
17 and the circumstances under which that request
18 must be made, and how the county must respond to
19 that, is -- the court will give them instructions,
20 but ultimately at the end of the day they're going
21 to have to decide whether or not the law was
22 complied with.

23 And giving that instruction, perhaps
24 repeatedly when this issue comes up, may be a way
25 of heading this off and putting it in a proper

1 context for the jury.
 2 Mr. Brassey?
 3 MR. BRASSEY: Mr. Howell.
 4 THE COURT: Mr. Howell, yes.
 5 MR. HOWELL: Thank you.
 6 THE COURT: And I want to compliment counsel
 7 on the quality of -- no, go ahead, Mr. Howell.
 8 I want to compliment counsel on the
 9 quality of the briefing. Motions in limine -- I
 10 think it was one of the first judges that I dealt
 11 with after I was appointed told me to invite
 12 motions in limine, but deny them all.
 13 (Laughter.)
 14 THE COURT: And the idea is they're so
 15 helpful to kind of get the stage set.
 16 But in this case they were actually
 17 very well written, and it really was excellent in
 18 providing me a quick way to get up to speed on the
 19 critical issues. Unfortunately, there are still a
 20 few of them that we haven't decided, but we'll try
 21 to get to those in the next few days.
 22 Mr. Howell?
 23 MR. HOWELL: Your Honor, I think the court
 24 has identified the law, which obviously is what we
 25 contend needs to have happened in this case, which

1 is they have to ask for a reasonably specific
 2 accommodation --
 3 THE COURT: But, Mr. Howell, don't you have
 4 a unique situation here where you have a body
 5 which is making a legislative or quasi-legislative
 6 decision, which is kind of a final decision, which
 7 almost denies the opportunity for an interactive
 8 process, which explains, perhaps, why the
 9 plaintiffs said going in, "Don't make a final
 10 decision, because we want to engage in an
 11 interactive process with you; so make a
 12 provisional decision"; and instead, the county
 13 makes a final decision?
 14 So isn't that a fair issue?
 15 MR. HOWELL: Judge, I -- well, we quibble
 16 with what is a final decision. It has to be final
 17 pursuant to what charge they have under
 18 the -- under their directors, Idaho Code and
 19 ordinances. They have to make a final decision.
 20 That does not mean it's final, that you
 21 can't, "Hey, we can't talk about this at all."
 22 And obviously, we have submitted
 23 evidence, and there will be evidence in this
 24 trial, that there was discussions, and they could
 25 have come back, and they can come back another --

1 well, the South Fork folks, through Mr. Oaas, has
 2 asked for amending PUDs. And so there is a
 3 process available to come back and talk about a
 4 decision. It's not final.
 5 What the plaintiffs are trying to
 6 argue, Your Honor, is that it's final; that under
 7 their -- under the FHA, that final decision is a
 8 bright line rule that prevents any more
 9 discussion. And that's not what it means. It's
 10 final in the terms of they have to issue a final
 11 decision. They have to do that, Judge.
 12 And so -- and again, I think it is a
 13 factual dispute, Your Honor, where there is an
 14 indication that they were going to come back and
 15 ask for a reasonable accommodation afterwards, if
 16 they weren't happy.
 17 I mean, it's --
 18 THE COURT: But you wouldn't --
 19 MR. HOWELL: You know the argument.
 20 THE COURT: But you wouldn't object if --
 21 for the court to give such an instruction to
 22 ensure that the jury has the proper context in
 23 which to consider the evidence.
 24 MR. HOWELL: Your Honor, our preference, I
 25 think, would be to have that instruction at the

1 end. Because each time it comes up, if you're
 2 instructing -- and I don't know what the
 3 instruction exactly will be, but if you're
 4 instructing the jury each time this evidence comes
 5 in, I think you're giving it -- I think it could
 6 dilute the evidence.
 7 THE COURT: Okay.
 8 Well, let me -- Counsel, I think we're
 9 getting -- oh, Mr. Woodard?
 10 MR. WOODARD: Just real quickly, Your Honor.
 11 Once we make the request with that rebuttal brief,
 12 with the interactive process, the duty then falls
 13 on them to say, "Come."
 14 I mean, I think that's why we need the
 15 instruction, because the type of questions that
 16 they're asking is saying the duty was on us to
 17 come back, after we have already made the request.
 18 And that's not the law. So I do think we need the
 19 instruction.
 20 THE COURT: All right. Counsel, I'm going
 21 to -- I'll work with Ms. Huang, and I have got
 22 some other staff attorneys working, helping me on
 23 some other issues in this case, in fact, working
 24 on jury instructions, because we're obviously tied
 25 up here and can't work on them. I may have them

1 try to put together a brief statement.

2 But I want -- my instruction will not
3 only talk about the law, but also why this is a
4 unique situation in the context of a legislative
5 decision.

6 Mr. Howell, even your comment is that
7 they have to make a final decision. And that's
8 what kind of sets this apart in a way, say, from a
9 request made in the typical employment context in
10 which it almost invites an interactive discussion;
11 and here, it's just not clear.

12 I mean, you know, I'm reasonably
13 well-schooled in the law. I actually used to
14 practice in the area of municipal law a bit, and I
15 can see why you would scratch your head about how
16 you engage in an interactive process regarding an
17 accommodation when you have a governing body that
18 has to make a legislative decision of sorts.
19 Somehow, how do you work that in?

20 And, frankly, as Mr. Woodard pointed
21 out, apparently what was in the rebuttal brief,
22 that's probably close to the way I would have
23 dealt with the situation, were I representing a
24 developer, not knowing whether I would have that
25 opportunity after the final decision was made.

1 know, he is doing his job here, listening, but I
2 have conferred with counsel for Boise County, and
3 they agree that we should exclude Mr. Twilegar as
4 a witness -- as a potential witness.

5 THE COURT: Exclude him from being in the
6 courtroom?

7 MR. BANDUCCI: Yes, since he may be a
8 potential witness.

9 THE COURT: All right.

10 MR. BRASSEY: Your Honor, first --

11 THE COURT: Mr. Brassey?

12 MR. BRASSEY: -- I don't agree, but if the
13 representation is they may call somebody as a
14 witness, Your Honor, I know they're excluded. So
15 I don't mean to --

16 THE COURT: Well --

17 MR. BRASSEY: -- fine hairs, but what he is
18 talking about, there was a meeting, Judge, in
19 Mr. Banducci's office. I wasn't there. It was
20 one of the commissioners and Mr. Twilegar.

21 So if we're really going to get into
22 this, it seems to me Mr. Banducci is now going to
23 be a witness.

24 THE COURT: If that's the --

25 MR. BRASSEY: My understanding is, it was a

1 And that's why I think this just cries
2 out to be a factual issue for the jury and let
3 them apply their good common sense to this, and
4 we'll see how it shakes out.

5 All right. Let's take a brief break.

6 We'll try to be back in five minutes with the jury
7 and then get started. All right. We'll be in
8 recess.

9 (Recess.)

10 (After recess. Jury absent.)

11 MR. BANDUCCI: I sincerely apologize,
12 Your Honor. I don't want to eat into the trial
13 time in this, but Ron Twilegar, who is counsel for
14 Boise County, is here, and given what Mr. Howell
15 -- given Mr. Howell's comments about postorder
16 communications being part of discussions relating
17 to reasonable accommodation, there were
18 discussions and -- involving Mr. Twilegar. And I
19 don't know exactly how that's all going to shake
20 out and whether or not there is going to be either
21 a position taken ultimately by Boise County, or
22 perhaps even by Alamar, that Mr. Twilegar was
23 involved in conversations that were directed at
24 the idea of accommodation.

25 And I understand Mr. Twilegar is, you

1 settlement negotiations under the rule, not under
2 the FHA. But it just seems to me we're opening up
3 a can of worms. That's not what we're talking
4 about, or not -- what we argued to the court just
5 a bit ago didn't take into account the meeting
6 with Mr. Twilegar.

7 THE COURT: Well, let me just jump in,
8 because I -- again, Mr. Twilegar, it's pretty much
9 a free country, but not completely. And I
10 think -- and these court -- our court proceedings
11 are pretty much open to the public, but not
12 completely. And if there is an even slight chance
13 that you may be called -- I guess it strikes me
14 that there is no real reason why Mr. Twilegar
15 needs to remain in, if there is an indication that
16 he may be called as a witness.

17 If, on the other hand, either side
18 feels that his presence in the courtroom is
19 necessary, you need to point out why. But if it's
20 not necessary, then I think we would just be
21 well-served to proceed with caution and ask
22 Mr. Twilegar not to be in the courtroom throughout
23 the proceedings.

24 MR. BRASSEY: Your Honor, that's why I
25 indicated to Mr. Banducci that if there is some

1 chance he is going to be a witness, I understand
2 the court's ruling. I may disagree with it,
3 but --

4 THE COURT: Well, you know, I -- I am vested
5 with a lot of discretion in this area, and I think
6 I'm going to exercise that discretion in caution
7 and just order Mr. Twilegar not to be in the
8 courtroom when the evidence is being presented.

9 If he wants to remain in the hallway
10 and come in during arguments or otherwise, he is
11 free to do so. But when there is evidence being
12 presented, I think we probably would be better off
13 having Mr. Twilegar remain outside the courtroom.

14 And I apologize for imposing upon your
15 freedom to come and go as you please.

16 MR. TWILEGAR: May I address the court?

17 THE COURT: You may, but very briefly.
18 We're using up counsel's time now with the jury.

19 MR. TWILEGAR: Your Honor, I'm the
20 constitutionally elected official to represent
21 these three individuals. I'm here to observe and
22 address issues that may come after this --

23 THE COURT: Well, as I understand it, a
24 transcript is being ordered. So you certainly
25 would have access to the transcript, if that's

1 necessary.

2 MR. TWILEGAR: Secondly, if I leave this
3 building, how am I going to be called as a
4 witness?

5 I'm not under subpoena.

6 THE COURT: Well, that can be remedied,
7 since this is only -- this is a two-week trial.
8 You could be served at any time.

9 MR. TWILEGAR: Well, I would prefer to stay
10 here, to be able to address issues that I might
11 have to advise these three individuals here.

12 THE COURT: Well, I'm going to
13 require -- I'm going to grant the request, but I'm
14 going to advise counsel that as soon as it becomes
15 obvious that you will or will not require
16 Mr. Twilegar as a witness, that you so advise the
17 court, and that we can then allow Mr. Twilegar to
18 be in for the balance of the case.

19 And I think that decision certainly
20 would be made -- well, will certainly be made by
21 the time the plaintiff closes. I think at that
22 point it would be clear or not clear. But we'll
23 deal with that as we get into it.

24 MR. TWILEGAR: But just so I understand,
25 will I be able to come back after the plaintiff

1 closes?

2 THE COURT: We'll have to deal with that as
3 we get into it. All right? I don't want to lock
4 myself in, because I can't predict what's going to
5 happen between now and then.

6 All right. Let's bring the jury in.

7 (Jury present.)

8 THE COURT: For the record I'll note that
9 the jury has been brought in.

10 Ladies and gentlemen, I apologize.
11 We're 20 minutes late, but we had some matters we
12 had to take up with counsel. Let me assure you
13 that although you were waiting in the jury room,
14 we were busy taking care of some issues.

15 All right. At this time, I think the
16 plaintiffs are ready to call their next witness.

17 Mr. Banducci.

18 MR. BANDUCCI: Thank you, Your Honor. Call
19 Chris Tverdy.

20 THE COURT: Mr. Tverdy, would you please
21 step around counsel's table there and step before
22 Ms. Gearhart to be sworn as a witness.

23 CHRIS TVERDY,
24 having been first duly sworn to tell the whole
25 truth, testified as follows:

1 THE CLERK: Please state your complete name
2 and spell your last name for the record.

3 THE WITNESS: Chris Tverdy, T-V-E-R-D-Y.

4 THE COURT: Would you respell that again for
5 me?

6 THE WITNESS: T-V-E-R-D-Y.

7 THE COURT: All right.

8 You may inquire, Mr. Banducci.

9 MR. BANDUCCI: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. BANDUCCI:

12 **Q.** Good morning, Mr. Tverdy. How are you?

13 **A.** Doing great. Thank you.

14 **Q.** All right. Mr. Tverdy, let's start

15 first by giving the jury a little bit of
16 background, where you're from, your family, and
17 what you're doing currently.

18 **A.** I am from Idaho. I grew up in the --
19 on a cattle ranch in southern Idaho, near a town
20 called Castleford. So -- but the ranch was
21 literally out in the -- pretty close to the
22 Idaho-Nevada border. My family owned and operated
23 a ranch that had been in the family for a couple
24 generations. I grew up working on that ranch and
25 going to school, high school, grade school and

1 high school as Castleford High School; and, you
2 know, went to college and am now located here in
3 Boise.

4 **Q.** So, are you married currently?

5 **A.** I am married for 24 years, two
6 children, one in college up at Gonzaga, and one in
7 college here in Boise.

8 **Q.** Okay. And how are you currently
9 employed?

10 **A.** I currently work for Micron Technology.

11 **Q.** Okay. And let's give the jury a sense
12 for your career path, your professional background
13 after graduating from college. Why don't you just
14 talk a little bit about your college experience
15 and then what you did right after college.

16 **A.** Okay. Well, I went to college at Lewis
17 & Clark State College up in Lewiston. And the
18 reason I chose that out of high school is I wanted
19 to try and play college basketball. And upon
20 getting there and realizing that I had better
21 focus on academics rather than sports for my
22 profession, I finished a year in -- the year at
23 Lewiston, and transferred down to Boise State,
24 where I focused on a business degree, graduating
25 from Boise State with a bachelor's in business

1 administration, with an emphasis in human resource
2 management.

3 **Q.** Okay. After graduating from Boise
4 State, where did you go?

5 **A.** Went to work for Micron in 1987 as a
6 production operator, worked in a brand new product
7 line that they had started called -- the product
8 line was a memory module. What memory modules
9 are, at that time Micron was shipping everything
10 in the small components, is what they're -- what
11 they're -- the little tiny package of what they're
12 known for.

13 **But the reality is, is about**
14 80 percent -- today, 80 percent of what Micron
15 ships are on these memory modules. And so when I
16 started there we had just begun to introduce that
17 product. And obviously, it grew dramatically, and
18 I benefited from that.

19 **Q.** Okay. Can you take the jury basically
20 through your time at Micron. How long were you at
21 Micron before joining Oaas Laney?

22 **A.** I think it was about 17 years, 17 and a
23 half years, something like that.

24 **Q.** And over that 17-and-a-half-year
25 period, just very quickly take them on the tour

1 through your work experience.

2 **A.** As I said, I was -- I benefited from
3 the dramatic growth that occurred at Micron, and
4 so I was a production operator for literally
5 probably eight weeks. Then I was asked to work on
6 a project to implement a tracking program, a
7 work-in-process tracking program. So I had to
8 work with the IT department and a variety of
9 functional groups to get that program up and
10 running.

11 **Following that implementation, I became**
12 **the planning manager, which is working with**
13 **production schedules and marketing and sales, and**
14 **making sure that we are building the right stuff**
15 **at the right time.**

16 **Following that, for a -- doing that job**
17 **for a couple of years, I was asked to participate**
18 **in a large team and a large effort of moving the**
19 **operation from Micron's campus out to a new**
20 **facility that we needed to construct in Nampa.**
21 **And so this was a 130,000-square-foot building,**
22 **and it was quite a challenge for me at that time**
23 **because it was, you know, a very large**
24 **construction project, locating the land and such.**

25 **Upon completing that project, we -- the**

1 **company was growing dramatically. We were kind of**
2 **spun off from Micron and merged with Micron**
3 **Computer to be the company that you may recognize**
4 **as Micron Electronics. And the company was**
5 **growing very dramatically. Our division was named**
6 **MCMS. It stood for Micron Custom Manufacturing**
7 **Services.**

8 **I had worked in that role for a year or**
9 **so, and then I was asked to go to North Carolina**
10 **and be the site manager in North Carolina,**
11 **starting a new facility out there. So my position**
12 **was site director. And I had to, working with a**
13 **team that reported to me, locate property,**
14 **construct a facility, basically create a carbon**
15 **copy of what we had in Nampa.**

16 **And so that was quite a challenging**
17 **project, as you could imagine. But one of the**
18 **things --**

19 **Q.** Were you in -- excuse me, Mr. Tverdy.
20 I didn't mean to interrupt you. But were you in
21 charge of that project, then?

22 **A.** I was. I was the site director. And
23 so reporting to me was the engineering staff, the
24 construction staff, the HR staff, everybody that
25 it took to get that project up and running. And I

1 reported back to the vice president that was
2 located in Nampa.

3 So that was a -- that was a very
4 important project to the company, and I'm very
5 proud to say that it went quite well.

6 Following my return back to Idaho, that
7 company eventually grew and there was 250
8 employees located at that site; a very successful
9 operation.

10 So upon coming back to Idaho, then, I
11 was asked to head up the worldwide operations for
12 MCMS, managing the manufacturing operations. And
13 I say "worldwide," because then we began to expand
14 to Asia. And that was my next project, to work on
15 a facility in Penang, Malaysia, and starting up a
16 smaller facility, but pretty much what we had done
17 in North Carolina.

18 So upon completing that project, at
19 that point MCMS was doing quite well. I was
20 responsible for about 1,200 employees in three
21 different plants, a very large operating budget,
22 to the tune of about \$70 million a year. Things
23 were going quite well, and the company was worth
24 quite a bit of money. We had developed a pretty
25 successful venture.

1 And that was the point when Micron
2 decided that, it not being its core business, to
3 sell it. And so we were -- we were sold to a
4 private equity firm via a facility called a
5 leveraged buyout. And the leveraged buyout is
6 good for Micron, it's good for the owners, but for
7 the company it puts quite a bit of debt on the
8 books.

9 And that debt ultimately was really
10 something that we started to struggle with
11 dramatically. And so I came to the difficult
12 decision of leaving that company that I had been
13 instrumental in growing, and moving to a
14 competitor that had just located to Idaho called
15 Jabill Circuit.

16 **Q.** What was your job at Jabill?

17 **A.** At Jabill, my position was business
18 unit manager. And so I was possibly for -- the
19 way that company is organized is the business
20 units are engagements with specific customers.
21 And so I was responsible for a particular product
22 line. It was -- it was about a \$150 million
23 product line for a specific customer.

24 And in that role I was responsible for
25 all -- it's a matrixed organization. And what

1 that means is while not everybody in the plant
2 reports to me, they are responsible to me and I
3 direct their activities, whether that's -- for my
4 product types; so whether that's engineering,
5 procurement, planning, pricing, the sales efforts,
6 all of that.

7 So that was a great job, and I was
8 having a great time with it. But about a year
9 after being there, Jabill had acquired a facility
10 in Malaysia and targeted my product line to move
11 to that plant. And they announced the shutdown of
12 the facility here in Meridian, Idaho.

13 And so I was faced with -- the company
14 wanted me to stay located here and travel, but I
15 really didn't want to do that for my family. And
16 so I chose to look elsewhere.

17 And at that same time there was an
18 opportunity back at Micron, believe it or not,
19 working on memory modules again. And so I took
20 the job back at Micron and had a similar role to
21 what I had to this point in working on new
22 facility startups for Micron. That would be in
23 Puerto Rico and in Singapore, and there was a
24 small project in Scotland. So I did a lot of what
25 I did previously with facility startups and

1 planning and construction.

2 **Q.** Now, ultimately, can you tell the jury
3 what you learned over this time at Micron and at
4 Jabill relative to planning, budgeting and the
5 like, construction, that ultimately worked
6 directly into the kind of work you ended up doing
7 when you came to work for Alamar?

8 **A.** Yes. The -- the thing with the
9 high-tech industry that, as I grew up working in
10 that, you know, I kind of believed that -- that my
11 experience was very specialized to Micron and the
12 high-tech industry. But the reality is, is the
13 planning processes, the budgeting process, hiring,
14 general managerial, business planning, all of that
15 is really the same. And I had a deep amount of
16 experience because of what I was able to do at
17 Micron.

18 So Micron's expectations, as you could
19 imagine, are very high when it comes to detailed
20 planning and business planning and figuring out
21 every detail of the cost structure of a product or
22 the cost structure of a service.

23 And so as I left Micron and started
24 working for Oaas Laney on this particular project,
25 those skills were -- were easily transferable, I

1 found, and I really did hit the ground running
2 with that experience.

3 **Q.** Now, how did you know either Mr. Oaas
4 or Mr. Laney?

5 **A.** In my second or third job at Micron, I
6 reported directly to Erik Oaas when -- when I was
7 a planning manager. And then -- and that was
8 probably for, I would estimate, a two-year period.
9 And then, of course, I worked directly with Erik
10 for, you know, the five or six years following
11 that.

12 Steve Laney was in the company, well,
13 in the engineering -- as well, in the engineering
14 areas. And so I worked in the engineering areas,
15 and so I knew Steve, as well, pretty much through
16 my entire Micron career.

17 It was only after I went to Jabill that
18 I stopped seeing Steve and Erik on a, you know,
19 kind of a weekly/monthly basis. So I knew them
20 well.

21 **Q.** Okay. Now, how did you end up at Oaas
22 Laney, and what kind of diligence did you do with
23 respect to this RTC project?

24 **A.** I -- you know, after having worked back
25 at Micron for about five years, I was really

1 of my entrepreneurial spirit and something that's
2 in our own backyard. And so, I was very
3 interested in it.

4 **Q.** All right. What position did they ask
5 you to take?

6 **A.** They asked me to be the project manager
7 for the residential treatment program, that's
8 later named as Alamar Ranch.

9 **Q.** And what responsibilities, generally,
10 did you have in that position?

11 **A.** Project manager responsibilities are
12 pretty much wide-reaching, but specifically for
13 the first three or four months of my -- my role
14 there was focused on learning the business,
15 learning -- researching, understanding --
16 understanding the business, understanding the
17 business plan, changing, modifying the business
18 plan for what we all learned, and then to get
19 started on site location and, you know, building a
20 schedule, building a program, hiring the staff,
21 get the project up and running.

22 **Q.** And was -- were those responsibilities
23 really much different than what you were doing
24 when you were at Micron?

25 **A.** No, not at all. In fact, they

1 wanting to -- you know, all of my effort was
2 overseas and in Asia. And while it was a great
3 job, I really wanted something that was very
4 entrepreneurial and something that was in our own
5 backyard. That was important to me.

6 So I was familiar with Erik Oaas's and
7 Steve Laney's business. They had a great
8 reputation in town. And so I reached out to them
9 to see if there was an opportunity in their work
10 that I could participate in.

11 And as I -- as I met with them for
12 coffee one day, they presented the -- the business
13 that they were working on with this residential
14 treatment center, and asked me to look more
15 closely at that and see if it was something that I
16 was interested in.

17 Through the course of a few emails,
18 they sent me a rough draft of a business plan that
19 a consultant that they had engaged had written,
20 and so, I started to research that.

21 And knowing Erik and Steve's, you know,
22 business capabilities, their reputation in the
23 valley, their personal morals and integrity, you
24 know, I came to the conclusion that this was
25 really something that exactly met the requirement

1 were -- they are very similar to starting a new
2 facility in North Carolina or researching a new
3 product offering that we were going to sell.

4 **Q.** Was one of the responsibilities that
5 you had relative to finding an executive director
6 for Alamar?

7 **A.** Absolutely.

8 **Q.** Tell the jury about that, please.

9 **A.** Well, clearly, I had the expertise in
10 managing the business. But as we did our
11 research -- as I did my research, it was -- it was
12 clear that there is a deep amount of experience
13 from an operating -- an operational and program
14 design perspective that we needed. We had other
15 people on our project team that were familiar with
16 the industry, but we had no one with direct
17 operating experience.

18 So we contracted with a recruiter here
19 in Boise to help us go on a search to find an
20 individual like that. And specifically, we were
21 looking for somebody who was currently operating
22 in a residential treatment center and had
23 good -- good experience with program design and
24 with marketing the program.

25 **Q.** Do you recall how many candidates you

1 considered?

2 **A.** Not -- not precisely, but I would -- I
3 would estimate that I had phone interviews with at
4 least 20 individuals. The industry is well-known,
5 the programs are well-known, so the recruiter was
6 able to pretty readily line up interviews with
7 people that were pretty interested in the
8 opportunity.

9 **Q.** And did you bring certain finalists to
10 Boise?

11 **A.** Yeah. We -- of those approximate
12 twenty that I spoke to, we narrowed that down to
13 two individuals and brought them to Boise for
14 face-to-face interviews with me, the ownership
15 staff and the consultants that we had on board at
16 that time.

17 **Q.** And who were those two finalists?

18 **A.** Amy Jeppesen and Dr. Ray Gwilliam.

19 **Q.** Okay. And as between those two, did
20 you pick one?

21 **A.** Yeah. We hired Amy, and it was -- it
22 was clear and obvious that Amy was the right
23 choice for the position.

24 **Q.** Why is that?

25 **A.** Well, simply because she was -- her

1 resume and her experience to that point was
2 exactly what we were looking for. But beyond
3 that, she had the right, you know, personal
4 background, the right integrity that we were
5 looking for, that was a -- was a perfect match
6 with our -- with the rest of our team that we had
7 assembled.

8 She -- we knew she would be
9 well-represented and well-liked in the community,
10 a great spokesperson on behalf of our program.
11 Because so often these programs are externally
12 seen by their leaders, she was exactly what we
13 were looking for there, and we were just ecstatic
14 to have found her.

15 **Q.** Okay. Now, tell the jury -- the jury
16 has heard a little bit about Green Ranch. And was
17 Green Ranch really the first place that Alamar
18 decided to locate the Alamar project?

19 **A.** We -- you know, for the -- over the
20 course of at least two months, Steven Laney and I,
21 and occasionally Erik Oaas, occasionally Keith
22 Fletcher, would go on -- you know, go look at
23 different properties, ranging from Garden Valley
24 over to the, you know, Highway 21 corridor.

25 Our requirement was that the property

1 needed to be located within about a 30-minute
2 drive from the Boise population center, for
3 employees to be able to travel to the site and,
4 you know, to get good services and such.

5 So we -- there were a variety of
6 properties that we looked at, but the Green Ranch
7 was the first one that really fit that bill
8 perfectly.

9 **Q.** Okay. You mentioned Keith Fletcher's
10 name, and I forgot to ask you this: Mr. Fletcher
11 is one of the principals with Ashley Manor; is
12 that correct?

13 **A.** That's correct.

14 **Q.** Okay. Before we go into Green Ranch,
15 could you explain to the jury what role Ashley
16 Manor folks, like Keith Fletcher, played with
17 respect to the Alamar project and what sort of
18 experience they brought?

19 **A.** Yeah. They were an important piece of
20 our team. Keith Fletcher and Roger Malm are the
21 two principal owners of Ashley Manor. Ashley
22 Manor is a good-sized company that has residential
23 care facilities for Alzheimer's patients, as well
24 as assisted care facilities.

25 The unique thing about their

1 Alzheimer's care facilities is that they are small
2 buildings, homes, really, sizing from 10 to 15
3 patients, and they're located in residential
4 communities, very comfortable for their residents.

5 And so what they were -- they were part
6 of the project team because of their association
7 with Oaas Laney. And so the idea of a residential
8 treatment center was kind of a natural extension,
9 and they were certainly part of the catalyst of
10 why Oaas Laney was looking at this -- these types
11 of programs.

12 So what Keith Fletcher and Roger Malm
13 brought to the table was very strong operative
14 experience in these residential care facilities,
15 because they had done a number of facility
16 startups, and they were just -- they were just
17 very good advisors through this process for me.

18 **Q.** All right. Let's jump back to the
19 Green Ranch.

20 MR. BANDUCCI: And Kathy, if we could bring
21 up Exhibit 1181, page 13.

22 Actually, first, let's do this --
23 first, let's do this. Have you got the
24 Google Earth map that just shows roughly where
25 Green Ranch is in relation to Boise and Idaho

1 City?

2 THE COURT: Counsel, did you say 1181?

3 MR. BANDUCCI: Before we do 1181, we're
4 going to do a Google Earth illustrative, just a
5 map, to show general location. And 1181 would be
6 a photograph, Your Honor.

7 THE COURT: Do you have that marked as an
8 exhibit, though?

9 MR. BANDUCCI: Pardon me?

10 THE COURT: The Google map, has that been
11 marked as an exhibit, so that we can identify it?

12 MR. BANDUCCI: We're going to offer it,
13 Your Honor, as an illustrative exhibit.

14 THE COURT: Is there a number for it is what
15 I'm asking.

16 MR. BANDUCCI: We don't have Google Earth
17 marked as an exhibit, Your Honor.

18 THE COURT: Okay. I assume there is no
19 objection to it, Mr. Brassey?

20 I just want to make sure, though, our
21 record is clear and we preserve what's shown to
22 the jury.

23 MR. BRASSEY: We have no objection, Judge.
24 I'm not sure which picture it is, but I assume
25 it's one we have seen.

1 exhibit, Your Honor.

2 THE COURT: Again, it's not a problem. I'm
3 just trying to identify for the record which
4 exhibit is now being shown. This is page 13?

5 MR. BANDUCCI: Yes.

6 THE COURT: All right. Is there going to be
7 an objection?

8 MR. BRASSEY: No.

9 THE COURT: All right. 1181, page 13, will
10 be admitted. We may need to -- and published to
11 the jury.

12 (Plaintiffs' Exhibit No. 1181, page 13,
13 admitted.)

14 THE COURT: We may need to figure out a way
15 to -- if there is going to be no objection to any
16 of Exhibit 1181 photos, then perhaps we can admit
17 them all, and we wouldn't have to worry about --

18 MR. BANDUCCI: We have presented them to
19 counsel, Your Honor. If counsel doesn't have an
20 objection to 1181 in its entirety, we could put
21 that in now.

22 MR. BRASSEY: I don't know that I've seen it
23 all.

24 THE COURT: All right. At this point I'll
25 admit only page 13. And then I'll ask counsel,

1 MR. BANDUCCI: Yeah.

2 THE COURT: Could we --

3 MR. BANDUCCI: If you would like, we can
4 show it only to --

5 THE COURT: Yeah, I've got it now.

6 MR. BANDUCCI: -- counsel and the court.

7 THE COURT: It's only going to be shown to
8 the witness. Now I've turned off the jury
9 monitor.

10 Go ahead and bring it up, if you would.

11 Perhaps the illustrative exhibits could
12 be marked starting with Exhibit 1212, which
13 appears to be the next unused exhibit number.

14 MR. BANDUCCI: All right, Your Honor.

15 She's got to bring it up.

16 Kathy, did I throw you a curve ball?

17 Well, then, you know what? Let's go to
18 1181, and we'll save the map, the general map, for
19 later. Sorry about that.

20 MS. SAVELL: It has not been admitted.

21 MR. BANDUCCI: Let's show that to the court
22 and counsel.

23 THE COURT: And this is 1181?

24 MR. BANDUCCI: Yes. 1181, page 13 of 1181.
25 There are multiple photographs in the single

1 perhaps on a break, to look through those and see
2 if there is going to be any objection to any of
3 those.

4 MR. BRASSEY: That would be fine, Judge.

5 THE COURT: All right.

6 Go ahead and proceed.

7 MR. BANDUCCI: All right. Very good.

8 BY MR. BANDUCCI:

9 **Q.** Now, just so that we can get general
10 orientation --

11 MR. BANDUCCI: And Your Honor, I'm not
12 exactly sure, this is --

13 If you could show -- is there a button
14 here?

15 BY MR. BANDUCCI:

16 **Q.** I'm drawing with my finger. You can
17 see that. What does that red line follow, just so
18 that the jury can get orientation?

19 **A.** That would be Highway 21, going toward
20 Idaho City from Boise.

21 **Q.** Okay. So Idaho City is in that
22 direction, and Boise is obviously in that
23 direction; correct?

24 **A.** That's correct.

25 **Q.** Okay. And this area here (indicating)

1 is what?

2 **A. That would be the Green Ranch.**

3 **Q.** Okay. And for a general sense of
4 location, what have I just outlined there?

5 **A. That would be the Osprey Subdivision.**

6 **Q.** Okay. So this is Green Ranch
7 (indicating) and this is Osprey?

8 **A. That's correct.**

9 **Q.** All right. The Green Ranch was the
10 first place that Alamar looked to actually site
11 the Alamar project; correct?

12 **A. That's correct.**

13 **Q.** All right. Tell the jury why Green
14 Ranch was a suitable location, from your
15 perspective.

16 **A. I remember the day that Steve Laney and**
17 **the property owners' representative took a tour of**
18 **the property, and it was just -- it was just**
19 **perfect for what we had envisioned the treatment**
20 **center to be at. It was densely covered with**
21 **trees. It's a little difficult to see in this**
22 **photo because it's wintertime, but that property**
23 **is an operating tree farm.**

24 **Built into it, also, are five -- I**
25 **think five single-room cabins, a large custom**

1 **home. There is a horse barn and corrals and**
2 **facilities associated with that. It was all**
3 **exactly in line with what -- the amenities that we**
4 **needed for our program. So we were quite ecstatic**
5 **when we saw that property, from the first moment**
6 **we took a tour of it.**

7 **Q.** Okay. And did you -- or did Alamar
8 file a conditional use application before the
9 Planning and Zoning Commission for Boise County,
10 to ask Boise County for a conditional use permit
11 for Alamar at Green Ranch?

12 **A. Yes, we did.**

13 MR. BANDUCCI: May the witness be shown
14 Exhibit 1004?

15 And we would move its admission,
16 Your Honor.

17 THE COURT: Any objection?

18 MR. BANDUCCI: No.

19 THE COURT: Exhibit 1004 will be admitted
20 and published to the jury.

21 (Plaintiffs' Exhibit No. 1004
22 admitted.)

23 BY MR. BANDUCCI:

24 **Q.** And this is the, what we call the
25 "CUP," filed on December 8th, 2006, for Green

1 Ranch?

2 **A. That's correct.**

3 **Q.** Okay.

4 MR. BANDUCCI: And if we could go -- I think
5 it is, Kathy, I think the second page of this
6 document.

7 Nope, keep moving forward, forward,
8 keep going. I think that's where we want to go.

9 And if we can bring out Supplement 5.
10 BY MR. BANDUCCI:

11 **Q.** All right. This says, "The total
12 development will include 9 residential buildings,
13 each designed to house 12 students." So that
14 would be 108 students; correct?

15 **A. That's right.**

16 **Q.** All right. Was it the plan at -- if
17 Alamar was going to be developed at Green Ranch,
18 that that would be 108-student facility?

19 **A. That's correct.**

20 **Q.** All right.

21 MR. BANDUCCI: Thank you. You can take that
22 down, Kathy.

23 BY MR. BANDUCCI:

24 **Q.** What happened when Alamar applied --
25 filed its application at the Boise County Planning

1 and Zoning for -- for Alamar's project at Green
2 Ranch?

3 **A. We had done a lot of research on these**
4 **programs, and so we realized that there would be**
5 **certain members of the community that weren't wild**
6 **about our program, because that was just typical**
7 **of what we have seen in our research of other**
8 **startups.**

9 **However, we were -- we were, I guess,**
10 **to say "stunned" might even be an understatement**
11 **of the reaction from the community that we**
12 **received.**

13 MR. BRASSEY: Judge, I object. I think it's
14 nonresponsive.

15 THE COURT: Let's put another question back
16 before the witness. I think it may be
17 nonresponsive.

18 MR. BANDUCCI: Sure.

19 BY MR. BANDUCCI:

20 **Q.** Mr. Tverdy, what was your reaction to
21 the Boise County response to the conditional use
22 permit application after it was filed?

23 MR. BRASSEY: Judge, I object to the form of
24 the question, insofar as the question is Boise
25 County. And I also think the question is

1 irrelevant.

2 THE COURT: Well, I think he's probably
3 providing context and background, so I think I'll
4 allow it.

5 I think there was some ambiguity
6 whether you're referring to Boise County as an
7 entity --

8 MR. BANDUCCI: Boise County citizens. I
9 should have said "Boise County citizens"; with
10 that amendment to my question, Your Honor.

11 THE COURT: All right.

12 THE WITNESS: We were stunned in the
13 reaction of the community. We just -- the volume
14 of feedback that we received, the hostility of the
15 feedback we received, was just tremendous.

16 BY MR. BANDUCCI:

17 **Q.** Were there particular homeowners
18 or -- let me put it this way: Were the citizens
19 responding so loudly and angrily coming from a
20 particular part of Boise County?

21 MR. BRASSEY: Judge --

22 BY MR. BANDUCCI:

23 **Q.** As best you know?

24 MR. BRASSEY: Excuse me.

25 I object to the form. I also object as

1 leading.

2 THE COURT: Overruled.

3 You may answer.

4 THE WITNESS: Yeah. The -- almost
5 exclusively, the commentary was coming from the
6 homeowners within the Osprey Subdivision.

7 BY MR. BANDUCCI:

8 **Q.** And we had -- we had drawn there for a
9 while the location of Osprey in relation to Green
10 Ranch. Did those two part -- the properties, did
11 those two properties abut each other?

12 **A.** Yes, they did.

13 **Q.** Okay. Can you characterize for the
14 jury as best you can the general response, the
15 kinds of things that were being -- you heard from
16 Osprey residents about their concerns for Alamar
17 Ranch?

18 MR. BRASSEY: Judge, I think it calls for
19 hearsay, if the witness is being asked to give
20 specific comments from citizens.

21 MR. BANDUCCI: Not being offered for the
22 matter asserted -- as truth for the matter
23 asserted.

24 THE COURT: It would appear that it's not
25 being offered for the truth of the matter

1 asserted. In fact, I'm going to assume that
2 Mr. Tverdy would think that the statements were
3 not accurate, and therefore they're clearly not
4 being offered for the truth of the matter
5 asserted.

6 I'm a little more concerned about
7 foundation.

8 MR. BRASSEY: Your Honor, with regard to
9 foundation, part of my -- I'll try to keep this
10 short -- I don't know how you cross-examine with
11 people who aren't identified --

12 THE COURT: Right.

13 MR. BRASSEY: -- with that specific
14 question.

15 MR. BANDUCCI: Your Honor, if I may?

16 THE COURT: Briefly.

17 MR. BANDUCCI: My understanding is that
18 objections are to be made, two or three words, and
19 no speaking objections.

20 THE COURT: Well, I think Mr. Brassey was
21 trying to stay within that, which is why he said
22 what he said.

23 MR. BANDUCCI: If I may then, Your Honor --

24 THE COURT: I think the witness can testify
25 as to his understanding of the reasons for the

1 objection. But I think to get beyond that, into
2 specifics, does raise the problem that I think
3 Mr. Brassey has pointed out about how do you
4 cross-examine someone about the statements, in
5 which you don't know who the statements were made
6 by.

7 So why don't we take another stab at it
8 within that context.

9 MR. BANDUCCI: Yes, Your Honor. And simply
10 put, I mean, obviously, public clamor in an FHA
11 context is relevant, and --

12 THE COURT: And that's what I'm allowing you
13 to do. What the witness can testify to is to
14 generally testify as to what was said, if he can't
15 identify who the actual individuals were.

16 BY MR. BANDUCCI:

17 **Q.** Again, can you generally characterize
18 the kinds of comments that you were hearing from
19 the folks of Osprey Subdivision?

20 MR. BANDUCCI: And Your Honor, we will get
21 into specific comments made by specific people
22 very shortly.

23 THE COURT: All right. That's why I'm
24 giving you some leeway. But I still think we
25 should restrict ourselves just to a very general

1 description of what the comments were.

2 BY MR. BANDUCCI:

3 **Q.** Go ahead.

4 **A.** The Osprey community was, especially
5 the homeowners that were close to the property
6 line, were very concerned about the traffic that
7 would be generated through -- through their
8 subdivision via our second egress.

9 They were concerned about the types of
10 kids that would be located there and the
11 likelihood that they would be violent and
12 represent a danger to their community.

13 They were concerned about declining
14 property values, glare, just the overall impact of
15 our program.

16 **Q.** Okay. Now, did you attend a meeting in
17 early 2007 at the Wilderness Ranch Fire District
18 firehouse?

19 **A.** Yes, we did.

20 **Q.** And how did you find out about that
21 meeting?

22 **A.** The Osprey -- the community located in
23 the Osprey area had created a website called
24 NoAlamarRanch.com. And this was authored by a few
25 people within that community to spread the word

1 about Alamar Ranch, from their perspective. And
2 in that -- on that website, they were
3 communicating to the community about a
4 neighborhood meeting that they organized at the
5 Wilderness Ranch Fire District.

6 So as a result of seeing that, we did
7 our best to contact them -- I don't recall
8 specifically who we contacted that was the author
9 of the website -- and asked for an invitation to
10 the -- to the meeting.

11 We were given an invitation, but we
12 weren't allowed to present. We were just told
13 that we could have five minutes at the end of the
14 meeting to respond to questions.

15 **Q.** All right. And describe to the jury
16 what happened at that meeting.

17 **A.** It was our first direct contact with
18 the community, and it was -- it was quite an
19 event. The fire- -- the firehouse is a small
20 building, and the meeting was held in the bays
21 where they park the trucks. And so it's pretty
22 small, in that there are three trucks that fit in
23 there.

24 As we showed up to the meeting, there
25 was just a handful of us, I think four of us, from

1 the Alamar Ranch team. And it was -- it was a
2 very hostile environment. We could barely push
3 our way into the building, because it was just
4 completely full of folks. And so we were -- stood
5 crowded in the back of the room while the meeting
6 took place.

7 The organizers of the meeting presented
8 their view of Alamar Ranch, which was -- which was
9 completely inaccurate in terms of the types of
10 kids that we would be bringing into the program.
11 And it was overwhelming about -- it was
12 overwhelming, the misinformation that was being
13 provided at that point in time.

14 **Q.** And who was providing that information?
15 Who was leading that meeting?

16 **A.** The individual that was leading the
17 meeting was Brian Bulow, and there were a few
18 others that worked closely with him that were the
19 authors of that No Alamar Ranch website.

20 **Q.** Okay. And were you given a chance to
21 talk?

22 **A.** Yes. At the very end of the meeting,
23 we were allowed to make our way to the front,
24 which we had to kind of squeeze our way to the
25 front, and then we were told we had five minutes

1 to answer some questions.

2 And so as questions were raised, we
3 tried our best to correct the misinformation that
4 had been given by the No Alamar Ranch team. But
5 it was -- it was just futile. We couldn't
6 complete our sentences. We couldn't -- the
7 community just absolutely did not want to hear
8 what we had to say.

9 And so after that five -- approximate
10 five minutes were done, the meeting was abruptly
11 called and we made our way home.

12 **Q.** Okay. Was Amy Jeppesen with you?

13 **A.** Yes, she was.

14 **Q.** As a result of that meeting, did you
15 actually have concerns for safety as a result of
16 that experience?

17 **A.** Absolutely. Every -- following our
18 experience at that meeting, every event that we
19 went to, we required -- "we" meaning the Alamar
20 Ranch project team -- required two people to be
21 together all the time. We even went as far as
22 other public gatherings like that, requesting the
23 sheriff be -- the Sheriff's Office be present
24 there, because it was a hostile and, you know,
25 intimidating environment.

1 **Q.** Okay. Now, did the opposition also at
2 this time begin to circulate petitions?

3 **A.** Yes. On this same NoAlamarRanch.com
4 website, they were communicating to the community
5 to sign -- sign petitions, and they gave the
6 locations of those petitions and were encouraging
7 people to sign them.

8 **Q.** Okay. How did you find out about these
9 petitions?

10 **A.** We saw their notice on the website, and
11 we also -- you know, we were in the community. In
12 fact, Amy was living in one of the cabins on the
13 Green Ranch property at the time. And so she
14 would go and check up on them. And for instance,
15 one of the locations of the petitions was at the
16 Rock Lodge Bar. And so she went there and just
17 personally inspected it and saw how it was being
18 done.

19 **Q.** Did you also receive copies of the
20 petition from Planning and Zoning?

21 **A.** Yes. Part of the agreement and, you
22 know, requirement that the Planning and Zoning
23 Office fulfills is providing information on what
24 was presented.

25 So in this No Alamar Ranch website,

1 they were requesting not only that community
2 members sign the petitions, attend these meetings,
3 but also write letters to -- in opposition to
4 Alamar Ranch to Planning and Zoning.

5 And so we were -- we requested and were
6 given the opportunity to get copies of those
7 letters from the Planning and Zoning Commission.
8 So we did have a good amount of information
9 coming.

10 MR. BANDUCCI: Kathy, I'm going to throw you
11 another curve ball here. Could you bring up for
12 the court and counsel Exhibit 1065.

13 MR. BRASSEY: 10 what?

14 MR. BANDUCCI: 65. This is part of your
15 record.

16 We would offer, Your Honor,
17 Exhibit 1065. This is stipulated as part of the
18 record of Boise Planning and Zoning. In fact, the
19 first page you can see bears the stamp. And it
20 has already been stipulated as authentic.

21 THE COURT: Any objection?

22 MR. BRASSEY: Judge, I have no objection if
23 we put the entire Planning and Zoning Commission
24 record in. I don't -- I object if we're just
25 going to piecemeal it.

1 THE COURT: Mr. Banducci, is there going to
2 be any objection to the entire --

3 MR. BANDUCCI: Yes, Your Honor, there is.
4 Because there are certain parts of the Planning
5 and Zoning record which we contend were never
6 reviewed by the Commission. And this is an
7 attempt to shoehorn what is irrelevant to the
8 Commission's consideration.

9 THE COURT: Let me -- well, I think we'll
10 probably just have to take each part of the
11 exhibit as it's offered.

12 And, Mr. Brassey, you're free, of
13 course, to offer the entire record, and then we'll
14 take it up document by document, if we need to.

15 MR. BRASSEY: Your Honor, just briefly, if
16 the plaintiffs' position is the Commission didn't
17 review the record, I assume it would include this
18 document. So --

19 THE COURT: Well --

20 MR. BRASSEY: -- that's my -- that's my
21 objection.

22 THE COURT: All right. I will -- this is
23 part of the Planning and Zoning record?

24 We're in agreement on that?

25 MR. BRASSEY: Yes.

1 I don't see the stamp on it, Counsel.

2 THE COURT: Well, all right. I'm going to
3 admit the exhibit, but I guess I'll give counsel
4 something of a shot across the bow that my sense
5 is that if it's part of the record, it probably is
6 going to be admitted.

7 If counsel wants to argue that part of
8 it was not actually reviewed by the
9 decision-makers, they're free to make that
10 argument. But we'll just have to take that up as
11 we get to it. But my inclination is to let the
12 entire record in, subject to argument about its
13 significance, and whether it was actually
14 considered by the county or not.

15 But at least, at this point as to
16 Exhibit --

17 MR. BANDUCCI: 1065.

18 THE COURT: -- 1065, I'll admit the exhibit,
19 publish it to the jury. And we'll take up the
20 balance of the, call it the "P & Z record" when
21 it's offered. But I have given you at least a
22 preliminary indication of what my ruling will be.

23 (Plaintiffs' Exhibit No. 1065
24 admitted.)

25 MR. BANDUCCI: Thank you, Your Honor.

1 And for your information, Your Honor,
2 the record -- it's either going to come in as one
3 marked document, which would look something like
4 this, which would be enormously difficult to deal
5 with as a single exhibit, or it's going to be
6 coming in as we have broken it out, for purposes
7 of, as we're using it.

8 THE COURT: Well, what I may do is admit the
9 exhibit, or at least indicate that I'll admit any
10 portions of the exhibit that counsel want to make
11 reference to, and then we can deal with each
12 individual exhibit in that context, without
13 perhaps admitting the entire document.

14 MR. BANDUCCI: Thank you, Your Honor.

15 THE COURT: All right. Proceed.

16 MR. BANDUCCI: Thank you, Your Honor.

17 So this is on display. Thank you.

18 BY MR. BANDUCCI:

19 **Q.** This is the first page of the -- of the
20 petitions. We have highlighted in the "comments"
21 section here, "Use the old pen" -- "prison in
22 Boise." "Find another county."

23 Is that an example of the kind of
24 clamor you were hearing from the folks in response
25 to the conditional use permit application?

1 **A.** Yeah. It's a good example.

2 MR. BANDUCCI: Go to the next page, please.

3 Top one.

4 BY MR. BANDUCCI:

5 **Q.** The same question as to this: "Find an
6 old abandoned prison and put in" -- "and put it to
7 good use." Again, is that illustrative of the
8 public clamor that arose from the application?

9 **A.** Yes, it is.

10 **Q.** Okay.

11 MR. BANDUCCI: Next.

12 BY MR. BANDUCCI:

13 **Q.** "Boise County can't support this";
14 similar?

15 **A.** Similar.

16 MR. BANDUCCI: Next.

17 BY MR. BANDUCCI:

18 **Q.** "Find desert area between Boise and
19 Mountain Home." Did you hear that?

20 **A.** Yes.

21 MR. BANDUCCI: Go to the next page, please.

22 BY MR. BANDUCCI:

23 **Q.** "Danger to the community." Did you
24 hear that complaint leveled at Alamar?

25 **A.** All the time.

1 **Q.** And what was your understanding as to
2 why people thought that the young men and women at
3 Alamar were going to be a danger to the community?

4 **A.** The No Alamar Ranch website authors,
5 you know, did an admirable job of changing our
6 application and what we said in terms of the kids
7 that we were going to be admitting. So all of
8 that information about sexual perpetrators,
9 dangerous kids, violent kids, all of that came
10 from that website, and you can just see it repeat
11 itself through these documents.

12 MR. BANDUCCI: Next page, please.

13 BY MR. BANDUCCI:

14 **Q.** "Don't need the facility in Boise
15 County." Were there a lot of people that took the
16 position that this Alamar facility couldn't be
17 placed anywhere in Boise County?

18 **A.** Absolutely.

19 MR. BANDUCCI: Next page, please.

20 BY MR. BANDUCCI:

21 **Q.** We'll start with -- this one is kind of
22 hard to read, but --

23 MR. BANDUCCI: Go ahead, Kathy; right where
24 you are.

25 You were perfect the last time. We're

1 going to start right here.

2 BY MR. BANDUCCI:

3 **Q.** It says, "Take your jail bait back to
4 where they came from. Why should we, Boise
5 County, take care of this crap?"

6 Without expanding on the vulgar
7 language, was it your sense that a lot of the
8 opponents of Alamar viewed these disabled kids as
9 bad people?

10 **A.** Absolutely. Despite what we had
11 specifically addressed in our application, that we
12 would not be bringing kids like this
13 through -- into our program, through our admission
14 criteria -- I mean, it was very, very clear, and
15 we said it over and over within the community.
16 But we just couldn't stop this.

17 **Q.** Okay.

18 MR. BANDUCCI: Next page.

19 I'm trying to erase that, but I don't
20 think I can. I'm making it worse.

21 Well, we'll leave it like that.

22 BY MR. BANDUCCI:

23 **Q.** "Put it elsewhere. There are a lot of
24 acres out by the prison."

25 Did you hear a lot of people suggest or

1 make an analogy to these kids as inmates?

2 **A. Absolutely. Absolutely. All the time.**

3 **Q.** Okay.

4 MR. BANDUCCI: Next.

5 This is just a page of all nos. Let's
6 go to the next.

7 BY MR. BANDUCCI:

8 **Q.** Did you hear from the -- from the
9 opponents of Alamar that, really, this facility
10 just needed to go somewhere else than Boise
11 County?

12 **A. Yes. We heard that comment all the
13 time. In fact, we heard it said, frequently said,
14 "Anywhere but Boise County," "Not in our county."**

15 MR. BANDUCCI: I think we can accelerate
16 now, Kathy.

17 Let's go to the next page.

18 Let's go to the next page.

19 Let's go to the next page.

20 BY MR. BANDUCCI:

21 **Q.** This is one that -- "Let them go to
22 jail like poor people, and beat them when they're
23 young." Was there a sense that these were spoiled
24 brat, rich kids that really didn't deserve to --
25 any sort of help in recovering from whatever

1 Justice Committee in the county. They're working
2 within the community, helping participate in teen
3 programs.

4 Lauren Carlson worked with -- on a big
5 program on a teen day that they had at the Basin
6 School District. So we showed the community that
7 we were right in the middle, and we wanted to
8 participate in the community.

9 Speaking to the -- to the foundation,
10 the nonprofit foundation, the plan was to use some
11 of the proceeds from the tuition that is paid into
12 Alamar Ranch to fund certain of those activities,
13 whether that is family programs, family
14 counseling, preventive-type items in the community
15 that we lived in up there at the Idaho City, Boise
16 County community, or whether that, in an extreme
17 case, went toward funding tuition for troubled
18 teens to go to a program like Alamar.

19 **Q.** Well, why wouldn't you send them just
20 to Alamar?

21 **A.** It depends. There are circumstances
22 where that would be suitable, but -- but it's more
23 likely that the requirement, what's
24 therapeutically required is to remove that child
25 from their local area and put them in a program

1 psychological issue they might be dealing with?

2 **A. Absolutely. Because it's a
3 high-quality program and with the services that we
4 offered, it was expensive from a tuition
5 perspective.**

6 **And so the community really latched
7 onto that point, thinking, "Well, these must be
8 exclusively rich, spoiled kids that are out of
9 control." And that's where a comment like that
10 came from.**

11 **Q.** Let me ask you -- let's digress for a
12 minute. Yesterday Mr. Laney was asked questions
13 about Alamar's nonprofit foundation that you all
14 intended to set up.

15 Can you explain what Alamar was doing
16 for Boise County youth who might not be able to
17 afford the -- to attend the Alamar project.

18 **A. We heard the community bring up the
19 point of, "Well, what are you doing for our
20 community?"**

21 **And so to really be part of the
22 community from the first day, while we're going
23 through this very difficult process with the
24 community, we have our staff -- Amy Jeppesen,
25 Lauren Carlson -- being part of the Juvenile**

1 that's away from some of the troubles that they're
2 in. And so it's really more productive to send
3 the child away, further away from home.

4 **Q.** So actually, then, Alamar would pay
5 money for a Boise youth to go to another
6 residential treatment center outside of Boise
7 County?

8 **A. Yes. That was -- that was part of the
9 design of the -- of the effort with the
10 foundation.**

11 **Q.** So this wasn't just giving them a free
12 slot that may be empty --

13 **A. No.**

14 **Q.** -- at Alamar?

15 **A. No, not at all.**

16 **Q.** Okay.

17 MR. BANDUCCI: Let's drop -- we can come
18 back to these. I think we've got a good sense of
19 this.

20 Can the witness be shown Exhibit 1022?

21 This also, Your Honor, is a part of the
22 Planning and Zoning record. It's been stipulated
23 as authentic. We would move its admission.

24 MR. BRASSEY: No objection.

25 THE COURT: 1022, did you say?

1 MR. BANDUCCI: Yes.

2 THE COURT: All right. 1022 will be
3 admitted and published to the jury.

4 (Plaintiffs' Exhibit No. 1022
5 admitted.)

6 BY MR. BANDUCCI:

7 **Q.** Now, when the Green Ranch was the site
8 of choice for Alamar, was there a decision made by
9 Osprey to walk away from an agreement between
10 Osprey and the Wilderness Ranch Fire District
11 relative to the construction of a firehouse that
12 would have used Osprey property?

13 **A.** Yes, there was.

14 **Q.** All right. Let's --

15 MR. BANDUCCI: If we can enlarge the body of
16 this. There we go.

17 BY MR. BANDUCCI:

18 **Q.** And this is from the Osprey Property
19 Owners Association, and it's to Mr. Wolford. We
20 can go back and verify that. Mr. Wolford is the
21 Planning and Zoning administrator at Boise County.

22 It says, "We are in receipt of the
23 attached letter from Amy Jeppesen of Alamar Ranch
24 to John McCarthy of the Wilderness Ranch Volunteer
25 Fire District. In it, Ms. Jeppesen makes

1 reference to making a significant contribution to
2 the fire district, to enable the construction of a
3 firehouse in Osprey Subdivision."

4 Is that so?

5 **A.** That's so.

6 **Q.** All right. "While it is true that the
7 OPOA" -- which is the Osprey Property Owners
8 Association -- "has had discussions with
9 Wilderness Ranch Fire District in the past
10 regarding a firehouse to be located on OPOA
11 property within Osprey Subdivision, an agreement
12 has not been reached, nor a lease agreement
13 signed.

14 "Because we foresee Alamar Ranch
15 creating a significant increase in the number of
16 responses for emergency services to their
17 facility, and therefore an increased amount of
18 traffic through our community, we do not believe
19 it is in the best interest of our members to allow
20 an agreement for a firehouse in our neighborhood
21 to proceed.

22 "Please be advised that should the
23 Alamar Ranch CUP be approved and their residential
24 treatment facility allowed to proceed as planned,
25 the OPOA will not enter into any type of lease

1 agreement allowing the construction of a firehouse
2 on our property. If a condition of approval for
3 the Alamar Ranch CUP is to provide a firehouse,
4 they will need to provide a location on their site
5 or acquire another parcel."

6 Did I read that correctly?

7 **A.** Yes.

8 **Q.** All right. And the distance from
9 Wilderness Ranch Firehouse to Osprey, or to where
10 Alamar was going to be, is the same distance;
11 right?

12 **A.** That's right.

13 **Q.** And did the Osprey Subdivision members
14 raise the response time between Wilderness Ranch
15 Fire District to Alamar as an issue in the
16 application process?

17 **A.** Absolutely.

18 **Q.** And yet, this says they won't provide a
19 firehouse right there at Osprey that could also
20 serve themselves as well as Alamar.

21 MR. BRASSEY: Judge, I object. It's
22 leading.

23 THE COURT: Sustained. Let's back off from
24 leading questions, Mr. Banducci.

25 MR. BANDUCCI: Thank you, Your Honor.

1 Let's go to the next document.

2 Actually, hang on just one second,
3 Kathy. I think we can drop that. We'll come back
4 to that.

5 BY MR. BANDUCCI:

6 **Q.** As a result of the problems with Green
7 Ranch and the outcry that you've just described,
8 what did Alamar decide to do?

9 **A.** We were -- it was very important, from
10 the process that we're required to follow with
11 filing a conditional use permit, that we meet with
12 all the different various agencies to make them
13 understand our program and to, if there are any
14 issues that are raised, to mitigate those issues.

15 So we began meeting with every one of
16 the county agencies, to make sure that they
17 understood our program, that they weren't taking
18 it -- taking their understanding from the
19 community information that was flying around. And
20 so, we met with them directly and worked through
21 the issues that they had related to our
22 application.

23 **Q.** Okay. And in that process, did you
24 also begin to look for other property?

25 **A.** We did. You know, the -- we were

1 pressing ahead full steam on getting the
2 application approved at the Green Ranch, but at
3 the same time, given the amount of emotion in the
4 community, we felt like, you know, we needed to
5 look a little bit more. And that's when the Klam
6 Ranch property was made available to Erik Oaas and
7 Steve Laney.

8 **Q.** Okay.

9 MR. BANDUCCI: Kathy, if we can go back to
10 the one -- 1181-13, which is already in evidence.
11 All right?

12 And I'm going to see if I can do this
13 again, and maybe erase it.

14 BY MR. BANDUCCI:

15 **Q.** But again, we had --

16 MR. BANDUCCI: Nope, that's not it.

17 BY MR. BANDUCCI:

18 **Q.** So we have Green Ranch here; right?

19 **A.** Correct.

20 **Q.** We have Osprey here?

21 **A.** That's correct.

22 **Q.** And we have Idaho 21 here?

23 **A.** Correct.

24 **Q.** And Klam Ranch is here; correct?

25 **A.** Yeah. That's pretty close.

1 **A.** That's right.

2 **Q.** Okay. And would it be fair for me to
3 draw the location where you intended to put the
4 facilities, if I drew it basically in this area
5 right here?

6 **A.** Yes. That's right.

7 **Q.** Okay. And again for purposes of
8 orientation, this here is Highway 21; correct?

9 **A.** Correct.

10 **Q.** Okay. As the crow flies, how far is
11 that, roughly, from Osprey Subdivision?

12 **A.** I would estimate it would be a little
13 less than a mile.

14 **Q.** Okay.

15 THE COURT: When you say -- are you talking
16 about the area proposed for development on this
17 ranch?

18 MR. BANDUCCI: Yes.

19 THE COURT: Not the roadway.

20 MR. BANDUCCI: No. The area proposed -- the
21 actual development of Osprey -- excuse me -- the
22 actual development of Alamar, Your Honor, its
23 distance from the boundaries of Osprey
24 Subdivision.

25 THE COURT: And that is a little less than

1 **Q.** Okay. Well, it's as good as I can do
2 with my -- all right.

3 So a decision was made to move from the
4 Green Ranch location, across the highway up the
5 bluff and back to the Klam Ranch property;
6 correct?

7 **A.** That's right.

8 **Q.** Okay. All right.

9 MR. BANDUCCI: Now -- I'll be darned.

10 Can the witness be shown

11 Exhibit 1181-12?

12 Does the court -- and we would move its
13 admission.

14 MR. BRASSEY: No objection.

15 THE COURT: This is pages 12 -- or just page
16 12?

17 MR. BANDUCCI: This is just page 12,
18 Your Honor.

19 THE COURT: There is no objection. That
20 page will be admitted.

21 (Plaintiffs' Exhibit 1181, page 12,
22 admitted.)

23 BY MR. BANDUCCI:

24 **Q.** And this is a closer perspective on the
25 Klam Ranch plateau; correct?

1 one mile?

2 THE WITNESS: That's correct.

3 MR. BANDUCCI: Okay. Thank you.

4 BY MR. BANDUCCI:

5 **Q.** Now, when you moved the program to Klam
6 Ranch, did you also reduce the student population?

7 **A.** We did. There -- there was a lot of
8 commentary from the community about the size of
9 the program being 108, and we felt it was
10 appropriate to reduce the number to 72. It was a
11 number that still worked programmatically from a
12 therapeutic perspective, as well as from a, you
13 know, from a business perspective, and so we made
14 that change in -- in our application on Klam
15 Ranch, yes.

16 **Q.** Okay. And we'll look at the Klam Ranch
17 application in just a moment.

18 But how was Klam Ranch acquired?

19 **A.** We acquired the property by using an
20 LLC that was created named YTC, LLC.

21 **Q.** All right. And do you remember how
22 much YTC paid for property?

23 **A.** Approximately \$1.3 million.

24 **Q.** Okay. And how many acres total is the
25 piece?

1 **A. The piece is 123 acres.**
 2 MR. BANDUCCI: Can the witness be shown
 3 Exhibit 1200, please? Court and counsel, but not
 4 displayed.
 5 THE COURT: Is there any objection,
 6 Mr. Brassey?
 7 MR. BRASSEY: No, Judge. I think we have
 8 stipulated to this.
 9 THE COURT: Exhibit 1200 is admitted and
 10 published to the jury.
 11 (Plaintiffs' Exhibit No. 1200
 12 admitted.)
 13 BY MR. BANDUCCI:
 14 **Q.** Is this the warranty deed that shows
 15 that the interest in Klam Ranch is being
 16 transferred from Grimey (phonetic) Investors, the
 17 original owner --
 18 **A. That's correct.**
 19 **Q.** -- to WTC -- or excuse me, YTC?
 20 **A. YTC, that's correct.**
 21 **Q.** All right. Thank you. All right.
 22 Now, what did you think would happen
 23 once you moved the Alamar Ranch operation from the
 24 Green Ranch to the Klam Ranch, as far as the
 25 public's position, specifically the Osprey

1 landowners' position?
 2 **A. We were, again, pretty excited to have**
 3 **this piece of property, because as you can tell**
 4 **from that photo, it really is a very isolated**
 5 **piece of property. It was large. It had many of**
 6 **the same amenities that the Green Ranch did.**
 7 **So programmatically, it was going to**
 8 **work quite well for us. And yet it would isolate**
 9 **our program, our traffic, glare; just physically,**
 10 **the distance would isolate the program. And we**
 11 **believed it would be received very well in the**
 12 **community, and really answer almost every concern**
 13 **that had been raised.**
 14 MR. BANDUCCI: Okay. Can the witness be
 15 shown Exhibit 1029, please.
 16 MR. BRASSEY: I think it's already in.
 17 THE COURT: 1029?
 18 MR. BANDUCCI: I think it's already in,
 19 Your Honor.
 20 All right.
 21 BY MR. BANDUCCI:
 22 **Q.** Is this the conditional use permit that
 23 was filed for the Klam Ranch operation of Alamar
 24 in April 2007?
 25 **A. Yes, it is.**

1 **Q.** Okay. Now, who did you work with at
 2 Planning and Zoning for Boise County relative to
 3 this application?
 4 **A. The administrator was Craig Wolford.**
 5 **Q.** Okay. And was Mr. Wolford the
 6 administrator the entire time throughout the
 7 Alamar application process?
 8 **A. He was the administrator through the**
 9 **P & Z hearing, but not after that.**
 10 **Q.** And why not?
 11 **A. He became ill and was forced to retire.**
 12 **Q.** And who replaced him?
 13 **A. Patti Burke.**
 14 **Q.** Okay. Now, when you were dealing with
 15 Mr. Wolford, did he explain to you what you needed
 16 to do to obtain a conditional use permit?
 17 **A. Yes, he did. Of course, we knew**
 18 **through their ordinance what was required, but --**
 19 **but it also is a -- required to work directly with**
 20 **the administrator to make sure that -- that --**
 21 **it's quite an involved process for a project like**
 22 **ours, and so to make sure that everything was**
 23 **addressed up front in that application. So, yes,**
 24 **we did.**
 25 **Q.** Okay. And what did you understand you

1 needed to do to have a successful application for
 2 a conditional use permit?
 3 **A. One of the most -- it's written in the**
 4 **ordinance, and also the advice given to us by**
 5 **Mr. Wolford was one of the most important things**
 6 **in our application process is to make sure that**
 7 **the various county services that are impacted by**
 8 **our project be, you know, be consulted with, to**
 9 **make sure that they have, you know -- that they're**
 10 **considered and that they have no objections to the**
 11 **project.**
 12 **Q.** And why is that important?
 13 **A. Well, that's very important because**
 14 **they're the experts in the area. You know,**
 15 **Wilderness Ranch Fire District is the expert. The**
 16 **Sheriff's Office is the expert in their functions.**
 17 **And so a lot of weight is given to their feedback**
 18 **to the council.**
 19 **Q.** Okay. So could you give an -- just as
 20 an example of your dealings with the Wilderness
 21 Ranch Fire District, how that interactive process
 22 works so that the Wilderness Ranch Fire District
 23 can report back to Planning and Zoning and say
 24 either, "We oppose" or, "We don't oppose"?
 25 **A. Yes. We -- Mr. Wolford gave us the --**

1 the head of the department or agency, which is
2 John McCarthy, and so we -- and he also provided
3 McCarthy our application, as he is required to do.

4 So we met with McCarthy and his -- and
5 his larger staff and began very frequent meetings.
6 The fire district was probably one of the biggest
7 efforts, to make sure that we were building a plan
8 that worked for them. So we had frequent
9 meetings, working with our engineering team and
10 with their requirements and the various fire codes
11 that they represent, to make sure that our design
12 was -- was done in cooperation with that agency,
13 to be completed.

14 **Q.** So what precisely was Wilderness Ranch
15 Fire District's area of responsibility as it
16 related to Alamar?

17 **A.** Yeah. For our project, it was pretty
18 wide. It was the emergency ingress and egress;
19 so, the roads and how the roads were designed.

20 It was -- they were responsible for
21 wildfire, because of the rural nature of the
22 community. So we had to make sure that, you know,
23 those issues were taken care of.

24 They're responsible for building
25 safety, and so that dealt with sprinkler systems

1 inside the building, and the overall building
2 design and construction.

3 They're responsible for making sure
4 that there is adequate water on-site, in the event
5 of emergency, that the trucks can hook up to a
6 water source and be able to fight the fire.

7 So those were the types of things we
8 worked with them.

9 **Q.** Okay. And did they also consult with
10 the Idaho State Fire Marshal with respect to this
11 project?

12 **A.** Absolutely. It's a small -- the
13 Wilderness Ranch Fire District is, you know,
14 they're a quite well-run organization, and by far
15 and away the most organized in Boise County. Yet,
16 they do, for projects like this, consult other
17 agencies to get more expertise on it.

18 **Q.** Okay. And what was the code or the
19 codes that were used in assuring that Alamar
20 complied with safety standards?

21 **A.** The codes that were employed were the
22 International Fire Code, another code called UWI,
23 Wild- -- it's Urban Wildland Interface Code. And
24 then embedded in that is the fire-wise design
25 element, that they wanted us to make sure that our

1 property was constructed to.

2 **Q.** Okay. Now, other than Wilderness Ranch
3 Fire District, did you also work with the school
4 district?

5 **A.** Yes. The school district was another
6 important one to address, because of the nature of
7 our program.

8 **Q.** Okay. And very, very quickly, can you
9 just explain to the jury what Alamar agreed to do
10 relative to concerns raised by the school
11 district?

12 **A.** The school district was concerned about
13 the special education nature of the private school
14 that we were going to have on-site, and the
15 oversight that the federal law requires them to
16 have over it. And they didn't have the resources
17 to do that oversight.

18 So we had to make sure that they
19 understood our program and how it was managed; and
20 then, in addition to that, guarantee them
21 effectively that if for -- some unforeseen
22 circumstance arise, that they need to do something
23 on our behalf, that we will -- we will compensate
24 for them. And so that was an agreement we put in
25 place that resulted in a condition.

1 **Q.** Okay. Now, did you have similar
2 meetings with the ambulance?

3 **A.** We did.

4 **Q.** Similar meetings with county roads?

5 **A.** Yes.

6 **Q.** Similar meetings with the Emergency
7 Services?

8 **A.** Yes.

9 **Q.** Similar meetings with the Sheriff's
10 Department?

11 **A.** Yes.

12 **Q.** Okay. Now, in connection with these
13 discussions, did you also hire consultants to
14 prepare studies to evaluate the impact of Alamar
15 on the county and its services?

16 **A.** Yes, we did. We were advised that we
17 needed to provide a traffic study, an economic
18 impact study, and we also conducted a study on the
19 impact on property values, and an impact on county
20 services.

21 **Q.** All right.

22 MR. BANDUCCI: Can the witness be shown,
23 without showing to the jury, Exhibit 1203?

24 BY MR. BANDUCCI:

25 **Q.** Is this the study submitted by Alamar

1 that evaluated the impact, the financial impact on
 2 of Alamar County -- the Alamar project on the
 3 county and also the impact of Alamar on emergency
 4 services?
 5 **A. Yes.**
 6 MR. BANDUCCI: We would move its admission,
 7 Your Honor.
 8 THE COURT: Any objection?
 9 MR. BRASSEY: Your Honor, my understanding
 10 is this was supplied to Planning and Zoning?
 11 THE WITNESS: Yes.
 12 MR. BRASSEY: No objection.
 13 THE COURT: All right. 1203 will be
 14 admitted --
 15 MR. BANDUCCI: All right.
 16 THE COURT: -- and published to the jury.
 17 (Plaintiffs' Exhibit No. 1203
 18 admitted.)
 19 THE COURT: Counsel, we're going to take a
 20 break in about ten minutes, just so you'll know.
 21 MR. BANDUCCI: Thank you, Your Honor.
 22 Appreciate it.
 23 BY MR. BANDUCCI:
 24 **Q.** Now, this is a report prepared by Peter
 25 R. Crabb. He is a Ph.D. at Northwest Nazarene

1 University; is that correct?
 2 **A. That's right.**
 3 **Q.** And he is in the School of Business and
 4 Economics; is that right?
 5 **A. Yes.**
 6 **Q.** Okay. And just very, very generally,
 7 what -- what did Dr. Crabb do with this report?
 8 **A. He studied the economic impact that**
 9 **Alamar Ranch would have on the county. He studied**
 10 **the impact that it would have on property values,**
 11 **and he studied the impact that it would have on**
 12 **emergency services of Boise County.**
 13 MR. BANDUCCI: Now, can the witness be shown
 14 Exhibit 1037?
 15 BY MR. BANDUCCI:
 16 **Q.** Is this, Exhibit 1037, the traffic
 17 impact study that was filed by Alamar Ranch with
 18 the Planning and Zoning Department in support of
 19 its conditional use permit application?
 20 **A. Yes.**
 21 MR. BANDUCCI: We would move its admission.
 22 MR. BRASSEY: No objection.
 23 THE COURT: What was the exhibit number
 24 again?
 25 MR. BANDUCCI: It is 1037.

1 THE COURT: 1037 will be admitted and
 2 published to the jury.
 3 (Plaintiffs' Exhibit No. 1037
 4 admitted.)
 5 BY MR. BANDUCCI:
 6 **Q.** Okay. And this -- this is a traffic
 7 impact study prepared by Stanley Consultants; is
 8 that right?
 9 **A. That's right.**
 10 **Q.** Okay. And again, tell the jury just
 11 generally what was done with this traffic impact
 12 study, what it addressed.
 13 **A. It addresses the vehicle traffic,**
 14 **vehicle counts that Alamar Ranch would add to the**
 15 **Highway 21 corridor, the intersections there. It**
 16 **addressed things like, you know, what needed to be**
 17 **improved in the intersection to make it safe,**
 18 **like, you know, knocking down weeds and things**
 19 **like that.**
 20 **Q.** Okay. Now --
 21 MR. BANDUCCI: I probably did these in the
 22 wrong order. Could you put 1203 back up, Kathy,
 23 please?
 24 BY MR. BANDUCCI:
 25 **Q.** Now, in the Crabb study, I think you've

1 already mentioned that the -- that Dr. Crabb
 2 evaluated Alamar Ranch's impact on emergency
 3 services. That would include the
 4 Sheriff's Office?
 5 **A. That would.**
 6 **Q.** Okay. With respect to Dr. Crabb's
 7 study, did he find that the impact of Alamar on
 8 the Sheriff's Office, in terms of calls made to
 9 the Sheriff's Office for runaways or other
 10 problems that might be referred to the Sheriff's
 11 Department, did he find that Alamar's impact would
 12 be very similar to the other residential treatment
 13 center in Boise County?
 14 MR. BRASSEY: Judge, I object to form. It's
 15 leading.
 16 THE COURT: Sustained.
 17 MR. BANDUCCI: Okay.
 18 BY MR. BANDUCCI:
 19 **Q.** Can you tell the jury what Dr. Crabb's
 20 findings were in that regard, as compared to the
 21 experience with Project PATCH?
 22 **A. Yes. The impact on the Sheriff's**
 23 **Department would be minimal, minimal, just as the**
 24 **case of Project PATCH was.**
 25 **Q.** Now, Project PATCH, where is that

1 located?

2 **A.** Project PATCH is located in the Garden
3 Valley area, very near the little town of Crouch.

4 **Q.** And did you meet with the folks from
5 Project PATCH?

6 **A.** Yes. We knew them very well. We
7 conducted benchmarking exercises, "benchmarking"
8 meaning visiting, looking at their program,
9 understanding things that they do well and
10 learning from them. And then we just had a real
11 good managerial relationship with their director.

12 **Q.** Approximately how many students are
13 they licensed for? Do you know?

14 **A.** I'm not sure. I think it's around 40.

15 **Q.** Okay. And did you talk to them about
16 problems that they had had historically with kids
17 running off the property?

18 **A.** Yeah. That was all part of our -- our
19 benchmarking activities in terms of, you know, the
20 impact that that would have on the community, how
21 often that had occurred. And it just was very few
22 and far between.

23 **Q.** Did you also talk with the sheriff of
24 Boise County about that issue?

25 **A.** Yes, we did. Sheriff Drew Bodie, as

1 part of our regular meetings with the county
2 services, we asked him directly about Project
3 PATCH, and he couldn't recall a single instance
4 where the Sheriff's Office had responded to an
5 emergency there.

6 **Q.** And as far as the kids that were going
7 to be admitted to Alamar, in your view, were these
8 basically the same kinds of kids that would be
9 admitted to Alamar's, that were admitted to
10 Project PATCH?

11 **A.** Very similar.

12 **Q.** Okay. Now, as a result of your
13 efforts, did all of the county agencies that we
14 have discussed here take the position that they
15 would not object to Alamar, based on the
16 agreements and conditions that you had reached
17 with them?

18 **A.** That's right. We had successful
19 agreements with every county service, so, yeah,
20 those all -- those were all in order, just as we
21 had intended.

22 **Q.** Is that important?

23 **A.** Exceptionally important. As we were
24 advised by Mr. Wolford, and you could tell by --
25 in -- within the emergency code, no objection from

1 those county services is a strong indication that
2 the application ought to be approved.

3 **Q.** Okay.

4 MR. BANDUCCI: Now, can the witness be shown
5 page 10 of Exhibit 1029? Exhibit 1029 is -- it's
6 in admission -- in evidence. Thank you.

7 THE COURT: 1029?

8 MR. BANDUCCI: Yes.

9 BY MR. BANDUCCI:

10 **Q.** This is a page out of the conditional
11 use permit application?

12 **A.** That's right.

13 **Q.** And this is "Alamar Ranch at a Glance";
14 is that right?

15 **A.** That's right.

16 **Q.** Okay.

17 MR. BANDUCCI: I hope that copy is better
18 than mine.

19 Let's -- Kathy, if we could bring out
20 the very -- the top lined portion of that exhibit.

21 All right. Good.

22 BY MR. BANDUCCI:

23 **Q.** And this is just kind of the general
24 information, parcel size, maximum number of
25 students, employees -- now, those are the people,

1 including psychiatrists, psychologists, et cetera?

2 **A.** That's right. It's the direct
3 residential staff, yeah, everybody.

4 **Q.** Okay. Therapist-to-student ratio; can
5 you explain what that is to the jury?

6 **A.** Yeah. One -- one -- therapist to
7 student that's there, and that's a very important
8 ratio, something that the industry tracks, and is
9 a good example of a high-end or high-quality
10 program.

11 **Q.** Teacher-to-student ratio, that's one
12 teacher for every 12 students?

13 **A.** That's right. That represents the
14 private school that we have there.

15 **Q.** Okay. And what is the direct care
16 staff referenced there?

17 **A.** The direct care staff is when you add
18 in the residential advisor. So within every one
19 of the lodges, there is required, and just
20 programmatically, that somebody be present all the
21 time. And so when you bring in everybody who is
22 kind of touching the kids on a daily basis from a
23 residential and therapeutic nature, that's what
24 that number refers to.

25 **Q.** Okay.

1 MR. BANDUCCI: Now, let's go to the next
2 section, Kathy.

3 BY MR. BANDUCCI:

4 **Q.** And these are the admissions criterias;
5 is that right?

6 **A.** That's right.

7 **Q.** All right. And I think we have already
8 talked about this, but let's take just a moment.

9 This particular block is split into two. One is,
10 it says it will treat certain types, and will not
11 accept other individuals of another type.

12 Why did you include this in "Alamar
13 Ranch at a Glance"?

14 **A.** The who we will accept and who we will
15 not accept is at the heart of the admissions
16 process, the heart of our business. It's just
17 critically important.

18 And this is the piece that was being
19 just commonly misunderstood throughout the entire
20 community, despite our efforts to educate
21 everybody. And so we just wanted to put this up
22 in front of every -- at every opportunity we
23 could.

24 **Q.** Okay.

25 MR. BANDUCCI: One last section, and then I

1 think, Your Honor, it would be a good breaking
2 point.

3 THE COURT: Yes.

4 BY MR. BANDUCCI:

5 **Q.** Let's go to "licensing accreditation."

6 Let's just focus on the NATSAP, JCAHO, and NAAS.
7 What are those, and very quickly for the jury,
8 what do they --

9 **A.** NATSAP is a national organization that
10 is -- that programs like Alamar Ranch would belong
11 to, and participate in studies.

12 JCAHO is an accrediting body that is a
13 very difficult accreditation to achieve, but is
14 kind of a mark of excellence on your program.

15 And then the NAAS is the accredited
16 body that would be accrediting the private school
17 that we have there.

18 **Q.** Okay.

19 MR. BANDUCCI: Let's go just a few more
20 spaces here, Kathy.

21 This is the required staff credentials
22 requiring licensure, certification in the State of
23 Idaho.

24 And then, Kathy, I think the last
25 couple of sections.

1 BY MR. BANDUCCI:

2 **Q.** This is the impact on local emergency
3 responders. Is this what Dr. Crabb's report
4 concluded?

5 **A.** Yes, it is, exactly.

6 **Q.** Can you take the jury through that?

7 **A.** Yeah. From the Sheriff's Department
8 perspective, they -- the study and the Sheriff's
9 Department agreed that the impact would be slight.

10 From a fire perspective, with the
11 design that we put in place, we -- we had -- we
12 would have a slight impact, especially given
13 the -- this is the number of calls to the site.
14 The impact would be slight, yet doesn't -- I mean,
15 you know, we put in a lot of requirements in
16 place, based on what the fire department asked
17 for. But still, even with those requirements, the
18 impact would be slight.

19 And then, on the ambulance service, again,
20 very slight impact.

21 **Q.** And last, but not least, the
22 anticipated economic impact, if you would explain
23 that to the jury. Is this part of Dr. Crabb's
24 study, also?

25 **A.** It is directly from Dr. Crabb's study.

1 And with the 60 to 90 new jobs created in Boise
2 County, not total jobs but new jobs created, the
3 spending impact would be roughly \$100,000 to
4 \$1.5 million.

5 MR. BANDUCCI: All right. This is a good
6 place to break, Your Honor.

7 THE COURT: All right.

8 Ladies and gentlemen, we'll take a
9 15-minute recess.

10 I'll again admonish you not to discuss
11 the case among yourselves or with anyone else, nor
12 should you form or express any opinions about the
13 case until it is submitted to you.

14 We'll be in recess for 15 minutes.

15 (Recess.)

16 (Jury present.)

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

19 Mr. Tverdy, I'll remind you that you
20 are still under oath.

21 And, Mr. Banducci, you may resume your
22 direct examination.

23 MR. BANDUCCI: Thank you, Your Honor.

24 Mr. Tverdy, I'm going to show you
25 Exhibit 1036.

1 THE COURT: Has that been admitted?
 2 MR. BANDUCCI: No, Your Honor, it has not.
 3 BY MR. BANDUCCI:
 4 **Q.** Mr. Tverdy, is this the presentation
 5 that was provided at the Planning and Zoning
 6 Commission meeting on August 2nd, 2007?
 7 **A.** Yes, it is.
 8 MR. BANDUCCI: We'd move its admission,
 9 Your Honor.
 10 MR. BRASSEY: No objection.
 11 THE COURT: Exhibit 1036 will be admitted
 12 and published to the jury.
 13 (Plaintiffs' Exhibit No. 1036 admitted
 14 and published.)
 15 BY MR. BANDUCCI:
 16 **Q.** My purpose in showing this to you,
 17 Mr. Tverdy -- I'd like to go to page 51. This is
 18 a rather lengthy document. And what I'd like to
 19 have you do, Mr. Tverdy, is take the jury through
 20 some of these conditions so that they understand
 21 what you -- what work you did and what agreements
 22 you reached with the various county agencies.
 23 So let's go to the next page, please.
 24 This is really -- has to do with no changes
 25 occurring unless in writing. So let's move to the

1 the end of it, it says, "In the event that it
 2 does, for some unknown reason, we will compensate
 3 the school district for whatever services they
 4 performed on our behalf.
 5 **Q.** Next slide.
 6 **A.** This particular condition is a
 7 requirement to ensure that any new development,
 8 not just a residential treatment center, but any
 9 new development, residential, whatever, has
 10 appropriately helped support the school district
 11 through growth. So what we agreed to with the
 12 school district here is that with our new
 13 employment in the county, if any of those
 14 employees' children now attend the Basin School
 15 District, that we will write a one-time, \$500
 16 check to the school district to compensate them
 17 for the additional cost of educating that child.
 18 **Q.** Okay. Next.
 19 **A.** This condition was an important one
 20 that encapsulated our work with Wilderness Ranch
 21 Fire District. So what we're committing to here
 22 is that we will improve the -- number one, we will
 23 improve the existing road. We'll provide a
 24 secondary accessible, suitable emergency ingress
 25 and egress, so a secondary in and off the

1 next one.
 2 Boise County would have the right to
 3 revoke the conditional use permit if they found
 4 Alamar failing to abide by any of the conditions
 5 of the approval; correct?
 6 **A.** Correct.
 7 **Q.** Let's go to the next one. All right.
 8 Now, this first one we're going to stop
 9 here at for a while is relative to the Basin
 10 School District. Can you tell them what this
 11 condition and, actually, the next condition slide
 12 described?
 13 **A.** Yes. I spoke briefly about this
 14 earlier. This is the -- the response that the
 15 Basin School District agreed to, which was they're
 16 concerned about the IDEA, the Individuals with
 17 Disabilities Education Act of 2004, where it is
 18 required that they do this process called "Child
 19 Find." And it just makes sure that children with
 20 disabilities are being -- it has an appropriate
 21 individual education plan.
 22 And so what this document or these
 23 words here say is that we will conduct that
 24 exercise entirely on our own, and it will not
 25 impact the school district. In the event -- at

1 property; will provide fire sprinklers for all
 2 buildings; will provide water storage and a
 3 delivery system for those sprinkler systems that
 4 are -- it's separate from the potable water
 5 solution. In other words, the storage facility
 6 did that --
 7 **Q.** How large was that storage tank going
 8 to be?
 9 **A.** The calculations that we had done with
 10 the district for our building sprinklers and for
 11 their ability to hook up to it with their fire
 12 trucks was a 300,000-gallon tank.
 13 **Q.** Okay. Keep going.
 14 **A.** And then, No. 5 is implementing the
 15 Firewise practices in our landscaping and building
 16 design.
 17 **Q.** Okay. Next.
 18 This is a really long one, but let me
 19 have you focus on this reference right here to a
 20 37-home subdivision and what the agreement was
 21 with Boise County.
 22 **A.** It was commonly accepted that Alamar
 23 Ranch would have a similar impact as a 37-home
 24 subdivision. So in this particular condition, we
 25 committed that Alamar Ranch would not have any

1 impact beyond a 37-home subdivision, and if it did
2 that, we would compensate the county for those
3 additional services.

4 And so it's a complicated set of words
5 here to deliver that we would meet annually to
6 review the number of calls that Alamar Ranch
7 generated by emergency services, we would compare
8 that to a representative 37-home subdivision, and
9 if we were greater than that, we would pay the --
10 we would compensate the county.

11 **Q.** And emergency services included what?

12 **A.** Ambulance, fire, and sheriff.

13 **Q.** Thank you. Let's go to the next.

14 **A.** This particular condition was that we
15 have an emergency management plan and that we
16 review that annually with our -- with the county's
17 emergency management personnel that dealt with, as
18 you can see, water, food, linens, pharmaceuticals,
19 kind of general operating stuff.

20 **Q.** Next. You can skip that one. You can
21 skip that one. We can skip that.

22 Let's talk about this one. No. 12.

23 **A.** No. 12, we volunteered to designate an
24 area that's clear on our property for -- and is
25 suitable for a Life Flight landing zone, and so --

1 and it was important to the community because,
2 really, in that particular area there's really not
3 a good location for this to occur, so we offered
4 that we would do this on our site so we would
5 identify a landing pad.

6 **Q.** There has been some discussion in
7 questions by someone about a helipad. Does this
8 proposed condition propose a helipad?

9 **A.** No, it does not. What we were
10 proposing and what we designed and got approved
11 with the emergency services departments, fire,
12 sheriff, and ambulance, was, you know, our layout,
13 our facility, was having a big soccer field on it,
14 and so we would designate an area out there that
15 would be maintained year round for a helicopter to
16 land in.

17 **Q.** Okay. Next.

18 Now, this is a rather long condition,
19 as well. But tell the jury, if you would, please,
20 about this advisory committee that's referenced
21 here.

22 **A.** There was so much emotion and concern
23 amongst the community that once approved that
24 Alamar Ranch would drift away from the admissions
25 criteria or the operating criteria that we had

1 presented to the county, so we volunteered to
2 create an advisory committee with members from the
3 county on that board, on that committee, that
4 would meet, I think it was quarterly, to review
5 the program at Alamar Ranch and to provide -- to
6 be an advisory committee to Alamar Ranch
7 management team.

8 **Q.** Next. All right. I think that's the
9 end of the slide section.

10 Thank you, Kathy.

11 Now, as a result of moving Alamar
12 across the road, as a result of obtaining the
13 agreement with the county agencies and agreement
14 to these conditions, tell the jury what impact
15 that had on the opposition.

16 **A.** Really, there was no -- no impact at
17 all. The same feedback, the same, you know,
18 communication and activity amongst the No Alamar
19 team continued going forward.

20 **Q.** Tell the jury about the road signs that
21 were posted.

22 **A.** Road signs was -- is an example of the
23 activity that the No Alamar Ranch group did. So
24 they organized people to put up signs, illegal
25 signs, I might add, along the Highway 21 corridor

1 that were, you know, big banners that just put out
2 there "No Alamar Ranch."

3 **Q.** Okay.

4 **A.** There's probably three or four of those
5 right near the property and up the corridor.

6 **Q.** Okay. Now, did you attempt to have
7 another meeting, another public meeting with
8 interested citizens in mid-2007, roughly,
9 three months after you filed the Klam Ranch
10 application?

11 **A.** We did. We thought it was important
12 that we have one more opportunity prior to our
13 Planning and Zoning hearing to talk about and to
14 try to correct the record as to the types of kids
15 that we were going to have in our program. So we
16 rented the Grange Hall in Idaho City, advertised
17 it in the paper, and created a presentation that
18 went through, had numerous people from Alamar
19 Ranch speak and to present the case for what
20 Alamar Ranch is to the community.

21 **Q.** Could you describe to the jury how that
22 meeting went.

23 **A.** Well, it was, unfortunately, just like
24 every other community meeting that we had up
25 there, in that it was the same people that

1 **attended, the same hostile kind of inappropriate**
 2 **behavior in terms of interrupting and shouting**
 3 **stuff. It just was an environment where as much**
 4 **as we tried, they just didn't want to hear what we**
 5 **had to say.**

6 **Q.** Do you recall during the discussion or
 7 the meeting whether anyone from the Alamar side of
 8 the discussion was asked about the need for 72
 9 students in the population?

10 MR. BRASSEY: Judge, I object. I think it
 11 calls for hearsay. And we can't identify who the
 12 speaker is.

13 THE COURT: Well, I think the witness --
 14 just answer the question yes or no. Do you recall
 15 such a request being made?

16 THE WITNESS: Yes.

17 BY MR. BANDUCCI:

18 **Q.** And do you recall who from Alamar
 19 addressed that topic?

20 **A. Yes. Erik Oaas.**

21 **Q.** Okay. And you were there when he
 22 addressed that question?

23 **A. Yes.**

24 **Q.** What did he say?

25 MR. BRASSEY: Judge, I object. I think

1 Mr. Oaas needs to respond to that question to be
 2 answered in that fashion. It's hearsay.

3 MR. BANDUCCI: Not being offered for the
 4 truth of the matter stated, Your Honor.

5 THE COURT: Ladies and gentlemen, I warned
 6 you there would be a time when I would instruct
 7 you that you could consider evidence for a limited
 8 purpose. This is one of those times. The
 9 statement that's being attributed to another
 10 individual, you're not to consider whether it was
 11 true or not true because that individual is not
 12 here and not subject to cross-examination,
 13 although, presumably, they may testify at a later
 14 point in time.

15 My understanding, though, is that the
 16 evidence is being offered only to show what
 17 information was conveyed to the decision-makers
 18 and only for that limited purpose. So you may
 19 consider the statements now being attributed by
 20 Mr. Tverdy to this other individual for what
 21 impact it had upon those who heard the comments in
 22 terms of their decision-making on this
 23 application, but you are not to consider whether
 24 it's true or not true, accurate or inaccurate.

25 With that limiting instruction, I'll

1 allow you to go ahead and proceed.

2 THE WITNESS: Mr. Oaas's answer was that
 3 we -- that our therapeutic design, our financial
 4 business plan was all founded on 72 and that we
 5 needed to have 72 residents.

6 BY MR. BANDUCCI:

7 **Q.** Was that the first time you heard that
 8 question asked?

9 **A. No. We were asked that frequently in**
 10 **different settings when we were meeting with**
 11 **people in their homes, when we -- it just was a**
 12 **frequent conversation point.**

13 **Q.** And did the -- to your knowledge, did
 14 the answer to that question vary at all from what
 15 Mr. Oaas stated in the meeting?

16 **A. Never.**

17 **Q.** Okay. Now, you mentioned a few moments
 18 ago that this was a meeting that occurred shortly
 19 before the P & Z hearings. Did you attend the
 20 P & Z hearings?

21 **A. Yes.**

22 **Q.** And these -- there were two P & Z
 23 hearings; correct?

24 **A. There were.**

25 **Q.** And these are the hearings in front of

1 the Planning and Zoning Commission of Boise
 2 County; correct?

3 **A. Correct.**

4 **Q.** Okay. And as far as you knew going in,
 5 were there objections by the county agencies?

6 **A. There were none.**

7 **Q.** Okay. And at that hearing were the
 8 conditions that we actually just reviewed a few
 9 moments ago presented?

10 **A. Yes, they were.**

11 **Q.** Okay.

12 MR. BANDUCCI: And can the witness be handed
 13 Exhibit 1209. Actually, let's -- let's start with
 14 Exhibit 1038.

15 THE COURT: 1038?

16 MR. BANDUCCI: Yes, Your Honor. This is the
 17 transcript of the hearing.

18 THE COURT: Is there any objection,
 19 Mr. Brassey?

20 MR. BRASSEY: No. We would stipulate to its
 21 admission.

22 THE COURT: The exhibit will be admitted and
 23 published to the jury.

24 (Plaintiffs' Exhibit No. 1038 admitted
 25 and published.)

1 BY MR. BANDUCCI:

2 **Q.** Now, did you review this transcript to
3 identify the therapists and residential treatment
4 center professionals who spoke in favor of Alamar?

5 **A.** Yes, I did.

6 MR. BANDUCCI: Can the witness be provided
7 Exhibit 1209? And this is not in evidence,
8 Your Honor.

9 BY MR. BANDUCCI:

10 **Q.** Is this a list of those persons who
11 spoke that are identified in the transcript as
12 supporters of Alamar?

13 **A.** Yes, it is.

14 MR. BANDUCCI: We would move its admission.

15 MR. BRASSEY: Judge, I object. The
16 transcript is in evidence, and I think the
17 document speaks for itself.

18 THE COURT: This is 1201; correct?

19 MR. BANDUCCI: This is 1209, Your Honor.

20 THE COURT: 1209?

21 MR. BANDUCCI: Yes. If I may, Your Honor,
22 it's a summary. The transcript is a voluminous
23 document, and in order to take the jury through
24 that would be very time-consuming. It's only
25 offered to identify people.

1 THE COURT: Okay. The Rule 1006 -- I think
2 it's 1006 -- summary you either get the summary or
3 not the underlying exhibit. Here, we've admitted
4 the transcript, which is the underlying document.

5 However, I'm always looking for ways to
6 make things more understandable to the jury. I
7 think what I'll do is allow this, assuming it's
8 accurate and that counsel does not dispute its
9 accuracy, to be shown to the jury only to provide
10 them with background. It will not be admitted as
11 an exhibit and will not go into the jury room, but
12 I'll admit it, essentially, as an illustrative
13 exhibit or demonstrative to assist counsel in
14 making the evidence more understandable.

15 With that limiting approach, any
16 objection, Mr. Brassey?

17 MR. BRASSEY: No, Your Honor.

18 THE COURT: And, again, what is good for the
19 goose is good for the gander; I'll give you the
20 same courtesy in terms of using any demonstratives
21 that may aid your presentation to the jury.

22 MR. BRASSEY: Thank you, Judge.

23 THE COURT: 1209 will be shown to the jury
24 but not admitted. It's only to be marked for
25 illustrative purposes only.

1 (Plaintiffs' Exhibit No. 1209 admitted
2 for illustrative purposes only.)

3 BY MR. BANDUCCI:

4 **Q.** Let's just go very quickly down this
5 list. We had -- is it fair to say that Alamar had
6 an English teacher, an assistant academic
7 coordinator for a similar facility in Montana?

8 **A.** Yes.

9 **Q.** That was Ms. Martinez?

10 **A.** Yes.

11 **Q.** And then, just going down, we had Kori
12 Mayeski, who had a master's in educational
13 administration and a principal for a residential
14 treatment in a therapeutic boarding school?

15 **A.** Correct.

16 MR. BRASSEY: Judge, Your Honor, I object
17 only in that -- well, I mean, it seems to me all
18 we're doing is just reading names, and so to that
19 extent, I object.

20 THE COURT: Well, I think if we're going to
21 use this, we need to use it kind of in conjunction
22 with something else. I'm not sure that -- what
23 we're doing with this particular exhibit.

24 MR. BANDUCCI: I'll reframe the question,
25 Your Honor.

1 THE COURT: All right.

2 BY MR. BANDUCCI:

3 **Q.** Can you --

4 MR. BANDUCCI: Well, perhaps, we'll just
5 leave it with this. I was going to ask the
6 witness to summarize what was presented, but I
7 imagine I would draw an objection on that.

8 THE COURT: All right.

9 BY MR. BANDUCCI:

10 **Q.** Were there various psychologists that
11 spoke at the P & Z hearing?

12 **A.** Yes. We had great support from the
13 psychological community, from Boise State, from
14 NNU. We had great support for what we were doing.

15 **Q.** Okay. Do you recall whether there were
16 people who talked about whether kids at
17 residential treatment centers were violent and
18 dangerous?

19 **A.** The testimony at the hearing was
20 certainly -- was surrounding the importance of the
21 admissions criteria and in ensuring that that
22 admission criteria was clearly defined and clearly
23 followed, as Alamar had. And so it was, you know,
24 good testimony for the project that we had put in
25 front of the commission.

1 MR. BANDUCCI: All right. Now, can the
2 witness also be handed Exhibit 1210? 1210.

3 BY MR. BANDUCCI:

4 **Q.** And is this a summary of some of the
5 opposition testimony contained in Exhibit 1038?

6 **A. Yes, it is.**

7 MR. BANDUCCI: And we'd offer it,
8 Your Honor, for the same purpose.

9 MR. BRASSEY: Judge, my objection is in the
10 last exhibit it just identified individuals and
11 their titles, et cetera. This takes excerpts out
12 of the transcript. It just seems to me the
13 transcript is in, and we shouldn't put a separate
14 exhibit in emphasizing some testimony.

15 THE COURT: What do we have? Is it just
16 this one page or is it multiple --

17 MR. BANDUCCI: I think it's just this one
18 page, Your Honor. We could --

19 THE COURT: Well, the alternative,
20 Mr. Brassey, is that we go to the transcript,
21 identify who the individual is, and have them --
22 and this just simply brings it together.

23 I think I'm going to allow counsel,
24 with the same limited understanding, but, again,
25 you will be allowed the same privilege. And it's

1 just a matter of moving the matter along.

2 Ladies and gentlemen, Mr. Brassey's
3 concern -- and it's one that we're always a bit
4 worried about -- is that by allowing evidence to
5 be shown to you in several different ways, it may
6 draw undue emphasis to that particular evidence.
7 Your decision must be made based upon all of the
8 evidence and, of course, also in context.

9 And what counsel is now showing to you
10 is simply one portion of the hearing transcript
11 that is admitted as another exhibit. You will
12 have that underlying transcript with you in the
13 jury room, as you will have all the trial
14 exhibits. What you will not have are these, what
15 I call, illustrative or demonstrative exhibits,
16 which allows us to move a little more quickly
17 through the evidence.

18 But it's important that you not give
19 undue weight to any particular item just because
20 it's presented in multiple forms.

21 So I'll allow Exhibit 1210 be published
22 to the jury as a demonstrative.

23 (Plaintiffs' Exhibit No. 1210 admitted
24 for illustrative purposes only.)

25 BY MR. BANDUCCI:

1 **Q.** Let's go to the top one. This is
2 Mr. Ratliff -- and, Your Honor, we've included the
3 transcript sites so the full statements of these
4 speakers is available.

5 Now, Mr. Ratliff -- in this summary
6 that you've reviewed, it says, "Live my life, the
7 rest of my life, what I have left, in peace and
8 harmony without having to be worried about some
9 kid breaking into my house at 12:00 at night with
10 a knife at my throat."

11 Is that similar to comments you heard
12 throughout the course of the process from folks in
13 Clear Creek and Osprey Subdivision?

14 **A. Absolutely, over and over.**

15 **Q.** Okay. Let's go to the next. This is
16 Jeri Kirkpatrick: "First, those kids are there
17 against their will, and they will run if given the
18 opportunity. Second, most of them will smoke, and
19 there will be fires regardless how diligent the
20 staff. And, third, there will be physical
21 assaults, and there will be some sexual assaults.
22 Fourth, there will be police calls, fire calls,
23 and EMT calls. There will be car accidents on the
24 highway coming back and forth to work."

25 Where is Ms. Kirkpatrick from?

1 **A. She lives up in the -- in Boise County
2 there.**

3 **Q.** Okay. And is this, again, similar to
4 the kinds of public clamor that you heard relative
5 to Alamar?

6 **A. Yes, absolutely.**

7 **Q.** Were the kids who were staying at
8 Alamar going to be allowed to drive on the
9 highway?

10 **A. Absolutely not.**

11 **Q.** Did they have cars?

12 **A. They had no cars. They were -- there
13 was just simply no means for them to leave the
14 property.**

15 **Q.** Okay. Next.

16 Mr. Wrublic: "I think it would be hard
17 to live with it if some kid come crawling through
18 my window and I blew his head off. That would be
19 hard to live with because their parents are going
20 to probably try to sue me, this and that."

21 Was there a concern stated in this
22 public reaction from Osprey and Clear Creek, in
23 particular, where people were afraid that the
24 parents of these students might respond in a way
25 that they didn't desire if there was some force

1 used with them?

2 **A.** For sure. We heard because of this
3 perceived rich kid, rich family connection, the
4 community really felt like the county is going to
5 get sued or they're going to get sued, depending
6 upon a particular instance that happened, and that
7 occurred over and over and over, again, just a
8 complete misrepresentation of the population that
9 we would have there.

10 **Q.** Next, Pamela Lattin: "I do have to
11 make a statement that I'd sooner try to reason
12 with an inmate than I would a disturbed, troubled
13 teenager. Frankly, I don't want to go through
14 that again, because one of these teenagers whose
15 parent have coughed up a great deal of money to
16 send that kid as far away from them as possible
17 goes out to the woods, sets a fire just to see how
18 fast it burns."

19 Were these -- was part of the
20 NoAlamar.com focused on the purported tendency of
21 these kids to be fire-starters?

22 **A.** Absolutely. Despite us stating
23 directly in our admission criteria and over and
24 over that we will not allow arsonists on the
25 property.

1 **A.** Absolutely, like it was yesterday.

2 **Q.** Go to the next.

3 Bryan Moore: "I mean, we hear they're
4 going to be nonviolent drug users. Well, there's
5 a family in Connecticut that had a run-in with a
6 nonviolent drug user recently. The father was
7 beat by a baseball bat, wife, 17-year-old,
8 11-year-old daughters raped, house set on fire,
9 women and children died by nonviolent drug users."

10 Was there a correlation that was being
11 drawn by the opposition that if people had used,
12 let's just say, marijuana that there was some
13 violent tendency as a result of that?

14 **A.** Yes. Just something that we just -- it
15 just was completely, completely incorrect and
16 unbelievable at the time.

17 **Q.** Okay. Next.

18 I think that's it for that. If you
19 could go to 1036, page 46. Now, this is also part
20 of that presentation where we showed the
21 conditions. This was part of the hearing document
22 that was presented on August 2nd. Do you recall
23 making some limited presentation on the Fair
24 Housing Act to the folks at the P & Z?

25 **A.** Yes.

1 **Q.** Okay. Next.

2 "RTC is, in fact" -- now, this is
3 Dennis Charney, who is Dennis Charney?

4 **A.** Dennis Charney was retained by a group
5 of No Alamar Ranch individuals to represent them
6 in this.

7 **Q.** He's an attorney?

8 **A.** He's an attorney, yes.

9 **Q.** "RTC is, in fact, a functional
10 equivalent of a prison. It is isolated. It has
11 no wires. It has no fences or really any
12 appropriate security for 72 kids that these
13 individuals want to house there. The kids will be
14 there against their will.

15 "They all have problems. They will
16 want to escape, and they will all want to get to
17 an area where they can have fun, where they can
18 have the Internet, where they can have the mall,
19 where they can have McDonald's. And the first
20 thing that they will do is they will leave, they
21 will hit the highway and in cold months they may
22 commit home invasions. They may commit robberies.
23 They may commit burglaries."

24 Do you remember Mr. Charney as an
25 attorney making those statements to the P & Z?

1 **Q.** All right. Thank you.

2 MR. BANDUCCI: Now, can the witness be shown
3 Exhibit 1044?

4 Your Honor, this is the transcript from
5 the August 15th hearing. It is an official record
6 of Boise County.

7 THE COURT: Any objection?

8 MR. BRASSEY: No objection. We'd stipulate
9 to its admission.

10 THE COURT: All right. 1044 will be
11 admitted and published to the jury.

12 (Plaintiffs' Exhibit No. 1044 admitted
13 and published.)

14 MR. BANDUCCI: Let's go to page 26 of 69.
15 And if you could pull that out. You know, Kathy,
16 I think we need to pull out so it shows who it's
17 from, D.C. -- actually, you know what, I'm going
18 to make it harder for you. Can you go back in
19 front of the document and identify who D.C. is?

20 D.C. here is Mr. Charney. All right.
21 Let's go back now to page 26. And if you would,
22 yeah, bring out that section. Thank you.

23 BY MR. BANDUCCI:

24 **Q.** All right. Sorry.

25 Dennis Charney for the opposition: "I

1 feel that it is in the record. I don't know which
 2 exhibit it is, but it talks about recommendations
 3 for RTCs, and there are at least 12 different
 4 institutions, such as American Psychiatric
 5 Association, American Association of Community
 6 Psychiatrists, that recommend a population size
 7 for an RTC of 30 or less. Now, we have a proposal
 8 for 72, in an area where services are bleak at
 9 best and, quite frankly, size equals profit.
 10 Probably anything less than 72 would not be
 11 profitable, and they would not be able to
 12 successfully operate this in the black if it was
 13 anything less than 72."

14 Do you remember Mr. Charney saying
 15 that?

16 **A. Yes, I do.**

17 **Q.** Okay. Was that the first time you had
 18 heard the opposition acknowledge that Alamar's
 19 model for viability was based on 72?

20 **A. Not at all.**

21 **Q.** Thank you. And this was made to the
 22 Planning and Zoning Commission?

23 **A. Yes, it was.**

24 **Q.** Thank you.

25 MR. BANDUCCI: You can take that down,

1 **what that means is they announce each of the**
 2 **commissioners' names and they vote.**
 3 **When it resulted in a three-to-three**
 4 **tie, the Planning and Zoning administrator, in**
 5 **accordance with the process in the ordinance,**
 6 **asked for clarification as to the no votes as to**
 7 **what it is that -- what pieces of the ordinance or**
 8 **the comprehensive plan that they were referring to**
 9 **or they were basing their decision upon.**

10 **The -- each of those three no votes**
 11 **never tied any of their reasoning to any**
 12 **particular item in the ordinance or the comp plan.**

13 **Q.** Let's go to page 10 of this exhibit.

14 All right.

15 Mr. BANDUCCI: And Kathy, the summary at the
 16 top, blow that up.

17 BY MR. BANDUCCI:

18 **Q.** And this is -- well, maybe we should
 19 back off and show who is writing this. This is a
 20 statement by Planning and Zoning Commissioners who
 21 voted to approve Alamar applications, Jonathan
 22 Bart, Clint Evans, and Jack Kane. Those were
 23 three of the six that were hearing this?

24 **A. That's right.**

25 **Q.** Okay. Now let's go to the summary.

1 Kathy.

2 BY MR. BANDUCCI:

3 **Q.** Now, the decision of the Planning and
 4 Zoning after these two hearings was a tie?

5 **A. Yes, it was.**

6 MR. BANDUCCI: Can the witness be handed
 7 Exhibit 1048, please?

8 Your Honor, this is the Memorandum
 9 Decision and Order of the Planning and Zoning
 10 Commission. It's an official record of Boise
 11 County.

12 MR. BRASSEY: No objection.

13 THE COURT: All right. Exhibit 1048 will be
 14 admitted and published to the jury.

15 (Plaintiffs' Exhibit No. 1048 admitted
 16 and published.)

17 BY MR. BANDUCCI:

18 **Q.** Now, did you hear the Planning and
 19 Zoning Commission announce their decision at the
 20 end of the hearing?

21 **A. Yes, I did.**

22 **Q.** Can you describe to the jury what you
 23 heard?

24 **A. Well, through the deliberation process**
 25 **and their vote, there was a roll-call vote, and so**

1 It says, "Three P & Z Commissioners
 2 voted against the Alamar application on the basis
 3 that the county infrastructure cannot support
 4 Alamar, that conditions could not be enforced, and
 5 that the specific site was unsuitable. The third
 6 concern could be addressed by suggesting another
 7 site and, thus, cannot be used as a basis for
 8 denying the application.

9 "We analyze the first two concerns and
 10 find that there is no support for them in the
 11 record. On the contrary, none of the heads of
 12 Boise County government opposed the application.
 13 These people are in a better position to judge the
 14 impact of their programs than are P & Z
 15 Commissioners. We should accept their judgment
 16 unless strong evidence is presented showing that
 17 they are wrong. No such evidence was presented in
 18 this case.

19 "Furthermore, the applicants have shown
 20 themselves willing to accept any reasonable
 21 condition, and examination of the suggested
 22 conditions shows that they can be monitored to
 23 insure compliance. The lack of objections from
 24 county government, the willingness of the
 25 applicant to work with the county to insure that

1 adverse effects are avoided, and the lack of
2 factual evidence from any other source showing
3 that Alamar would cause adverse effects all
4 indicate that the Alamar application should be
5 approved."

6 Did you read that when you got a copy
7 of the Planning and Zoning decision?

8 **A. Absolutely.**

9 **Q.** Okay. Now, let's go to page 13. And
10 go to "In summary."

11 "In summary, while some of our
12 colleagues were concerned that units of Boise
13 County government might be unduly stressed by
14 Alamar, careful review of the record indicates
15 that those in charge of the affected departments
16 are satisfied with the measures applicants have
17 proposed and either endorse the application or do
18 not oppose it. Refusing to grant the application
19 on the grounds that Alamar will cause unacceptable
20 adverse impacts on county government would, thus,
21 be inappropriate and, in fact, would not pass the
22 'arbitrary and capricious' test."

23 When you saw this statement by the
24 commissioners who voted for it, did that give you
25 some hope for an appeal?

1 one area.

2 **We spent a lot of time working -- using**
3 **our engineers to work with the Wilderness Ranch**
4 **Fire District to design a conceptual road plan**
5 **that was specific that we could put in front of**
6 **the county commissioners during the appeal**
7 **process. And so we did that, and we were able to**
8 **get acceptance of that plan by Wilderness Ranch**
9 **Fire District, and that was submitted as a letter**
10 **to the county commission, Planning and Zoning, and**
11 **county commissioners.**

12 **Additionally, we worked with the --**
13 **there were some concerns about our traffic study**
14 **and a few things that weren't quite clear, so we**
15 **asked our traffic study engineers to review that**
16 **more closely and to get buy-off with the Idaho**
17 **Transportation Department, given that that was**
18 **their jurisdiction on Highway 21. And so that was**
19 **another example of more clearly defining the**
20 **requirement prior to going in front of the county**
21 **commissioners for our appeal.**

22 MR. BANDUCCI: Okay. Let's go back to
23 1048-13, Kathy, just very quickly, please. I
24 think page 11. Go to 12.

25 MR. WOODARD: It's page 11 up at the top.

1 **A. Absolutely. That's exactly the way we**
2 **felt walking away from this decision; and,**
3 **clearly, tying it to the facts of the case and the**
4 **ordinance, we felt like an appeal would be quite**
5 **successful.**

6 **Q.** Okay. And did you, in fact, appeal to
7 the county commissioners?

8 **A. Yes, we did.**

9 MR. BANDUCCI: You can take that down,
10 Kathy. Thank you.

11 BY MR. BANDUCCI:

12 **Q.** Tell the jury -- now, the appeal
13 hearings, et cetera, occurred roughly, what,
14 three months after the Planning and Zoning
15 hearings?

16 **A. Yeah. I think three months, probably.**

17 **Q.** Now, was there work that you -- that
18 Alamar did on the project relative to conditions,
19 relative to requests by these county agencies to
20 refine some of the understandings reached with
21 these county agencies?

22 **A. Yes, we did. There were -- through the**
23 **course of the hearings and the deliberation, we**
24 **felt like we needed to focus more and come up with**
25 **a more specific plan on road design. So that was**

1 See where it says page 17?

2 MR. BANDUCCI: Just go back one more. Go
3 forward now two, two steps forward. There we go.
4 I'm sorry. I meant back.

5 MR. WOODARD: It's that page right there.

6 MR. BANDUCCI: One more.

7 MR. WOODARD: It's that page.

8 MR. BANDUCCI: No, it is not.

9 Next page, please. All right. Down at
10 the bottom paragraph.

11 BY MR. BANDUCCI:

12 **Q.** You talked about the commissioners
13 wanting -- the P & Z Commissioners wanting you to
14 go back to Wilderness Ranch. Take a look at that.
15 This is the commissioners who voted in favor. It
16 says: "Like the school district, the fire
17 district has carefully evaluated the Alamar
18 application, multiple meetings, and it has
19 submitted a statement saying that it does not
20 oppose it. The applicant has suggested that they
21 could be required to address those issues
22 identified by Wilderness Ranch Fire Protection
23 District, in particular, during the public hearing
24 they committed" -- that being Alamar -- "committed
25 to creating a second ingress/egress for the

1 property in accordance with the fire district's
2 recommendations."

3 Is that why you went back to the fire
4 district?

5 **A. Absolutely.**

6 MR. BANDUCCI: Okay. Now, let's show the
7 witness Exhibit 1055.

8 BY MR. BANDUCCI:

9 **Q.** Is Exhibit 1055 what was sent to the
10 Boise County Commissioners with respect to the
11 further work done by Alamar with Wilderness Ranch
12 Fire Protection District?

13 **A. Yes, it is.**

14 MR. BANDUCCI: Move its admission.

15 MR. BRASSEY: No objection.

16 THE COURT: Exhibit 1055 will be admitted.
17 (Plaintiffs' Exhibit No. 1055
18 admitted.)

19 BY MR. BANDUCCI:

20 **Q.** Now, let's go to the first page. Could
21 you just blow that up, including the signature.

22 This is a letter from John McCarthy,
23 the chief of the Wilderness Ranch Fire Protection
24 District. And why don't you tell the jury what --
25 what this letter represents.

1 fine.

2 BY MR. BANDUCCI:

3 **Q.** This says that -- this is, again, from
4 John McCarthy -- it says, "The International Fire
5 Code 2006 does not require secondary access egress
6 roads, but does provide authority to the fire code
7 official to require one. The fire code official
8 is authorized to require more than one fire
9 apparatus access road based on the potential for
10 impairment for a single road by vehicle
11 congestion, conditions of terrain, climatic
12 conditions, or other factors that could limit
13 access. I have placed such a requirement on the
14 proposed Alamar Ranch development."

15 What does that mean?

16 **A. What that means is Mr. McCarthy is
17 going beyond the minimum requirements of
18 International Fire Code and is requiring us to
19 have a -- a second access for an emergency vehicle
20 to get access to the site or off the site.**

21 **Q.** Okay. And let's go to the next page.

22 And is this the road that was approved
23 by the Wilderness Ranch Fire District?

24 **A. Yes, it is.**

25 **Q.** All right. Let me see if -- I want to

1 **A. This letter represents our agreement of
2 the -- I spoke of the -- of the conceptual plan
3 that we worked with in between the -- prior to the
4 appeal hearing. This letter represents the
5 Wilderness Ranch Fire District's approval of that
6 layout, the road layout and the site plan.**

7 **Q.** Okay. And this particular letter
8 indicates that the Wilderness Ranch Fire District
9 has concluded that the site must be in compliance
10 with Section 503.1.2 of the International Fire
11 Code, and then indicates that after review of the
12 site plan and a trip to the site, that the
13 proposed secondary access road will adequately
14 address safety concerns relative to site
15 evacuation and site access by emergency response
16 personnel.

17 **A. That's correct.**

18 **Q.** And was that done as a result of your
19 work with the Wilderness Ranch Fire District?

20 **A. That's right. We had several trips to
21 the site with them, several conversations with our
22 engineers; and, yes, that's correct.**

23 MR. BANDUCCI: Let's go to the next page.

24 Kathy, just blow this up, yeah, from
25 there, that's good. That's fine. That's just

1 make sure I got this right. This is coming up
2 this way, I think, is the Klam Ranch Road;
3 correct?

4 **A. The Klam Ranch Road begins right where
5 you finished drawing there, as it crosses the
6 river.**

7 **Q.** Okay.

8 MR. BRASSEY: From Highway 21.

9 THE WITNESS: Yeah. From Highway 21, you
10 turn onto Grimes Creek Road.

11 BY MR. BANDUCCI:

12 **Q.** Yeah, this is Highway 21 right here?

13 **A. Correct.**

14 **Q.** So I kind of went further than I needed
15 to. And then this road -- this is what, the
16 primary access road; correct?

17 **A. That's exactly right.**

18 **Q.** And what the fire district approved as
19 the secondary ingress and egress road is here;
20 correct?

21 **A. That's correct.**

22 **Q.** So that we go back out to the bridge
23 and then back out to Highway 21?

24 **A. That's right.**

25 **Q.** All right. Was this going to be a path

1 of 20 feet wide, according to the International
2 Fire Code?

3 **A. Yes. It was a fully improved road.**

4 **Q.** Thank you.

5 MR. BANDUCCI: Let's go to -- you can take
6 that down, Kathy. Thank you.

7 BY MR. BANDUCCI:

8 **Q.** Briefly, what did your meeting with the
9 Idaho Transportation Department reveal?

10 **A. The ITD revealed that they did not want
11 to have any modifications made to Highway 21 based
12 on the Alamar Ranch application, and they
13 submitted a letter to that effect.**

14 **Q.** After submitting this additional
15 information, did you have a hearing before the
16 Boise County Commissioners?

17 **A. Yes, we did.**

18 **Q.** And, again, going into this hearing,
19 were the county agencies in agreement with the
20 Alamar proposals and conditions?

21 **A. Yes, they were, same as at the Planning
22 and Zoning hearing.**

23 **Q.** Okay. Now, while at the hearing, was
24 there a presentation by an attorney retained by
25 Alamar who talked about the Fair Housing Act?

1 **A. Yes, there was.**

2 **Q.** And who was that person?

3 **A. McDonald, Dan McDonald. Yeah, from
4 Utah.**

5 **Q.** And why did you hire a lawyer to come
6 talk to the Boise County Commissioners about the
7 Fair Housing Act?

8 **A. We had, from the beginning of the
9 project, at a very light level, begun to educate
10 the community, but, more specifically, the county
11 officials on the applicability of the Fair Housing
12 Act. And as we went through, especially through
13 the P & Z hearing, it was very obvious that no
14 consideration was given to the Fair Housing Act
15 and that we needed to have more direct
16 conversation with the county officials regarding
17 that.**

18 **Q.** Okay. Now, during the course of the
19 commission -- during the course of the hearing
20 before the commission, did the commission ask you
21 why Alamar needed 72 students?

22 **A. No.**

23 **Q.** Did they ask you if the student
24 population was reduced, if that impacted the
25 business model?

1 **A. No, they did not.**

2 **Q.** Did they ask you how the FHA -- or ask
3 Mr. McDonald how the FHA might apply to Alamar?

4 **A. No.**

5 **Q.** Did they ask how the FHA -- what the
6 FHA might require them to do?

7 **A. No.**

8 **Q.** Did they ask any questions at all about
9 the programming or the acceptance criteria?

10 **A. No.**

11 **Q.** Did they ask -- did they indicate any
12 concerns about the report by Dr. Crabb?

13 **A. No.**

14 **Q.** Did they ask you whether your project
15 was similar or different to Project PATCH when it
16 came to sheriff calls?

17 **A. No.**

18 **Q.** Did they indicate any concern at all
19 regarding the Wilderness Ranch Fire District's
20 approval of this road, that we just looked at,
21 based on the International Fire Code?

22 **A. No concern at all.**

23 MR. BRASSEY: I object. Can we specify
24 which hearing?

25 MR. BANDUCCI: This is the appeal hearing,

1 January 28th, 2008.

2 THE COURT: The hearing before the county
3 commissioners?

4 MR. BANDUCCI: Yes.

5 THE COURT: All right.

6 BY MR. BANDUCCI:

7 **Q.** Tell the jury about the atmosphere of
8 that hearing.

9 **A. The atmosphere at the first hearing
10 with the county commissioners is what you're
11 referring to?**

12 **Q.** Yes.

13 **A. Yes. It was just like the previous
14 meetings, the county meetings that we had, where
15 it was the same community members there, same
16 hostility, same inappropriate remarks during the
17 middle of presentations. You know, very much the
18 same hostile environment that we had for every one
19 of the other meetings that we were involved with.**

20 **Q.** All right. Now, did the county
21 commissioners render a decision at the end of that
22 hearing?

23 **A. No.**

24 **Q.** Was there a second hearing?

25 **A. There was.**

1 **Q.** And that was a deliberation hearing on
 2 March 10th; correct?
 3 **A.** That's right.
 4 **Q.** And do you recall where that was held?
 5 **A.** Yeah. It was held in the county
 6 commissioners' chambers. Normally -- normal
 7 schedule -- where they normally held their
 8 meetings.
 9 MR. BANDUCCI: Okay. And can the witness be
 10 handed Exhibit 1084, please, or presented
 11 Exhibit 1084.
 12 This is the transcript, Your Honor,
 13 from the March 3rd -- excuse me -- March 10, 2008,
 14 hearing, deliberation hearing. We would move its
 15 admission.
 16 MR. BRASSEY: No objection.
 17 THE COURT: 1084 will be admitted and
 18 published to the jury.
 19 (Plaintiffs' Exhibit No. 1084 admitted
 20 and published.)
 21 MR. BRASSEY: Is the previous one in?
 22 MR. BANDUCCI: You know, I haven't offered
 23 it. I can do that. I don't have that number
 24 right in front of me, Mr. Brassey.
 25 MR. BRASSEY: 1076.

1 requirements there, the conditions were to not
 2 only increase the requirements for the primary
 3 road; that is, making it paved the entire way,
 4 which is not part of the code requirements or what
 5 was offered to Wilderness Ranch. So that
 6 substantially increased the cost of that road.
 7 But then in addition to that, they
 8 required -- the county commissioners required us
 9 to have a separate secondary egress road that left
 10 the property on a different path, crossing a
 11 different bridge, all constructed to the same
 12 standard as the primary road and all maintained
 13 365 days a year, 7 days a week, 24 hours a day.
 14 So the -- that was a dramatic change
 15 and a dramatic increase in the cost of the road
 16 design. And whether it was even possible to be
 17 met, I don't know, but it was -- it was just
 18 simply a way overdone requirement.
 19 **Q.** Now, what did they do with this
 20 helicopter landing area?
 21 **A.** You'll recall me speaking about the
 22 helicopter landing area being designated as part
 23 of our soccer fields and as part of our grounds.
 24 The county commissioners required, in this new
 25 condition, to make it an FAA certified landing

1 MR. BANDUCCI: We'll offer 1076, as well,
 2 Your Honor. That's the January 28th transcript.
 3 THE COURT: And there's no objection?
 4 MR. BRASSEY: No objection.
 5 THE COURT: 1076 will also be admitted.
 6 (Plaintiffs' Exhibit No. 1076
 7 admitted.)
 8 BY MR. BANDUCCI:
 9 **Q.** Now, during the course of these
 10 deliberations, were new and unforeseen conditions
 11 imposed on the Alamar project by the Boise County
 12 Commissioners?
 13 **A.** Yes.
 14 **Q.** Do you want to talk about that in
 15 relation to the secondary access road?
 16 **A.** Yes. There were -- there were a number
 17 of modifications or new additions to the
 18 conditions, but the ones that were most difficult
 19 for us to deal with were the road, the helipad,
 20 the -- the road, the helipad -- there's a third
 21 one I'm forgetting right now.
 22 But specifically addressing the road,
 23 you've heard us -- you heard me talk about the
 24 secondary access that we voluntarily submitted for
 25 with that road design. The county commissioners'

1 pad, which, as you can imagine, just dramatically
 2 changes the scope of the project in terms of what
 3 it takes to construct that and, more pointedly,
 4 the time to get it approved and the amount of red
 5 tape that we have to go through to just get it
 6 installed on the site. Another substantially
 7 overdone condition.
 8 **Q.** Okay. Did they also reduce -- "they,"
 9 the county commissioners, also reduce the
 10 population -- student population from 72 students
 11 to 24?
 12 **A.** Yes. After increasing the requirements
 13 in -- based on the foundation that we would have
 14 72 students on site, whether it was facilities or
 15 water tank sizing or what have you, so after the
 16 whole plan and all the conditions preceding this
 17 one were based on 72, then they reduced our
 18 allowed population to 24.
 19 **Q.** Did you have any clue going into this
 20 deliberation hearing that the commission would
 21 reduce the student population?
 22 **A.** No clue at all.
 23 **Q.** Were you aware of any county agencies
 24 that asked to reduce the population as one of the
 25 conditions that they discussed with you?

1 **A. No.**
 2 **Q.** Are you aware of any ordinance,
 3 comprehensive plan, any law that would be a basis
 4 for reducing the population?

5 **A. No.**
 6 MR. BANDUCCI: Let's go to Exhibit 1084,
 7 page 49 of 74. And, Kathy, what I want you to
 8 enlarge here -- let's start, first, with the
 9 section from here down to here.
 10 BY MR. BANDUCCI:

11 **Q.** Now, "TD" I think counsel agrees is
 12 Terry Day, and he says, "Well, I don't know if
 13 they endorsed a smaller facility, but I got the
 14 impression that they wouldn't be as against a
 15 smaller facility, and I think the number they did
 16 use was 12."

17 What group suggested 12 residents for
 18 Alamar?

19 **A. The No Alamar Ranch group.**

20 **Q.** Okay. Mr. McNeese says, "They said
 21 such as 12."

22 Terry Day said, "Such as was the
 23 verbiage they used."

24 Linda Zimmer says, "Such as."

25 The chair -- and that's Mr. Lawson; is

1 that correct?

2 **A. That's correct.**

3 **Q.** -- "What do you think?"

4 Ms. Zimmer says, "Well, it wouldn't be
 5 as large an impact."

6 Terry Day says, "And you."

7 Linda Zimmer says, "I can see other
 8 things there, too. I agree with Terry that, you
 9 know, I have some doubts about, but I don't think
 10 the opponents would be -- it would be such as
 11 devastating on them as to have a 12 versus a 72.
 12 It might be a trial way of seeing if it would
 13 work."

14 Now, do you recall anybody saying in
 15 this hearing, we need to reduce the size of Alamar
 16 for the safety of the kids?

17 **A. No.**

18 **Q.** Mr. McNeese then says, "Well,
 19 Mr. Chairman, Commissioner Zimmer, you may be
 20 correct about that, but remember that the
 21 application is based on staffing models and
 22 factors that the applicant feels is most economic
 23 to them based on the 72-bed facility. If you
 24 reduce the size of that, you'd be adversely
 25 affecting their ability to have an economic

1 benefit and also seriously calling into question
 2 the entirety of the application based on the model
 3 that's been presented and that everybody,
 4 including the Planning and Zoning Commission and
 5 this commission staff, has been working on, and
 6 that is the 72-bed facility. At this juncture, I
 7 couldn't tell you what the applicant would have to
 8 do in the way of reducing that 150, 160 staff to
 9 meet the needs of 12 people."

10 Do you see that?

11 **A. Yes.**

12 **Q.** Do you have any doubt after attending
 13 that hearing that the commissioners knew exactly
 14 what they were doing and that reducing the student
 15 population from 72, ultimately, to 24 was going to
 16 have an adverse economic impact on the project?

17 MR. BRASSEY: Your Honor, I -- I object. I
 18 think --

19 THE COURT: Sustained.

20 BY MR. BANDUCCI:

21 **Q.** Tell the jury how you interpret that
 22 paragraph.

23 MR. BRASSEY: Judge, I'm going to -- excuse
 24 me. I'm going to make an objection. I think
 25 it -- I think that's inappropriate to ask somebody

1 to comment on their -- on their -- well, that's my
 2 objection.

3 MR. BANDUCCI: I'll rephrase.

4 THE COURT: Please.

5 BY MR. BANDUCCI:

6 **Q.** Do you recall hearing Mr. McNeese say
 7 that to the commission?

8 **A. Absolutely.**

9 **Q.** And when Mr. McNeese was telling that
 10 to the commission, what did you think?

11 MR. BRASSEY: Judge, I object. I'm not sure
 12 that's relevant to the questions that are before
 13 the court and the jury.

14 THE COURT: Well, let me -- let me try to do
 15 this with the jury still present. I do think it
 16 has to be tied into something that is relevant as
 17 to what this witness's thought process was; just
 18 in the abstract or what he thinks about something
 19 is not relevant. But if it bears upon some
 20 decision he had to make going forward, then I
 21 think that is relevant. But just simply in the
 22 abstract, the document speaks for itself, the
 23 testimony speaks for itself, and there's no reason
 24 to add some commentary about the meaning of the
 25 testimony to this witness, unless the meaning of

1 those statements to this witness bears upon his
 2 future decision-making.
 3 So I'll sustain the objection.
 4 Mr. Banducci?
 5 MR. BANDUCCI: Let me lay some foundation,
 6 then.
 7 BY MR. BANDUCCI:
 8 **Q.** Did this statement by McNeese and what
 9 happened after this statement was made bear on
 10 your perspective as to whether or not Alamar could
 11 proceed with the project?
 12 **A.** We absolutely could not proceed with
 13 the project based on this reduction in residents.
 14 **Q.** What was your reaction to Mr. McNeese's
 15 statement and how did you interpret that relative
 16 to this conclusion that you just articulated?
 17 MR. BRASSEY: Judge, excuse me -- I would
 18 make the same objection I made just a minute ago.
 19 THE COURT: If it is tied only to the
 20 witness's understanding as to whether they could
 21 proceed with the project, I'll allow it.
 22 But -- excuse me -- the witness is
 23 cautioned that it has to be tied to that issue and
 24 not just a general observation about what was
 25 intended or not intended.

1 out, as the -- as the program had been designed
 2 with staffing, I mean, of -- with residents of
 3 only 24. It was clear to everybody through the
 4 process that that was a requirement, and it simply
 5 was a statement from the county that they did not
 6 want this program there.
 7 MR. BRASSEY: Your Honor, I'm going to
 8 object. I think that's nonresponsive, and I would
 9 ask it be stricken.
 10 THE COURT: I'm going to sustain the
 11 objection at this point.
 12 The witness can testify as to what
 13 he -- how a particular statement had -- what
 14 effect a particular statement had upon their
 15 decision-making going forward. However, I'm going
 16 to sustain the objection as to any observation as
 17 to what a particular state of mind may have
 18 motivated this comment or not. I think that would
 19 require speculation from the witness as to what
 20 another person was actually thinking.
 21 So I'll sustain the objection.
 22 BY MR. BANDUCCI:
 23 **Q.** Let me ask you this question,
 24 Mr. Tverdy: After Mr. McNeese made this
 25 statement, do you recall the commissioners doing

1 Proceed. You may answer.
 2 THE WITNESS: I'm not sure how to respond.
 3 Mr. Banducci, could you reask your
 4 question?
 5 MR. BANDUCCI: I'll reask the question.
 6 BY MR. BANDUCCI:
 7 **Q.** Given -- you were one of the people
 8 that would have made a decision about whether or
 9 not you could move on with this project?
 10 **A.** Yes.
 11 **Q.** This was -- you were the head of the
 12 project; correct?
 13 **A.** Yes. Especially the financial piece of
 14 it.
 15 **Q.** Okay. So you understood the model upon
 16 which Alamar was built?
 17 **A.** Absolutely.
 18 **Q.** When you heard the discussions read
 19 here -- and we can go on to the point where it
 20 gets increased to 24 and held to 24, if you'd
 21 like -- but when you heard these discussions, did
 22 that impact your perspective on whether or not
 23 Alamar could be viable?
 24 **A.** Yes, it did. We simply couldn't afford
 25 to operate the program as the conditions had laid

1 anything in questions, conversations, discussions
 2 in these deliberations where they wrestled with
 3 the notion that a reduction in bed count may, as
 4 Mr. McNeese says, adversely affect their ability
 5 to have an economic benefit?
 6 **A.** I do recall. There was -- there was no
 7 comment related from the commissioners and no
 8 discussion following Mr. McNeese's statement that
 9 we just read.
 10 **Q.** Thank you. Take that down.
 11 After -- did you have an ability to
 12 comment at this particular hearing?
 13 **A.** No. During the deliberation hearing it
 14 was stated up front that it was a public meeting,
 15 but not open for public comment. So no one from
 16 the audience there, from our team, was able to
 17 speak.
 18 MR. BANDUCCI: Okay. Now, could the witness
 19 be presented with Exhibit 1088. This is the
 20 memorandum decision. I believe it's already in
 21 evidence.
 22 THE COURT: 1088? That has not been
 23 admitted yet. I assume there's no objection,
 24 though?
 25 MR. BRASSEY: There's not.

1 THE COURT: 1088 will be admitted.
 2 (Plaintiffs' Exhibit No. 1088
 3 admitted.)
 4 BY MR. BANDUCCI:
 5 **Q.** All right. I'm not going to spend a
 6 great deal of time with you on this decision,
 7 Mr. Tverdy, but let's go to page 18.
 8 MR. BANDUCCI: Kathy, if you could -- okay,
 9 good.
 10 BY MR. BANDUCCI:
 11 **Q.** This is the section on reduction in
 12 size of the Alamar facility. Do you see that?
 13 **A.** Yes.
 14 **Q.** I now have something on my screen that
 15 I don't know how to get rid of.
 16 MR. BANDUCCI: And, Kathy, is it possible to
 17 identify the findings, they go on to the second
 18 page. I don't know, can you show those at the
 19 same time? Okay. We'll read through that.
 20 BY MR. BANDUCCI:
 21 **Q.** The finding says, "The board finds that
 22 the side --
 23 MR. BANDUCCI: Actually, Kathy, is it
 24 possible you could move that up so it's between
 25 those two pages so it would make it a little bit

1 bigger? That's as big as we can get the print?
 2 Okay. All right.
 3 BY MR. BANDUCCI:
 4 **Q.** It says, "The board finds that the size
 5 of the facility should be reduced to 24 students.
 6 A smaller facility will have less traffic."
 7 Do you recall at the deliberations the
 8 Board talking about the reduction being
 9 necessitated for traffic purposes?
 10 **A.** I do recall that during the
 11 deliberation related to the 24 -- the reduction to
 12 24, there was no discussion on deliberation on
 13 traffic.
 14 **Q.** And was the traffic issue already taken
 15 care of?
 16 **A.** Absolutely. It was taken care of with
 17 the road design and with the traffic studies that
 18 had been previously submitted.
 19 **Q.** Okay. It says, "Less demand on public
 20 services."
 21 Had the demand for the Sheriff's Office
 22 and the ambulance services already been taken care
 23 of by one of the conditions we talked about?
 24 **A.** Yes, they had. And based on 72
 25 students.

1 **Q.** And did they talk at the deliberations
 2 about the need to reduce from 72 to 24 based on
 3 demand of public services?
 4 **A.** No.
 5 **Q.** Next is, "Less impact on property
 6 values." Do you remember any testimony about
 7 reduction in property values being part of the
 8 decision to reduce the number?
 9 **A.** No. None at all.
 10 **Q.** Next is, "Lower danger of fire and
 11 lower impact on essential character of the
 12 surrounding area."
 13 Any discussion of that relative to the
 14 reduction from 72 to 24?
 15 **A.** None at all.
 16 **Q.** And the fire issue was addressed not
 17 only by Wilderness Ranch Fire District, but by the
 18 commission before they reduced the population?
 19 **A.** Correct.
 20 **Q.** Is it -- at the deliberation hearing,
 21 they added to the fire plan. And what else did
 22 they add in addition to additional requirements on
 23 the ingress/egress road?
 24 **A.** Yes. It was the fire truck, firehouse
 25 and location that was the one I had forgotten or

1 that I had mentioned earlier. We were required to
 2 provide a location, construct a firehouse, equip
 3 the firehouse with a fire truck and provide
 4 trained staffing. That was a requirement from
 5 Boise County Commissioners, not by the Wilderness
 6 Ranch Fire District.
 7 **Q.** And after imposing that, they reduced
 8 it to 24?
 9 **A.** Yes, they did.
 10 MR. BANDUCCI: Can the witness be shown --
 11 we're at 1088; correct? Can the witness be shown
 12 page 2 of Exhibit 1088? Kathy, the first full
 13 paragraph starts out, "The board's decision."
 14 BY MR. BANDUCCI:
 15 **Q.** It says, "The Board's decision on this
 16 appeal is final and need not be referred to the
 17 Commission."
 18 What did you understand that to mean?
 19 **A.** It's very clear what it means. It's
 20 the decision is final.
 21 MR. BANDUCCI: All right. We can take that
 22 down, Kathy. Thank you.
 23 Can the witness be handed Exhibit -- I
 24 believe -- oh, boy, I didn't include this number.
 25 BY MR. BANDUCCI:

1 **Q.** All right. What is before you, sir, is
2 a business plan, dated April 3rd, 2007. Did you
3 prepare that document?

4 **A.** I did.

5 **Q.** And this has not been shown to the
6 jury. We're laying foundation for this,
7 Mr. Tverdy, so I don't want you talking about the
8 contents of it --

9 MR. BANDUCCI: Unless you stipulate it in.

10 MR. BRASSEY: We'll stipulate.

11 MR. BANDUCCI: Very good.

12 THE COURT: Stipulated? All right.

13 Exhibit 1025 will be admitted.

14 (Plaintiffs' Exhibit No. 1025
15 admitted.)

16 BY MR. BANDUCCI:

17 **Q.** All right. Exhibit -- why don't you
18 tell the exhibit -- tell the jury, please, what
19 Exhibit 1025 is.

20 **A.** This is the business plan that I began
21 drafting at the very beginning of the project.
22 And as we learned more and defined the project,
23 every element of it, in a more narrow fashion, we
24 constantly updated this. So it contains our
25 marketing plan, our expense plan, our therapeutic

1 enough, Kathy.

2 BY MR. BANDUCCI:

3 **Q.** All right. So if you would take the
4 jury through this, just so that they get a sense
5 for what niche in the market Alamar is pursuing?

6 **A.** Well, it's, first, important to see
7 what the individual's diagnosis is. So their
8 14-year-old son has difficulties at school. He's
9 experimenting with drugs and alcohol. He's become
10 very defiant with his parents and other adults.
11 And the environment at home is just becoming
12 unmanageable for everybody involved. The parents
13 are distraught about this, but know there must be
14 something done to help their child, in other
15 words, he's on a path of destruction.

16 And so we talk about -- a little bit
17 about what Alamar Ranch is there to help with in
18 terms of the healing and creating hope for these
19 families. And it's a family therapy model that
20 this child is being brought into. And so we speak
21 a little bit to that to just try and ground, kind
22 of personalize the residents that would be coming
23 to this program.

24 **Q.** Okay. Let's go to -- we talked about
25 the company description and most of it already.

1 **and staffing plans, and just the full-on**
2 **description of what it takes to run Alamar Ranch**
3 **and make Alamar Ranch successful.**

4 **Q.** All right. Let's take the jury through
5 this quickly but on a page-by-page basis so that
6 they can see your work. And as we go through
7 this, if you would describe, just generally, what
8 each of these sections involves, the work that was
9 done and why they're in here. Okay. And why
10 they're in this business plan.

11 I think we can go by the executive --
12 let's pass the table of contents here. The
13 executive summary, I think, is pretty repetitive,
14 given what the jury has already seen. Let's stop
15 at the case study for a second. What is this case
16 study?

17 **A.** The residential treatment center
18 business is not known to many -- not widely known
19 amongst the world, and so we put a little case
20 study in there to show a representative individual
21 that would be coming to our program. So this
22 talks about the mother and father struggle with
23 what this particular child's issues are.

24 MR. BANDUCCI: Let's just take this very
25 quickly, paragraph -- well, if you can make it big

1 Let's go to the market assessment.

2 **A.** Okay.

3 **Q.** What did you do in terms of a market
4 assessment, generally?

5 **A.** For a business plan, it's very
6 important to understand the niche and to
7 communicate that niche in the market that you're
8 providing, that there's room in there for your
9 business, that you understand who your client is.

10 And so this market research is
11 something that I did and Steve Laney helped me
12 with to very narrowly look at the industry, look
13 at our competitors that are out there and define
14 the niche of the market that we are addressing,
15 the alcohol abuse treatment; you know, there's a
16 lot of data and a lot of market research in the --
17 in the media out there that we're able to get.

18 And that's what we're representing
19 here, is that our program is a very small slice of
20 the overall market for this particular niche that
21 we're working within.

22 **Q.** Let's go to competition. And there are
23 three levels of competition, low level, midlevel,
24 high level. Where does Alamar fit?

25 **A.** It's really important to understand

1 that Alamar is in the high-level categorization,
2 and low, medium, and high level is mostly
3 categorized by some of the things that I've
4 already talked about this morning, about staffing
5 levels and full offering of support programs, from
6 residential to educational to therapeutics.

7 **Q.** All right. In the high-level paragraph
8 it says, "The final grouping is the high level of
9 the care at RTC. Tuition rates depend upon length
10 of stay, but range from 8,000 to \$13,000 per
11 month. Programs charging in the higher range will
12 usually have 6- to 12-month stays. Therapeutic
13 programs offered will be much more intensive, with
14 two individual therapy sessions and one family
15 session per week."

16 The other highlighted section, "The
17 typical education program consists of an
18 integrated school with teachers that are certified
19 on specific subjects. Classes are taught in a --
20 typically classroom setting or in learning centers
21 located on site. The program must offer
22 curriculum ranging from special education through
23 advanced placement."

24 Explain that to the jury, if you would.

25 **A.** The slice of the market that we're

1 appealing to and targeting, those families, while
2 they're struggling with their teenager, they still
3 do not want to sacrifice any element of that
4 child's education, and so they have the same
5 expectation -- and, in fact, maybe a higher level
6 of expectation -- of what services are going to be
7 offered.

8 And so one child might come to our
9 program that's struggling and has some learning
10 disability that we have to deal with on an
11 individual education plan. The next child might
12 be off the chart in a particular curriculum and
13 need advanced placement programs.

14 So our education program really needed
15 to address both of those requirements. And that's
16 what we mean by a high-level, high-quality
17 program.

18 **Q.** Let's go to the next paragraph and then
19 we'll -- or the next page, I'm sorry. And at the
20 top, I think we'll just take in that and then
21 we'll move on.

22 It says, "Alamar Ranch will be
23 positioned in the high-end residential treatment
24 segment. Of the, roughly, 300 residential
25 treatment centers throughout the United States,

1 there are only 10 to 15 organizations focused on
2 this same segment."

3 Can you tell the jury about that,
4 please?

5 **A.** Yeah. We researched that a lot,
6 because that's the space that we're playing in and
7 we needed to understand our competitors and
8 understand the services they offered, just the
9 entire environment that those programs were
10 offered in, and so we researched and studied those
11 programs quite well. Amy Jeppesen was quite
12 instrumental in helping us through that.

13 **Q.** Okay. Next page, please.

14 This is the risk assessment section.
15 Tell the jury just a little bit about risk
16 assessment, and then we'll look at a couple of
17 these paragraphs, specifically.

18 **A.** One of the uses of this business plan
19 is for us to take to the owners and to financing
20 partners. And so it is -- it is important that
21 this plan represent a very conservative model.
22 And so our stakeholders want to make sure that
23 we've looked at every risk element of the plan.
24 And so that's what this section does, it goes
25 through and itemizes the risks that we have in

1 starting up Alamar Ranch.

2 **Q.** Now, the first section in the risk
3 assessment is conditional use permit.

4 Can we bring that out, Kathy?
5 And that talks about, "Alamar's
6 proposed use will require approval by Boise County
7 Planning and Zoning and, if appealed, Boise County
8 Board of Commissioners."

9 And it points out that, "Treatment
10 centers have had difficulty in obtaining approval
11 due to a negative reaction from nearby residential
12 neighborhoods. Although we are not aware of any
13 specific challenges at this time, Alamar Ranch
14 could face delays in our timeline if approval is
15 not granted."

16 When was this prepared? Obviously,
17 this was before you heard from No Alamar?

18 **A.** It was. This document was drafted
19 starting in, probably, the summer of 2006 and was
20 updated as we went forward. But most of the later
21 updates were financial updates.

22 **Q.** Now, this speaks to the risk of delay
23 due to reaction from nearby residential
24 neighborhoods. Does this risk assessment identify
25 as a risk the potential that the county

1 commissioners would violate the Fair Housing Act
2 and discriminate?

3 **A.** Absolutely not. What we were focusing
4 on here is simply a delay in time. Our research
5 had validated that, that programs to one degree or
6 another have difficulty with the approval process,
7 which is what I wrote in here. But we never
8 expected the -- the, you know, effectively being
9 denied, like we were in this particular case. And
10 so that was just not even represented as a risk.
11 What we represented here was a delay, at best.

12 **Q.** Let's go to the second page to
13 capitalization.

14 And, Kathy, if you could bring that
15 out.

16 Capitalization is also identified as a
17 risk factor in here. Could you tell the jury just
18 exactly what you had done relative to obtaining
19 financing for the project, and what status things
20 were when this decision and order came down from
21 the county commissioners?

22 **A.** Absolutely. We had -- from the
23 beginning of the project through its various
24 stages of selecting property, of acquiring
25 property, we kept our banking connections always

1 informed. And so as we progressed, we had
2 increasing conversations with a variety of
3 different investors, as well as banking clients or
4 banking partners.

5 And so at the later stages, we had very
6 advanced conversations with three institutions,
7 Bank of the Cascades, Mountain West Bank, and
8 Northwest Farm Credit Services, and were in
9 the -- right in the pipeline of being ready to
10 submit applications.

11 However, all of those are premature to
12 be submitted prior to getting our conditional use
13 permit application. So in the case of the
14 Northwest Farm Credit Services, all of the
15 documentation had been submitted. It was ready to
16 go. It would be submitted following the approval
17 of our application.

18 MR. BANDUCCI: Kathy, can we flip quickly,
19 then, through the next pages.

20 BY MR. BANDUCCI:

21 **Q.** The next one I think is marketing
22 strategy. The next one after that is sales
23 strategy. The next one after that is operations,
24 and that talks about the different phasing for the
25 project. Is that correct?

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

2 **Q.** And as I understand it, there would be
3 three phases to the project?

4 **A.** That's right.

5 **Q.** Explain that very quickly to the jury.

6 **A.** The first phase -- it's very
7 complicated, and there was a lot of planning put
8 into this to minimize the amount of financing and
9 cash outlay.

10 So the first phase was for 24 beds and
11 all of the required infrastructure improvements,
12 so roads, water system, sewer system, cafeteria,
13 administration building, and two lodges.

14 The second phase was additional lodges,
15 and the third phase was additional lodges.

16 But by phasing it that way, we're able
17 to get the program up and operating and minimizing
18 the negative drain versus -- or in contrast to
19 going out and building all six buildings,
20 residential lodges right from the start and then
21 starting to bring in kids to the program. So
22 that's what the phasing really represents there.

23 **Q.** Okay. Now, we'll flip through some
24 more of this.

25 I think -- what's the next section,

1 Kathy? Operations?

2 Operations overview. Next page is
3 research and development and management and
4 financial controls. Technology. Management and
5 organization. This talks about the senior
6 executive team; correct?

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

8 **Q.** And then the next section shows an
9 organization chart and then we get into
10 financials.

11 Now, I'm not going to -- go to the
12 first page -- I'm not going to go through these in
13 depth, but explain bottom line to the jury, if you
14 would, what you expected would be invested in the
15 development and operation of Alamar.

16 **A.** We --

17 **Q.** I suspect this is just the development
18 piece, isn't it?

19 **A.** Yes. This is just the real estate
20 development piece, so kind of the capital costs
21 associated with the land improvements and
22 buildings. In total, for the three phases,
23 including the property, we would invest
24 \$11.5 million.

25 And you can see the phases. The first

1 phase is, really, the combination of the
2 1.4 million, which is the property purchase, and
3 then the initial buildings at 3.8 million. So the
4 first piece of that is -- the first phase that I
5 talked about earlier was that, those first two
6 numbers, and then the second and third are 2.8 and
7 3.4.

8 **Q.** Behind that is, I guess, is that next
9 page a more refined version of what you've got
10 there?

11 **A.** That's correct. It was difficult for
12 me, the volumes of information that go to these
13 summary pages. I mean, the information is very,
14 very "voluminous" -- is that the right word? --
15 and so it's kind of hard to represent here with
16 the small print. But there were detailed
17 estimates for each of these buildings that all
18 rolled up to that summary page. That's really
19 what this -- this is a month-by-month look at
20 that.

21 **Q.** In other words, you had this down,
22 right down to the faucets and the doorknobs?

23 **A.** That's right.

24 **Q.** Let's go to the facility start-up
25 schedule. And what's that?

1 of running the facility on a day-to-day basis.
2 **Q.** And so what this sheet represents is
3 the costs that Alamar Ranch have into the project
4 before we bring one child into the program. So
5 you can see -- I don't know if it's visible, but
6 this goes through, I think, it's December of '08.

7 **Q.** Is it December '08 or December '07?

8 **A.** Sorry, '07. You're correct. It's
9 December of '07, when there's no kids there; it's
10 all in development cycle.

11 **Q.** And then the next slide of this
12 presentation gets into the ramp schedule as the
13 kids start arriving.

14 **Q.** We've highlighted that as of December
15 '07 -- does this sound right? -- that the
16 accumulated cash need is about \$1.5 million?

17 **A.** That's right. So just to rephrase --
18 rephrase what Mr. Banducci said, for paying
19 salaries, like mine and Amy Jeppesen, and for all
20 of the costs of the conditional use permit and all
21 of the engineering fees, we had -- we would have
22 to expend a-million-and-a-half dollars of those
23 types of expenses before we bring one child in.

24 **Q.** And did you have financing lined up for
25 that?

1 **A.** This doesn't show up very well on my
2 monitor, but there is a red -- a red column and a
3 gray column. The red column shows the number of
4 residents over the months that we steadily grow.
5 So, you know, in the month of March of '08, it
6 looks like we're bringing in, you know, maybe two
7 children, and then the next month we're growing to
8 six, and it scales across the time frame.

9 **Q.** The gray bar is residents compared to
10 available beds. And so as we construct additional
11 lodges, you can see that those come in chunks of
12 12, because each building, each lodge has 12 beds
13 in it.

14 **A.** So it's just a growth plan over the
15 approximate three-and-a-half years that it takes
16 to get the project fully developed and operating.

17 **Q.** The next page is Alamar Ranch start-up
18 budget.

19 **A.** Yeah, this particular -- it's important
20 to understand that the previous financials that we
21 were looking at is for the residential LLC; that
22 is, the YTC, LLC, the entity that's owning the
23 real estate. This is for Alamar Ranch, LLC, which
24 is the operating company. It's the company that
25 employs the staff and the -- and all the expense

1 **A.** We did.

2 **Q.** Thank you. Next is operational
3 financial analysis. Again, I'm going to -- I'll
4 let you explain this briefly, but I think at this
5 point we can kind of --

6 **A.** Yeah.

7 **Q.** -- summarize it.

8 **A.** It's too much of an eye chart. But it
9 is a month-by-month projection, basically, a
10 month-by-month cash flow of how many students are
11 in, what the revenue is, the expenses associated
12 with that revenue, and then the results.

13 **Q.** And so starting the first grouping of
14 rows across is, I don't know, the first maybe
15 18 months of the program that we go through to
16 showing steady growth and the expense increases.
17 And this just goes through, I think it's the
18 three-and-a-half-year time frame of getting fully
19 up and operating.

20 **Q.** Mr. Tverdy, you're the author of this
21 document; correct?

22 **A.** Correct.

23 **Q.** And is this document similar to what
24 you did for many years at Micron?

25 **A.** Absolutely, it is.

1 **Q.** Can you tell the jury whether, in your
2 opinion, Alamar would have been able to meet the
3 objectives in its business plan?

4 MR. BRASSEY: Your Honor, I object. It
5 lacks foundation. And my objection is not on the
6 financial data just shown. My objection has to do
7 with the expertise with RTCs. It lacks
8 foundation.

9 THE COURT: Counsel, I think I'm going to
10 sustain the objection. I think if the witness --
11 if the question were rephrased in terms of if the
12 assumptions are correct --

13 MR. BANDUCCI: That would be fine. I'll ask
14 it that way.

15 THE COURT: I'll allow it with that caveat.

16 MR. BANDUCCI: Sure.

17 THE COURT: Then it doesn't require
18 expertise. It's simply a matter of kind of
19 summarizing the business plan. Go ahead.

20 MR. BANDUCCI: Thank you, Your Honor.

21 BY MR. BANDUCCI:

22 **Q.** Based on the work that you did in
23 developing this business plan and tweaking it all
24 the way along in the process, in your opinion,
25 were the assumptions that you made in this

1 So with that limitation and instruction
2 of the jury, I'll allow the witness to answer.

3 THE WITNESS: The assumptions that went into
4 the plan were well-founded, and there just was no
5 doubt that -- that the business plan was
6 well-constructed, well-supported, was reviewed by
7 not only the ownership team, but our lending
8 institutions. There was simply no indication that
9 we would not have been successful performing with
10 this plan.

11 BY MR. BANDUCCI:

12 **Q.** Okay. Now, one last question,
13 Mr. Tverdy. Do you have any kind of interest in
14 the outcome of this case?

15 **A. No, I do not. I work at Micron
16 Technology now.**

17 **Q.** Why?

18 **A. Because the program was not successful.
19 We laid off all of the employees to this point,
20 and then once -- once the activity on the project
21 ground to zero, I was laid off as well, and now I
22 work at Micron Technology.**

23 **Q.** So you're here on your own time?

24 **A. I'm here on my own time.**

25 MR. BANDUCCI: Thank you.

1 business plan achievable?

2 MR. BRASSEY: Your Honor, I'm going to make
3 the same objection based on foundation.

4 MR. BANDUCCI: If I may, Your Honor?

5 THE COURT: Yes.

6 MR. BANDUCCI: He's the author. This is a
7 cross-examination issue. It's certainly not a
8 foundational issue. I'm not asking an expert
9 opinion.

10 THE COURT: Well, the problem is the
11 question was phrased in "in your opinion," which
12 that's where we have the problem.

13 I'm going to allow the witness to
14 answer as the author of the plan. But at this
15 point he certainly has some expertise in
16 developing business plans, but not in this
17 particular area, and I think that's the primary
18 basis for the objection.

19 The response of the witness will be
20 limited only to his observation as a -- as the
21 author of the plan and based upon the assumption
22 that the income levels will be achieved, because I
23 think that's probably where the critical issue is
24 and where the expertise cannot be provided by this
25 witness.

1 THE COURT: Mr. Brassey, we're about
2 four minutes away from where I would normally take
3 the break. Do you want to take the break now and
4 then start up?

5 MR. BRASSEY: That would be fine,
6 Your Honor.

7 THE COURT: We'll reconvene at 20 minutes
8 to. That's a little more than 15 minutes. But,
9 Counsel, please be in your seat at that time so we
10 can bring the jury in.

11 I'll, again, admonish the jury not to
12 discuss the case among themselves or with anyone
13 else, nor should they form or express any opinions
14 about the case until it is submitted to you.

15 Court will be in recess.

16 (Recess.)

17 (Jury present.)

18 THE COURT: I'll note for the record that
19 the jurors are present.

20 Mr. Tverdy, I'll remind you, you are
21 still under oath.

22 Mr. Brassey, you may begin your
23 cross-examination.

24 MR. BRASSEY: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. BRASSEY:

2 **Q.** Good afternoon, Mr. Tverdy.

3 **A.** Good afternoon.

4 **Q.** I want to ask you something that you
5 indicated at the end of your direct examination
6 with Mr. Banducci. With regard to your interest
7 in this outcome, you're not being paid to be here;
8 correct?

9 **A.** Correct.

10 **Q.** It would be incorrect to say you
11 weren't interested in the outcome, wouldn't it?

12 **A.** Interested in terms of justice being
13 done, yes.

14 **Q.** When did you go back to work at Micron?

15 **A.** February of this year, of 2010.

16 **Q.** And is it correct that when you went to
17 work --

18 **A.** Excuse me, Andy -- Mr. Brassey, sorry.

19 It was -- that's when I started -- it was May of
20 2010, this year.

21 **Q.** So roughly two years after the Board of
22 County Commissioners' decision in this case and
23 the written decision was entered in April of 2008;
24 correct?

25 **A.** Yes.

1 of ground that Alamar really considered to do the
2 Alamar Ranch project. Is that what you said?

3 **A.** Yeah. I said we were looking at
4 several properties in parallel, when the Green
5 Ranch came along and fully met our criteria, yes.

6 **Q.** And do you recall that an offer was
7 actually made on a piece of property in Garden
8 Valley?

9 **A.** Yeah. Sometime in the summer of '06,
10 we did make an offer on a property in Garden
11 Valley, yeah.

12 **Q.** So you were in negotiations which
13 didn't pan out, but had they panned out,
14 Alamar Ranch would have bought the property in
15 Garden Valley; correct?

16 MR. BANDUCCI: Objection. Calls for
17 speculation.

18 THE COURT: I'm not sure --

19 MR. BRASSEY: Well, Your Honor, here is --
20 let me try to rephrase it.

21 THE COURT: Let me -- all right. If you
22 rephrase, that may solve the problem.

23 BY MR. BRASSEY:

24 **Q.** Mr. Tverdy, an offer was made on a
25 piece of property. The other side, I assume, came

1 **Q.** And when you went to work at Oaas Laney
2 from Micron, were you involved just with Alamar or
3 were you also doing some other development
4 projects with them?

5 **A.** You know, from the beginning, I think I
6 was mostly exclusively working on Alamar Ranch
7 projects. But as months went on and other Oaas
8 Laney development activity occurred, I might, you
9 know, do a project here and there. So I would say
10 for my first year I was, you know, 90 percent
11 working on Alamar Ranch.

12 **Q.** Then you did some projects for them on
13 other developments; is that right?

14 **A.** That's right. I can't -- yeah, that's
15 right.

16 **Q.** And I assume since the commissioners'
17 decision in April of 2008, you were doing other
18 activities for Oaas Laney?

19 **A.** That's -- well, not -- I did other
20 activities for Oaas Laney, yes.

21 **Q.** I'm going to hop around a little bit,
22 Mr. Tverdy. It seems like a long time ago since
23 you started, quite frankly.

24 One of the things you mentioned was the
25 Green Ranch was the first project or first piece

1 back with different price?

2 **A.** Correct.

3 **Q.** And --

4 **A.** In addition to price, there were other
5 issues associated with that property that didn't
6 make it perfect for us. But price was the main
7 thing we were negotiating, yes.

8 **Q.** Okay. I understand.

9 Had the owner of that property accepted
10 your price, you would have put the project in
11 Garden Valley?

12 **A.** We would have begun due diligence. And
13 so we would have begun doing well testing,
14 groundwater testing, all of the other diligence
15 that needed to take place. So I can't say for
16 certain that that would have been a property that
17 we would have gone forward with.

18 MR. BRASSEY: Can we look at Plaintiff's --
19 Pat -- Exhibit 1181? And it hopefully is a Google
20 map.

21 Let's just show this, Your Honor, maybe
22 to the witness and counsel. I'm not sure this
23 first one I'm going to show is in.

24 THE COURT: The jury projector is off.
25 1181?

1 MR. BRASSEY: Correct.
 2 THE COURT: I have that as admitted, pages
 3 12 and 13.
 4 MR. BRASSEY: I think this is page 1.
 5 Your Honor --
 6 MR. BANDUCCI: We have no objection to it,
 7 Your Honor.
 8 MR. BRASSEY: We would move for the
 9 admission of Plaintiffs' 1181, page 1.
 10 MR. BANDUCCI: No objection.
 11 THE COURT: Admitted and published to the
 12 jury.
 13 (Plaintiffs' Exhibit 1181, page 1,
 14 admitted.)
 15 BY MR. BRASSEY:
 16 **Q.** Mr. Tverdy -- and maybe counsel and
 17 court saw this picture, but this is a view,
 18 obviously, from the air, looking down on Osprey
 19 Subdivision; is that right?
 20 **A.** That's right.
 21 **Q.** And Alamar Ranch is up at the top of
 22 that picture; is that right?
 23 **A.** Yeah. The uppermost portion of that
 24 clearing, yes.
 25 **Q.** Let me ask you this --

1 **A.** There is a road that is the Osprey
 2 Subdivision main entrance, and then connects over
 3 to the Green Ranch, if that's what your question
 4 is. Correct.
 5 **Q.** Is the main entrance -- see my
 6 pointer -- at the bottom here, or is it up at the
 7 top?
 8 **A.** The main entrance to the Osprey
 9 Subdivision is right at the, you know, just to
 10 the -- at the point of the clearing on the --
 11 where those houses are, right on the canyon rim.
 12 **Q.** Here (indicating)?
 13 **A.** Correct.
 14 **Q.** So there is -- and that's how Osprey
 15 gets to their subdivision?
 16 **A.** That's one entrance, yes.
 17 **Q.** And where is the other entrance?
 18 **A.** The other entrance is where you -- down
 19 on the very left bottom portion, you see a road
 20 that goes off the picture? That's the other
 21 entrance.
 22 **Q.** All right. So if, for example, we had
 23 a fire up here where my pointer is and everybody
 24 at Osprey Subdivision wanted to leave, assuming
 25 they didn't want to drive through the fire, they

1 MR. BRASSEY: I apologize, Judge, but I'm
 2 not sure I'm smart enough to figure this out.
 3 Well, let me see if this works,
 4 Your Honor. I don't know if it will from here or
 5 not.
 6 BY MR. BRASSEY:
 7 **Q.** What I'm trying to figure out,
 8 Mr. Tverdy -- yeah, it works -- is Alamar Ranch is
 9 up here where this pointer is; correct?
 10 **A.** Yeah. The very top portion of that
 11 clearing, yep.
 12 **Q.** Right. And Highway 21 runs down here
 13 through this canyon, doesn't it?
 14 **A.** That's right.
 15 **Q.** And then the Grimes Creek cutoff is
 16 right in here. I can't see that very well.
 17 **A.** Yeah. A little bit to the left, but
 18 yes, that's right.
 19 **Q.** All right. Right in here. And it runs
 20 up another canyon through here, doesn't it?
 21 **A.** Yeah. Right along the edge of the Klam
 22 Ranch property.
 23 **Q.** Okay. And then from Highway 21 in this
 24 area, is there a road that comes up to the Green
 25 Ranch and Osprey Subdivision?

1 would drive down this road and down onto
 2 Highway 21, wouldn't they?
 3 **A.** Yeah.
 4 MR. BRASSEY: Can we look at Plaintiffs'
 5 1181, Exhibit 12 -- page 12, excuse me.
 6 BY MR. BRASSEY:
 7 **Q.** I think, Mr. Tverdy, again, you talked
 8 about the Alamar Ranch. Is this whole clearing
 9 123 acres, roughly?
 10 **A.** No. The 123 acres goes up into the
 11 trees and the very tip of the, I guess, of the
 12 "Y," or whatever you want to call that, towards
 13 the top of the picture. The very tip of that is
 14 not part of the property.
 15 **Q.** And I apologize, but if you look at my
 16 pointer, this part is not part of the
 17 Alamar -- the Klam Ranch?
 18 **A.** That's right.
 19 **Q.** And along this rim where my pointer is,
 20 those are cliffs, aren't they, that drop down into
 21 Grimes Creek?
 22 **A.** That's correct.
 23 **Q.** And it's steep, rocky, and in places
 24 forested, isn't it?
 25 **A.** That's right.

1 **Q.** And is roughly, where I'm pointing,
2 west?

3 **A.** I think so, but I can never quite get
4 my bearings up there in that regard.

5 **Q.** Well, it's probably a little northwest.
6 But this is forest ground in this whole
7 area where my pointer is; is that right?

8 **A.** Yes.

9 **Q.** And just -- it's hard to see on this
10 picture, Mr. Tverdy, but the road comes right
11 through here, doesn't it, and came up along that
12 rim?

13 **A.** Which road are you referring to? The
14 one that we proposed to the county commissioners?

15 **Q.** Well, there was a road before you
16 bought it that came up to the property; correct?

17 **A.** Yes.

18 **Q.** And it kind of came along, so to speak,
19 the side of this cliff, and came up to the
20 property, didn't it?

21 **A.** That's right. It -- a little bit
22 different than what you're drawing it out there,
23 but, yes, it comes up the front edge of that
24 property.

25 **Q.** It's hard to see from this angle.

1 Now, this property that's right to, I'm
2 going to say to the south, or down Highway 21 from
3 this tip, who owns that? Do you know?

4 **A.** I don't know. It's a mixture --
5 depending upon where your pointer was, it's a
6 mixture between Forest Service and, I think, Sandy
7 Sims and another private property owner. I can't
8 remember the name of them.

9 **Q.** Chapman?

10 **A.** Not Chapman. I think Chapman and Sandy
11 Sims may be together on that, and then there is a
12 third one in addition to that.

13 **Q.** Do you know if Forest Service ground
14 butts up at all to this tip that I'm pointing to?

15 **A.** I think that is Forest Service ground,
16 that tip.

17 **Q.** Okay.

18 MR. BRASSEY: And let's -- can we look at
19 1181, page 13.

20 BY MR. BRASSEY:

21 **Q.** What's this over here, Mr. Tverdy?
22 Are there any houses in there? I guess
23 that's my question.

24 **A.** Point to me again -- or for me again.

25 **Q.** (Indicating.)

1 **A.** No, I don't think there is any houses
2 there.

3 **Q.** Okay. Thank you.

4 MR. BRASSEY: Pat, thank you.

5 BY MR. BRASSEY:

6 **Q.** With regard to the kids, the
7 adolescents that you testified would be involved
8 in Alamar Ranch, did you testify that, given your
9 research and the income per month, per child,
10 that, roughly, the stays were six to twelve
11 months?

12 **A.** Yes. That's what was in our business
13 plan.

14 **Q.** And for those adolescents, was the plan
15 that you would obtain parental consent for those
16 adolescents to be at Alamar Ranch?

17 **A.** I don't -- I'm not sure what you mean
18 by "parental consent." I don't know that those
19 are -- that's applied correctly.

20 **Q.** Well, let me ask you this: Given your
21 research and what you did, looking into a center
22 such as you wanted Alamar Ranch to be, was it the
23 parents who requested that their children be sent
24 to a facility such as this?

25 **A.** Of course.

1 **Q.** And generally speaking, were those --
2 the reason that those children were coming to
3 places like Alamar Ranch is because they were at
4 home and there simply were issues at home,
5 whatever they might be, that required the parents
6 wanting them in a place such as Alamar Ranch?

7 **A.** Yeah. I think that's fair to say that.

8 **Q.** And your goal, then, when you were
9 done, or when the 6- to 8-month -- or excuse
10 me -- 6- to 12-month period was up, would be to
11 return those children back to their homes and
12 hopefully get on with their lives?

13 **A.** Yeah. Back to where they want to go to
14 the next stage of their life, whether that's home
15 or whether that's to a college or to, what, but,
16 yes, back with -- get on with the rest of their
17 lives.

18 **Q.** Right. But your goal was to get them
19 back with their family; is that a fair statement?

20 **A.** You know, I think the details of those
21 programs and the circumstances are best discussed
22 with Amy Jeppesen, but, you know, certainly to
23 return them to a normal life.

24 **Q.** Okay. And if somebody was of college
25 age, they may move home and then go to college,

1 but to return them back, in essence, from where
2 they came, hopefully with a better life?

3 **A. For sure.**

4 **Q.** With regard to the application, I want
5 to look at Plaintiffs' Exhibit 1029 --

6 MR. BRASSEY: It's been admitted.

7 BY MR. BRASSEY:

8 **Q.** -- and I want to look at page 2.

9 As I understand it, Mr. Tverdy,
10 this -- did you help with this application?

11 **A. Yes.**

12 **Q.** And really I just wanted to ask you, as
13 I read it, looking at the background, it indicates
14 that, "We'll begin operation accepting males only
15 above a certain age." Do you see that, under
16 "background"?

17 **A. I know that is written in there, but I
18 don't see it at the moment.**

19 **Q.** It's three lines down.

20 MR. BRASSEY: Can we highlight it, Pat?

21 THE WITNESS: Okay. Yeah.

22 BY MR. BRASSEY:

23 **Q.** And that was the plan that at least was
24 reported to Planning and Zoning; is that right?

25 **A. Correct.**

1 mostly correct statement. I don't think we ever
2 said that we wouldn't under any circumstances
3 consider that.

4 But I think, as I said earlier, it
5 is -- it is not very common for an individual to
6 go to a program like Alamar Ranch, a residential
7 treatment center, that's located in their
8 backyard. Part of the therapeutic program is to
9 remove them from their family, from their local
10 environment.

11 **Q.** Do you remember telling me in your
12 deposition that when asked by the community and
13 the commissioners, both the county and Planning
14 and Zoning, that Alamar Ranch does not want to
15 have local kids in the program because of the
16 therapeutics that go on there?

17 Do you remember telling me that?

18 **A. Yeah. I think that's what I just said,
19 too.**

20 **Q.** Now, in terms of sending Boise County
21 kids somewhere, there is a project called Isaiah's
22 Ranch; correct?

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

24 **Q.** Where is that?

25 **A. I don't know the specific location, but**

1 **Q.** And then was the plan then to add girls
2 at some point in time?

3 **A. We certainly were not limiting
4 ourselves to adding girls to the program, but
5 there was also consideration of other diagnoses,
6 like one that we frequently talked about was an
7 Asperger's diagnosis.**

8 But what we were representing here is
9 that we would be begin the operation by focusing
10 on males 12 to 17.

11 **Q.** And do you know whether you ever
12 indicated to Planning and Zoning or the
13 commissioners that actually you had a plan to add
14 females at a later time?

15 **A. I think there were many conversations
16 in the community to that degree, but I don't ever
17 recall it coming up in any of our hearings, no.**

18 MR. BRASSEY: Thank you, Pat.

19 BY MR. BRASSEY:

20 **Q.** Let me ask you this just briefly: With
21 regard to the scholarship fund that Alamar Ranch
22 was going to establish for kids, I want to talk to
23 you about that. The scholarship funds were not to
24 have kids in Boise County go to Alamar Ranch?

25 **A. It depends, but I think that is a**

1 it's in the Idaho City area.

2 **Q.** And what kind of a program is it?

3 **A. The -- Isaiah's Ranch is a summer
4 program for, I think, younger kids, but a full --
5 a pretty wide range of age of kids, that -- we
6 know of them because Amy Jeppesen and Lauren
7 Carlson were volunteering in helping facilitate
8 those programs.**

9 **Q.** And was that somewhere where you might
10 send some Boise County kids?

11 **A. Yeah. But that is a -- I don't want to
12 characterize it as like Alamar Ranch, because it's
13 not. It is a -- it is a kind of a summer camp
14 program where there are activities, there are, you
15 know, kind of light counseling, family
16 building-type exercises going on, but it's mostly
17 a summer camp type activity to keep kids busy
18 during the summer.**

19 **Q.** And when you say because of the
20 therapeutics, you don't want local kids, would
21 that include kids from Boise?

22 **A. You know, I would defer that to Amy
23 Jeppesen, but I believe the answer to that would
24 probably be yes. But I really am not an expert on
25 that.**

1 **Q.** And on that subject, Amy Jeppesen is
2 the executive director you hired and told the jury
3 about; correct?

4 **A.** Correct.

5 **Q.** With regard to residential treatment
6 centers such as Alamar Ranch, does she have more
7 experience than you with regard to this type of
8 facility?

9 **A.** Absolutely.

10 **Q.** Okay. She has worked in them before
11 down in the state of Utah; correct?

12 **A.** The far majority of her professional
13 career has been doing that, yes.

14 **Q.** And I assume -- would defer to her with
15 regard to the programs, the benefit of the
16 programs and the therapeutic benefit of the
17 programs that Alamar Ranch proposed be built with
18 this project.

19 **A.** Absolutely.

20 **Q.** Excuse me, Mr. Tverdy, one second. I
21 forgot something up here.

22 Let me ask you this: You -- we showed
23 the jury the slides with regard to the PowerPoint
24 that was presented to Planning and Zoning. Do you
25 remember that?

1 **A.** Yes.

2 **Q.** And I believe that's 1036. Do you
3 remember that?

4 **A.** I don't.

5 **Q.** Okay. Let me ask you this --

6 MR. BRASSEY: Can we show the witness --
7 Your Honor, I don't think it's in yet. It's
8 Plaintiffs' Exhibit 1041. So if we could not show
9 the jury.

10 BY MR. BRASSEY:

11 **Q.** Do you recognize this, Mr. Tverdy?

12 **A.** Yes, I do.

13 **Q.** Okay. Let me ask you this: In the
14 process of going through the CUP application with
15 Planning and Zoning and the Board of County
16 Commissioners, Alamar Ranch hired a law firm in
17 Boise called Spink Butler, didn't they?

18 **A.** That's right.

19 **Q.** And JoAnn Butler and Mike Hethe [sic]
20 of that firm were the primary people, lawyers at
21 that firm who were involved in this project; is
22 that right?

23 **A.** It would be JoAnn Butler and --

24 **Q.** Hethe Clark. I said --

25 **A.** Hethe Clark was the attorney there,

1 yes.

2 **Q.** I apologize. I gave you the wrong
3 name.

4 It was Hethe Clark and JoAnn Butler;
5 correct?

6 **A.** That's right.

7 **Q.** And I'm assuming that when they
8 presented things to Planning and Zoning or to any
9 of the agencies for the county or the county
10 commissioners, they would do so with Alamar's
11 okay, and perhaps your okay and approval; would
12 that be a fair statement?

13 **A.** Yes.

14 MR. BRASSEY: Your Honor, I would like to
15 admit Plaintiffs' Exhibit 1041.

16 THE COURT: Any objection?

17 MR. BANDUCCI: No, Your Honor.

18 THE COURT: 1041 will be admitted.
19 (Plaintiffs' Exhibit No. 1041
20 admitted.)

21 MR. BRASSEY: And can we -- I want to go
22 back to something for just a minute. It's
23 Plaintiffs' Exhibit 1036. I believe, Your Honor,
24 it's in evidence.

25 THE COURT: It is.

1 MR. BRASSEY: And I want to go to
2 Condition 1. I think there were conditions that
3 were actually numbered.

4 BY MR. BRASSEY:

5 **Q.** Mr. Tverdy, do you recognize this
6 particular Condition 1 of the proposed conditions
7 of approval that you presented to -- or Alamar
8 presented to Planning and Zoning when they were
9 presenting their conditional use permit
10 application?

11 **A.** Yes.

12 **Q.** And I'm going to read it and then I'm
13 going to ask you a question.

14 "No change in the terms and conditions
15 of this approval shall be valid unless in writing
16 and signed by the applicant, or the applicant's
17 authorized representative, and an authorized
18 representative of Boise County. The burden shall
19 be upon the applicant to obtain the written
20 confirmation of any change, and not upon Boise
21 County."

22 That was something that Alamar Ranch
23 proposed both to Planning and Zoning and the Board
24 of County Commissioners; correct?

25 **A.** Correct.

1 MR. BRASSEY: And then, Pat, if we could go
2 back to Exhibit 1041.

3 BY MR. BRASSEY:

4 **Q.** Mr. Tverdy, this is a letter that Hethe
5 Clark wrote to Planning and Zoning on August 2nd,
6 2007, to the commissioners, with a list of 22
7 conditions that Alamar Ranch was willing to submit
8 to with regard to its conditional use permit; is
9 that correct?

10 **A.** That's correct.

11 MR. BRASSEY: And, Pat, if we can go -- it
12 should be the second page of -- and I want to
13 highlight "3."

14 BY MR. BRASSEY:

15 **Q.** And that's the same condition that
16 Alamar Ranch presented to Planning and Zoning in
17 its PowerPoint, that Alamar's counsel proposed to
18 Planning and Zoning that they would be willing to
19 live with with regard to this project; correct?

20 **A.** Correct.

21 MR. BRASSEY: Now, I want to go to -- I
22 believe it's Plaintiffs' 1088, the decision.

23 And I want to go to the very back of
24 the document.

25 BY MR. BRASSEY:

1 **A.** I do.

2 **Q.** Would it be fair to say Alamar didn't
3 object to that change in that condition?

4 **A.** I think that would be fair, yes.

5 **Q.** Would it be fair, Mr. Tverdy, to tell
6 the jury that one of the reasons Alamar Ranch
7 proposed this particular condition -- because in
8 land use projects such as the project of Alamar
9 Ranch, changes need to be made as time goes by,
10 and this gave you the ability to go to the county
11 and obtain that change?

12 **A.** Yes.

13 **Q.** Now, I want to ask you -- as I
14 understood --

15 MR. BRASSEY: Thank you, Pat.

16 BY MR. BRASSEY:

17 **Q.** -- as I understood your testimony with
18 regard to meeting with the departments of the
19 county government, and you mentioned the sheriff;
20 correct?

21 **A.** Correct.

22 **Q.** And emergency services -- was that
23 Gordon Ravenscroft?

24 **A.** Yeah.

25 **Q.** Okay.

1 **Q.** While he is doing that, Mr. Tverdy,
2 this is a document, the decision of the Board of
3 County Commissioners, that you talked about with
4 Mr. Banducci; is that right?

5 **A.** That's fine.

6 **Q.** And do you remember that attached to
7 the decision is a copy of the conditions with no
8 red-lining, so to speak, and then a second copy of
9 the conditions that reflects changes made by the
10 Board of County Commissioners; correct?

11 **A.** I remember seeing that document, but
12 I -- yeah. I don't know any details of it.

13 MR. BRASSEY: I want to go to Condition 3
14 with the red-lined or underlined documents. I
15 want to highlight "3."

16 BY MR. BRASSEY:

17 **Q.** And, Mr. Tverdy, the proposal Alamar
18 made was changed slightly and indicated that,
19 instead of just being signed by an authorized
20 representative of Boise County, it had to be
21 approved by the Boise County Board of
22 Commissioners after being properly noticed for
23 hearing and being placed on a formal meeting
24 agenda.

25 Do you see that?

1 **A.** "Emergency services" is kind of a broad
2 term, but Gordon Ravenscroft was one of the guys
3 we met with, yes.

4 **Q.** All right. And I understood you to say
5 that at the time of Planning and Zoning, you had
6 received no disagreement from any department of
7 county government, including emergency services,
8 with regard to what you were willing to do on this
9 project.

10 **A.** That's correct.

11 **Q.** Do you recall that Gordon Ravenscroft
12 from emergency services wrote a letter in July of
13 2007 to Planning and Zoning with regard to his
14 thoughts on this project?

15 Do you remember that?

16 **A.** Yeah, I do.

17 MR. BRASSEY: Can we see -- it's not
18 admitted yet. Can we see Defendant's 2026?

19 BY MR. BRASSEY:

20 **Q.** Mr. Tverdy, have you seen this before?

21 **A.** Yes.

22 **Q.** Okay.

23 MR. BRASSEY: Your Honor, we would offer
24 Defendant's 2026.

25 MR. BANDUCCI: No objection.

1 THE COURT: 2026 will be admitted.
2 (Defendant's Exhibit No. 2026
3 admitted.)

4 MR. BRASSEY: Pat, with regard to "Access,"
5 I want to go down to the third bullet point. Can
6 you yellow that for me?

7 BY MR. BRASSEY:

8 **Q.** I'm going to read you something and
9 then I'm going to ask you a question.

10 "Considering the residential treatment
11 center nature of the CUP and the number of
12 employees, a second secondary exit route for
13 emergency use should be required."

14 Isn't it true that in writing this
15 letter, Gordon Ravenscroft wanted a secondary
16 access that didn't use the same road and didn't
17 cross Grimes Creek Bridge?

18 Isn't that true?

19 MR. BANDUCCI: Objection. Calls for
20 speculation, Your Honor.

21 THE COURT: Sustained.

22 BY MR. BRASSEY:

23 **Q.** Well, let me ask you this, Mr. Tverdy:
24 Did you ever have a discussion with Gordon
25 Ravenscroft where he indicated that there had to

1 be two ways -- two ways in and two ways out of
2 this project?

3 **A.** No.

4 MR. BRASSEY: Thank you, Pat.

5 BY MR. BRASSEY:

6 **Q.** You didn't present to Planning and
7 Zoning on either August 2nd or August 15th, 2007,
8 did you?

9 **A.** No.

10 **Q.** But were you there?

11 **A.** Yes.

12 **Q.** Isn't it true -- well, strike that.

13 Who is Doug Russell?

14 **A.** Doug Russell is the lead engineer with
15 the Land Group that did the majority of the site
16 planning for us.

17 **Q.** And one of the things he was involved
18 in were roads for the project that would be
19 required; is that right?

20 **A.** Certainly. We were all working on that
21 together with Doug.

22 **Q.** And let me ask you this: With regard
23 to this hearing, do you recall Doug Russell; JoAnn
24 Butler, one of your lawyers; and Hethe Clark, one
25 of your lawyers, representing to the Planning and

1 Zoning Commission that there would be a secondary
2 ingress and egress from the property, and that
3 that secondary ingress and egress would not use
4 the existing bridge over Grimes Creek?

5 MR. BANDUCCI: Objection, Your Honor. This
6 is a permit that was denied and -- by the Planning
7 and Zoning Commission, and Mr. Brassey is making
8 this sound like this was an agreement that was
9 accepted by Planning and Zoning. And it clearly
10 was not. It was denied. So I object --

11 THE COURT: Just a moment.

12 MR. BANDUCCI: -- on the grounds of
13 relevance.

14 THE COURT: Just a moment.

15 MR. BRASSEY: Well, Your Honor --

16 THE COURT: Counsel, I'm trying to avoid
17 speaking objections. And I think we just --

18 MR. BRASSEY: Counsel went into Planning and
19 Zoning and testimony in Planning and Zoning, and
20 the fact -- our proof will be, Judge, that two
21 secondary ingress and egress has always been
22 required by emergency services --

23 THE COURT: I'm going to overrule the
24 objection and allow the witness to answer.

25 Go ahead.

1 BY MR. BRASSEY:

2 **Q.** My question, Mr. Tverdy, is this --

3 THE COURT: Just so we're clear,
4 Mr. Banducci, I think you can clarify this all on
5 redirect.

6 MR. BANDUCCI: Thank you, Your Honor.

7 BY MR. BRASSEY:

8 **Q.** Here is my question: In response to
9 some questions from Mr. Banducci, you testified
10 that you remember Planning and Zoning like it was
11 yesterday. Do you remember that?

12 **A.** Yes.

13 **Q.** Okay. Do you remember that your --
14 Doug Russell, one of your representatives, and
15 your lawyers represented to Planning and Zoning
16 that there would be a secondary ingress and egress
17 and that the bridge over Grimes Creek that
18 existed, that was going to be improved, would not
19 be used?

20 **A.** I think that mischaracterizes the
21 conversation that occurred there, and --

22 **Q.** Okay.

23 **A.** -- I would like to expand on that, if
24 you would like me to.

25 **Q.** Sure.

1 Well, I'm going to ask you -- I'm
2 sorry. Did you say "expand on that"? I'll ask
3 you a question.
4 I want to go to the Planning and Zoning
5 transcript of August 15th, which I believe has
6 been admitted as Plaintiffs' Exhibit 1044.
7 THE COURT: Counsel, that was admitted;
8 correct?
9 MR. BRASSEY: Yes.
10 MR. BANDUCCI: I believe it is, Your Honor.
11 MR. BRASSEY: Go to the first page so we can
12 identify the speakers.
13 BY MR. BRASSEY:
14 **Q.** And J.B., Mr. Tverdy, is identified as
15 Jon Bart who was one of the commissioners; is that
16 correct?
17 **A.** Correct.
18 **Q.** And D.R. has been represented as
19 Doug Russell, who was one of your representatives
20 from Alamar, speaking to Planning and Zoning at
21 the time of the hearing on August 15, 2007; is
22 that correct?
23 **A.** Correct.
24 MR. BRASSEY: I want to go to page 22 of the
25 transcript, and I want to -- I want to go down

1 **where there are people from the crowd**
2 **interjecting, there are multiple unknown**
3 **references. And what Doug Russell is saying here**
4 **is: We are complying to what the Wilderness Ranch**
5 **Fire District asked us to do.**
6 **Q.** Well, the document speaks for itself.
7 But, one, are you saying that you don't
8 remember Mr. Russell's response to Commissioner
9 Bart's question?
10 **A.** I remember this like it was yesterday,
11 Mr. Brassey. And I do remember Doug -- this
12 conversation taking place. And it was a very
13 confusing environment. And I think Mr. Russell's
14 statement here speaks for itself, that we were
15 complying to what the Wilderness Ranch Fire
16 District asked us to do.
17 **Q.** Actually, what he was doing in that
18 particular statement was responding to
19 Commissioner Bart's concern that there be a
20 secondary way in and out of this project so that
21 you could get the kids and employees off that
22 mountain.
23 MR. BANDUCCI: Your Honor, I guess I will be
24 the third one to say that the record speaks for
25 itself and object to the characterization that

1 three lines, where it starts, three speakers, with
2 J.B. I want to highlight that and the D.R.
3 And I want to yellow it and blow it up.
4 BY MR. BRASSEY:
5 **Q.** And, Mr. Tverdy, do you recall
6 Commissioner Bart saying, "So, if I can just be
7 sure I understand, then, you're pledging -- the
8 applicant is pledging to provide a second egress
9 that does not require use of the existing bridge
10 over Grimes Creek; is that correct?"
11 "Doug Russell: That is correct. That
12 is what Wilderness Ranch Fire District has asked
13 us to provide."
14 So my question is: Isn't it true, at
15 the time of the Planning and Zoning hearing,
16 Alamar Ranch represented to Planning and Zoning
17 that you would have two ways in and two ways out,
18 and the secondary access would not use that
19 existing bridge over Grimes Creek?
20 **A.** That is why I referred -- or previously
21 said I think that mischaracterizes the
22 conversation that took place that night. Because
23 if you look at the summary of the conversation
24 from this hearing on the page before and the page
25 after, it is a completely chaotic environment,

1 Mr. Brassey just injected.
2 THE COURT: Mr. Brassey, do you want to
3 respond briefly? Or else do you want to rephrase?
4 MR. BRASSEY: I'll rephrase it, Your Honor.
5 THE COURT: All right.
6 BY MR. BRASSEY:
7 **Q.** Isn't a fair reading, Mr. Tverdy, of
8 Mr. Russell's response, when he says, "That is
9 correct," that he is responding directly to
10 Commissioner Bart?
11 **A.** As I've stated, I do not believe so
12 given the context of the meeting.
13 MR. BRASSEY: Let's look at page 23, about
14 halfway down the big paragraph.
15 BY MR. BRASSEY:
16 **Q.** This is again Doug Russell; correct,
17 Mr. Tverdy?
18 MR. BRASSEY: Let's yellow that, Pat, so we
19 can see it.
20 THE WITNESS: That's right.
21 BY MR. BRASSEY:
22 **Q.** And what he is saying -- what the
23 transcript reflects that he said is,
24 "Mr. Chairman, Commissioners, we would not be
25 utilizing any bridges that came across Grimes

1 Creek. We would be traveling back through Forest
2 Service land that would bring the road to a Forest
3 Service road that comes back to Highway 21, State
4 Highway 21."

5 Do you see that?

6 **A.** I do.

7 **Q.** Isn't that because at the time Alamar
8 was representing to Planning and Zoning that they
9 were going to use an entirely separate road to get
10 the kids and employees out if there was an
11 emergency?

12 **A.** This statement is in -- if you look at
13 the -- the sequence of all of this conversation
14 that we're showing on this document, there is a
15 lot of conversation going back and forth between
16 Doug Russell and the members of the board, between
17 the members of the board and people like me
18 sitting in the audience, other people in the
19 audience from the No Alamar Ranch team, and there
20 is a conversation taking place as to, "Well, how
21 could it go? Where else could this cross?"

22 And Doug is responding to a road that
23 we had identified that went up across the, I guess
24 you would call it the northern side of the
25 property, up over the mountain range, and come

1 required and what we were offering.

2 So this line of conversation came up in
3 the hearing. And that's what I mean by it being
4 chaotic and disorganized, is that Doug is at the
5 podium, speaking with the commissioners, and the
6 conversation is going three and four different
7 directions at one time. It was quite chaotic.

8 MR. BRASSEY: Your Honor, I would move to
9 strike. I think it's nonresponsive.

10 THE COURT: Counsel, it didn't -- give me
11 just a moment. I want to review it, because it
12 didn't strike me that way as I listened to the
13 response. But give me a moment.

14 I think, Counsel, I'm going to overrule
15 the objection and allow the witness' answer to
16 stand.

17 Proceed.

18 BY MR. BRASSEY:

19 **Q.** Let me ask this, Mr. Tverdy: Isn't it
20 true that prior to the Planning and Zoning hearing
21 on August 15, 2007, that the Alamar team met and
22 discussed what Doug Russell was representing to
23 the commissioners at the time of the hearing?

24 Yes or no.

25 **A.** We discussed it as part of the -- an

1 down around, back further down Highway 21.

2 **Q.** And Alamar Ranch represented to
3 Planning and Zoning at the time, on August 15th,
4 that's what they were willing to do.

5 **A.** I think that's what we were willing to
6 investigate. We had no specific criteria that we
7 were -- we were needing to meet. The only
8 criteria we had at that point, Mr. Brassey, was
9 what the Wilderness Ranch Fire District had told
10 us that they required.

11 The rest of the conversation in the
12 hearing was conversational and back and forth with
13 the commissioners. I mean, I remember that like
14 it was yesterday.

15 **Q.** Doug Russell didn't come into the
16 hearing on the 15th and just decide on the spur of
17 the moment to represent to the commissioners that
18 there was going to be a secondary road and a
19 different way out of this project because your
20 team had discussed it, hadn't they?

21 **A.** Prior meetings with the Wilderness
22 Ranch Fire District, we had explored a variety of
23 paths off the property. During -- coming to the
24 meeting, we had a full agreement with the
25 Wilderness Ranch Fire District on what was

1 alternative, yes. We met to discuss this -- this
2 exit -- exit.

3 **Q.** Let's look at --

4 THE COURT: Just a moment. There is an
5 objection.

6 MR. BANDUCCI: Objection. Ambiguous as to
7 what "discussed it" is.

8 THE COURT: Let's clarify that.

9 MR. BRASSEY: I'll rephrase. Thank you,
10 Your Honor.

11 BY MR. BRASSEY:

12 **Q.** Mr. Tverdy, isn't it true that before
13 the Planning and Zoning hearing on August 15,
14 2007, that the Alamar team met on a number of
15 issues, and one of those issues was presenting to
16 Planning and Zoning that Alamar Ranch would not
17 use the existing bridge over Grimes Creek, and
18 that it would use a completely separate ingress
19 and egress to get kids and employees off that
20 mountain if there was an emergency?

21 Isn't that true?

22 **A.** I -- Mr. Brassey, I would say no in the
23 definition of that -- of that question. We met to
24 discuss alternative exits off the property. This
25 one that you have highlighted here was one of

1 those alternatives.

2 MR. BRASSEY: Let's look at page 24 of the
3 August 15, 2007, hearing. And I want to first
4 highlight, Pat, the first two paragraphs.

5 BY MR. BRASSEY:

6 Q. And "J.B." is Commissioner Bart;
7 correct?

8 A. That's right.

9 Q. And "J.K." is Commissioner Kane?

10 A. That's correct.

11 Q. Do you remember, Mr. Tverdy, whether
12 Commissioner Kane voted for or against you?

13 A. For us.

14 Q. Okay. I'm going to read you some
15 things, and I'm going to ask you a question:

16 "Commissioner Bart: I guess I'm
17 satisfied as long as it's clear that the emergency
18 egress would not use the single existing bridge
19 into the property. As long as that's true, then I
20 think that's an appropriate measure."

21 "Commissioner Kane: I would, if I
22 might, Mr. Chairman, add that -- that I think one
23 of the conditions has to be, in this -- is that
24 the secondary ingress-egress road is maintainable,
25 will pass cars both ways, and has a bridge across

1 the creek to get back onto Highway 21. And I
2 think in order -- I mean, we have seen this now
3 over this part of the state with these fires,
4 where the fires have cut roads and you cannot get
5 out."

6 "Unknown Male: Right."

7 "Commissioner Kane: Yellow Pine, can't
8 get out. Warren, can't get out. Warm Lake, can't
9 get -- or, I mean, Warm Lake, can't get out. So
10 we had better pay due diligence to how we put this
11 ingress-egress secondary road in here, and it
12 shouldn't be one that wanders around through the
13 forest out there where people can get lost because
14 of the road intersections; that we bring it as
15 nearly straight as we can to where it's going to
16 cross back. And I realize as we can" -- "as we
17 can is going to impact some other things that we
18 do, but I think we really need to look at this
19 hard."

20 Now, the next person talking was
21 Mr. Charney -- who was the lawyer for No Alamar;
22 is that right?

23 A. Correct.

24 Q. I'm going to read you something. He
25 says:

1 "May I just add a final point on that?
2 That point being that the ingress-egress obviously
3 shouldn't wander through -- or should wander
4 through as little of the forest as possible
5 because of fire concerns. But then the question
6 is: Where is it going to go?

7 "The bridge they're talking about they
8 just represented was public, is not. It's a
9 private bridge. It's right on the sharp, hairpin
10 turn, and that's not owned by the county or the
11 state. That's private ownership.

12 "So there are significant concerns
13 about, A, the ability to get a road down to the
14 creek, and B, how are they going to get the bridge
15 across it in compliance with a 404 permit, to tap
16 into Highway 21. A whole another ITD study would
17 need to be done to be accomplished on this.

18 "So this is an issue of significant
19 concern that has been completely ignored by the
20 applicant in this case, other than to say, 'We're
21 going to at some point try and get secondary
22 access.'"

23 "Commissioner Kane: Well, the answer
24 to that is that the" -- then it's unintelligible
25 -- "now rests with the developer to come up with a

1 plan and put it in place and do the due diligence
2 as required."

3 Then there is a statement, "That's if
4 you get to" --

5 And then Commissioner Kane says: "And
6 then will -- we'll continue to work in all weather
7 so they can get" -- then there is
8 "unintelligible."

9 And Mr. Charney says: "Right. And you
10 have talked about other conditions, not just
11 that -- but if it is a road that has to go for a
12 mile or more, that it be plowed road in the
13 wintertime, as well."

14 "Commissioner Kane: Well, that's what
15 I said, in all weather."

16 "Mr. Charney: Yes, all weather.

17 "So, okay. Any other questions for me
18 on that point?"

19 "Commissioner Kane: None from me."

20 "Hethe Clark: One more time -- and I
21 would just thank Commissioner Kane -- that's
22 exactly right. We hear the concerns. We are more
23 than willing to have that imposed upon us as a
24 condition of approval, and we will meet that
25 before we get into operation."

1 And isn't that was represented,
2 Mr. Tverdy, at the time of the Planning and Zoning
3 meeting on August 15, 2007?

4 **A. What we're representing to the Planning
5 and Zoning commissioners is that we will design a
6 road that takes into consideration that whole
7 conversation.**

8 Earlier in my testimony today we talked
9 about -- or I talked about the work that was
10 needed to be done to nail down the road design in
11 more concrete fashion between the two hearings.
12 And that's -- that's what this is referring to,
13 and that is exactly what we did.

14 **Q.** Isn't it true, Mr. Tverdy, that one of
15 the complaints that Alamar had when the county
16 commissioners made their decision, is that they
17 required a secondary ingress and egress out of the
18 property, which is what Alamar Ranch represented
19 they would do at Planning and Zoning?

20 **A. We complained that the requirement was
21 above and beyond what the Wilderness Ranch Fire
22 District requested of us and approved of us to do
23 to meet the fire code.**

24 **Q.** You objected to a secondary ingress and
25 egress?

1 MR. BANDUCCI: Objection, Your Honor. He is
2 getting argumentative.

3 MR. BRASSEY: I don't think that's --

4 THE COURT: Overruled.

5 Is that a fair summary of your
6 position?

7 THE WITNESS: Could I have -- Mr. Brassey,
8 could I ask you to restate?

9 THE COURT: The question is whether you
10 objected to a secondary ingress and egress.

11 THE WITNESS: No. We believe that the loop
12 road has a secondary ingress and egress off the
13 property that was required by the Wilderness Ranch
14 Fire District. And there are two roads off the
15 property that join at the very bottom on the
16 plateau and cross the bridge.

17 MR. BRASSEY: Let's look at Plaintiffs'
18 Exhibit 1055. And I want to look at the map
19 that's on page 3.

20 BY MR. BRASSEY:

21 **Q.** This is the road, Mr. Tverdy, that you
22 mentioned to the jury a little bit ago. And
23 Alamar's position is that where my pointer is on
24 the, roughly, northeast side of the project was
25 the secondary way in and out of this development;

1 is that correct?

2 **A. That's right.**

3 **Q.** And let me ask you this: What happens
4 if right here where these two roads meet, it's
5 either on fire, under water, too much snow, or a
6 rock slide, and somebody needs to get out of
7 Alamar Ranch?

8 What are you going to do about it?

9 **A. We met with Wilderness Ranch Fire
10 District to review the emergency evacuation in the
11 situation of a wildland fire, a hill slide, flood,
12 and addressed each of those points. The concern
13 that the Fire District had for a wildfire was an
14 order of magnitude higher than any other emergency
15 condition.**

16 And while it's probably difficult to
17 see on this drawing, the particular area where it
18 convenes to one road is a rock slide that the road
19 is built into. The fire danger is above there, on
20 the top property, where the grass and trees are,
21 not down in the plateau where that road convenes.
22 So the Wilderness Ranch Fire District was
23 completely comfortable with that road being single
24 access from that point, down across the river.

25 **Q.** And so for whatever reason this is

1 impassable here, you're not going to be able to
2 drive a vehicle, move kids in any kind of vehicle
3 out across this bridge across Grimes Creek, are
4 you?

5 **A. Because in -- that's correct. And what
6 the Wilderness Ranch Fire District said, that that
7 equates to about 300 yards, a couple of lengths of
8 a football field. The circumstances which would
9 make that road not passable are an easy walk for a
10 group of people off the property. We're not
11 talking about Warren or those other examples that
12 were mentioned earlier.**

13 **Q.** So if one of your adolescents up there,
14 one of your kids, is hurt and needs to get to St.
15 Luke's Hospital over here in Boise, Idaho, in an
16 ambulance, how are you going to get that ambulance
17 up that hill if that's blocked?

18 **A. That's why we have a Life Flight plat
19 on site.**

20 **Q.** And if you have fires up here and for
21 whatever reason this area is impassable, which
22 direction are you going to go and how are you
23 going to get those kids off that hill?

24 **A. These are all specific conversations we
25 had with Wilderness Ranch Fire District. So if**

1 there is a fire on that plateau between the Alamar
2 Ranch property -- buildings and the road, the
3 Wilderness Ranch Fire District wants us to stay in
4 our house. Because they are sprinklered, we have
5 Firewise design. It's the safest place for them
6 to be, rather than trying to exit off the
7 property.

8 **Q.** So if there is a forest fire that comes
9 across that property, you're going to have
10 everyone stay in their houses where there are
11 sprinklers?

12 **A.** It's grass. It's not forest up there.

13 **Q.** Now --

14 **A.** And yes, the grass fire moves through
15 the grass very quickly. And with the Firewise
16 design, as you saw in our application, the fire
17 doesn't -- isn't allowed to get anywhere close to
18 the building.

19 And with the addition and requirement
20 of fire sprinklers in the building, yes, it's the
21 safest place for those kids to be. That is not my
22 judgment. That is all per the Wilderness Ranch
23 Fire District.

24 **Q.** And would you agree with me,
25 Mr. Tverdy, that given the location where Alamar

1 Ranch decided to build this project, that one
2 of -- and given the topography that we saw on 1181
3 and 1181, page -- or excuse me, number -- page 13
4 and 12, that one of your concerns has to be the
5 safety for those kids?

6 That's one of your utmost concerns.

7 **A.** Without a doubt.

8 **Q.** And wouldn't you agree that if you had
9 a secondary way out that didn't meet at the same
10 road, is safer under all circumstances than a road
11 that meets in one place?

12 **A.** Certainly having two nice highways off
13 the property would have been a great -- a great
14 opportunity if it was something that we could
15 reasonably do.

16 But the property doesn't allow us to
17 reasonably do that, and so that's why we spent so
18 much time with the Wilderness Ranch Fire District
19 mitigating those risks and came to full agreement
20 with them.

21 **Q.** Isn't the fact of the matter is that
22 Alamar Ranch didn't want to spend the money for
23 the secondary ranch -- road? Excuse me.

24 **A.** Well, certainly that is a piece of the
25 decision, to -- whether we can accept that

1 condition or not. But I think that grossly
2 mischaracterizes it.

3 MR. BRASSEY: I want to look at, if we
4 could, your business plan. It's been admitted,
5 and I have to confess, I -- 1025. Sorry.

6 THE COURT: 1025?

7 BY MR. BRASSEY:

8 **Q.** Mr. Tverdy, the business plan that you
9 talked about with Mr. Banducci, I don't remember
10 that you identified who it was for. Who it was
11 really for was for potential investors who would
12 invest in the fund for this project; is that
13 right?

14 **A.** They were a piece of it. But the
15 primary use was for, you know, financing
16 discussions, yes. But we -- we used it to discuss
17 it with investors as well.

18 **Q.** And the -- I talked to the jury a
19 little bit about [sic] openings about an
20 investment group called T.H.E. Fund. Tell the
21 jury what that is.

22 **A.** T.H.E. Fund is an entity that Oaas
23 Laney began, I think, in the very beginning of
24 2006 to allow outside investors to participate in
25 the variety of projects that they were engaged

1 with.

2 Most of those were real estate
3 projects, but not all of them. There were other
4 businesses that were involved with it. So it was
5 an investment fund for an accredited investor to
6 participate in.

7 **Q.** And when you say "an accredited
8 investor," tell the jury what you mean by that.

9 **A.** There is a strict guideline that I'm
10 certainly not an expert to speak to, but
11 essentially, an accredited investor is somebody
12 who has the financial means to be able to analyze
13 risk in an investment. So they have to have a
14 substantial amount of net worth or experience in
15 dealing with those types of things.

16 **Q.** Let's look at page 6 of the business
17 plan, second paragraph.

18 And by the way, Thorval is Mr. Oaas's
19 right, his middle name?

20 **A.** Correct.

21 **Q.** And Howard is Mr. Laney's middle name?

22 **A.** Correct.

23 **Q.** I'm going to read you something and
24 then ask you a question.

25 "To date, funding for the project's

1 development has been contributed by the Thorval
2 Howard Entrepreneurial Fund, LLC (T.H.E. Fund),
3 and Synergy Healthcare Holding, LLC. T.H.E. Fund
4 is charged with the general management of the
5 operation and will maintain at least 51 percent
6 ownership in both Alamar Ranch, LLC, and YTC, LLC.
7 In addition to financing the growth via commercial
8 debt, T.H.E. Fund may seek additional private
9 investors."

10 And that was the plan for this project
11 to go forward, wasn't it?

12 **A. That's right.**

13 **Q.** And this -- I think you told the jury
14 that this document was updated as time went by.
15 And this particular version -- and I'll represent
16 to you -- on the front, Mr. Tverdy, is dated
17 April 3, 2007; correct?

18 **A. Correct.**

19 **Q.** And I think there were some financial
20 data that you looked at on the back page. I
21 think -- I think you indicated it may have been
22 updated through March, perhaps?

23 **A. Yeah. I think updated through to**
24 **include that -- yeah, that March time frame when**
25 **we were heading into the P & Z meetings.**

1 **Q.** And by this point in time, the Green
2 Ranch application for Alamar Ranch had been
3 withdrawn and the -- you were in the process of
4 applying, I think, on the 19th, for the Klam Ranch
5 application for a conditional use permit; correct?

6 **A. I think that's correct, yes.**

7 **Q.** And let me ask you this: I don't know
8 if you know right off the top of your head, but if
9 you can find it, tell the jury what -- well,
10 strike that.

11 You -- I apologize.

12 You told the jury that -- and when you
13 look at these documents, you've got down to the
14 nitty-gritty on what you budgeted. Isn't that
15 true?

16 **A. That's right.**

17 **Q.** Can you show the jury, in this budget
18 or some other budget, what the budget was for the
19 secondary road ingress and egress that was
20 represented would be built at the time you were at
21 Planning and Zoning?

22 **A. I can't off the top of my head. I**
23 **mean, I can give an answer off the top of my head,**
24 **but we need to, you know, scroll down in the**
25 **document.**

1 **Q.** Do you know if there was any budget
2 ever made?

3 **A. Oh, yeah.**

4 **Q.** Can you -- you're going to have to tell
5 me where to go.

6 **A. It's at the back of this document,**
7 **where we have that phasing. Mr. Banducci had that**
8 **up earlier. It was a -- it was a chart that had**
9 **the three phases on it, and the total investment.**

10 So, keep scrolling down a bunch.

11 **Q.** It's on about 24. Well, it's not
12 "about." It is on page 24. Is that what you were
13 referring to?

14 **A. Yeah, that's right.**

15 **Q.** Where is the road?

16 **A. Okay. So as we look at the property**
17 **and see we have the Klam Ranch Road represented at**
18 **\$150,000, bridge replacement at \$200,000, you can**
19 **kind of read down that column.**

20 **Q.** Okay. So what I need you to tell me
21 is: Which one of those numbers represents the
22 costs for the secondary road?

23 **A. At this point in time, this is -- this**
24 **is March of 2006, is the -- is what's dated on the**
25 **document; correct?**

1 We had those conversations with -- this
2 is based on the agreements that we had made with
3 Wilderness Ranch Fire District. So this was
4 before we had that big loop road that was done
5 following our P & Z hearing. So this was -- this
6 was a version prior to that.

7 **Q.** All right. The loop road didn't come
8 into being until after the Planning and Zoning
9 hearing and you were going to the county
10 commissioners, which would mean that if you were
11 planning for a secondary road, you should have had
12 a budget for it; correct?

13 **A. We -- what this represents is the**
14 **designs and the conversations that we had at --**
15 **with Wilderness Ranch. So I think that's what**
16 **you're asking me, but I'm not quite sure I got**
17 **that from your question.**

18 This is in sync with the plan that the
19 Wilderness Ranch Fire District had agreed to with
20 us, going into that first Planning and Zoning
21 hearing on the Klam Ranch.

22 **Q.** So, there isn't a budget for a separate
23 secondary road, is there?

24 **A. The road design, ingress-egress, at**
25 **that time was \$150,000.**

1 **Q.** And so that includes -- how long was
2 that loop road going to be, the secondary road
3 that we looked at a bit ago on the exhibit from
4 John McCarthy?

5 **A.** I can't tell you that off the top of my
6 head. I'm sorry.

7 MR. BRASSEY: It's Exhibit 1055.

8 Pat, let's go to 1055, third page.

9 BY MR. BRASSEY:

10 **Q.** Here is my question --

11 MR. BRASSEY: And can we blow that -- thank
12 you.

13 BY MR. BRASSEY:

14 **Q.** This loop road, from here down to where
15 this road meets, do you know how far that is?

16 **A.** Just -- just that one leg of it?

17 **Q.** Correct.

18 **A.** Well, I mean, the short answer is, no,
19 I don't know how far it is. I would have to
20 guess.

21 **Q.** Okay. You told us how far it was from
22 up in here over to Osprey. So how far --

23 **A.** Yeah, I --

24 **Q.** -- best estimate, here?

25 **A.** I'm guessing that's -- I'm guessing

1 design than what the county was asking us for.

2 MR. BRASSEY: Let's go back to the business
3 plan, page 16.

4 BY MR. BRASSEY:

5 **Q.** While we're doing that, Mr. Tverdy, you
6 talked to the jury, under "operations," this was
7 going to be a three-phase project, where the first
8 phase was 24 beds; correct?

9 **A.** Correct.

10 **Q.** So, two buildings. The second phase
11 was one building, an additional 12 beds; and the
12 third phase was three buildings, 36 beds, for a
13 total of 72; correct?

14 **A.** That's right.

15 **Q.** And I want to look at the
16 second-to-last -- well, I'm sorry. Let me ask you
17 something else first.

18 Given these deadlines, this particular
19 outline has to do with the Klam Ranch; correct?

20 **A.** Yes, it does.

21 **Q.** And I want to look at the
22 second-to-the-last paragraph. I'm going to read
23 you something, and then I'm going to ask you a
24 question.

25 "The current scope of the Alamar Ranch

1 half a mile or something to that degree.

2 **Q.** Okay. And it had to come down kind of
3 a cliff, didn't it?

4 **A.** Correct.

5 **Q.** So, are you telling us that the budget
6 that you show on page 24 takes into account that
7 road, and that would be --

8 **A.** No. That's exactly not what I'm
9 saying. That budget is for an agreed design prior
10 to heading into the Planning and Zoning hearing.
11 That was three to four months before this design
12 that we just previously had up on the screen.

13 **Q.** So, does the budget that we're looking
14 at here for roads include that loop road or any
15 other secondary ingress or egress road?

16 **A.** It does not -- the budget for this does
17 not equal the loop road that we just had up on the
18 screen. No.

19 **Q.** Is it -- was it the cost to redo the
20 road from the bridge on the west side of the
21 property up to where the buildings were going to
22 be?

23 **A.** That, plus an emergency exit off the
24 property per what the Wilderness Ranch Fire
25 District was requiring. It's a far cry different

1 program is to stop construction after Phase 3.
2 However, the overall size of the property allows
3 for additional construction of three lodges, each
4 having the same essential design as the previous
5 completed residences. This phase is not included
6 in the operating plan presented in this document."

7 Let me ask you this: If you went to
8 the Boise County Commissioners on this appeal and,
9 under your contention, the decision was final and
10 there was nothing you could do, how is it you're
11 representing to investors that you could -- the
12 project had room to build three additional lodges?

13 **A.** The -- your question is confusing to
14 me, but I can speak to this paragraph in that the
15 property, as you can tell, is quite large. And
16 what we're representing to the banking community
17 and to our investors is there is expandability in
18 the program.

19 But we are seeking approval for 72
20 residents in our program. In the event that we
21 wanted to expand beyond 72, we would certainly be
22 compelled to go right back and submit a new
23 conditional use permit and start the process all
24 over again with the county. I mean, it's
25 completely consistent with what it is we were

1 working on.

2 **Did I answer your question?**

3 **Q.** Well -- and you could have done that
4 whether the county commissioners granted 72 beds
5 or another number of beds, couldn't you?

6 **A.** We could have -- we could have gone
7 back for -- can you restate that, please?

8 **Q.** Sure. You just said had you been
9 granted 72 beds, you could have gone back and
10 asked for additional beds; correct?

11 **A.** We could have -- we could have
12 completed a new application and resubmitted it?

13 **Yes. That's -- that's -- anybody can
14 do that.**

15 **Q.** Okay. And that's one of the reasons,
16 isn't it, Mr. Tverdy, you put the condition in the
17 conditions Alamar proposed, that if you wanted
18 changes, you could go back to the county and have
19 a public hearing to see if they would grant it?

20 **A.** No. No, that's not correct.

21 **Q.** Okay. And you could go back and go
22 through another application process, whether it
23 was 72 beds or any number of other beds; correct?

24 **A.** Again, your question confuses me
25 because I don't get the context for it. But

1 anybody operating a business up there can go and
2 file for a new conditional use permit, yes.

3 **Q.** Did you ever --

4 MR. BRASSEY: Can we show the witness
5 Plaintiffs' Exhibit 1002?

6 And it has not been admitted.

7 BY MR. BRASSEY:

8 **Q.** Can you see that, Mr. Tverdy?

9 **A.** Yes.

10 **Q.** These are some notes. Do you know
11 whose handwriting this is?

12 **A.** Honestly, I don't, no.

13 **Q.** Did you ever meet with Mr. Wolford, the
14 Planning and Zoning commissioner -- excuse me --
15 Planning and Zoning administrator, who was the
16 administrator in September of 2006?

17 **A.** Absolutely.

18 **Q.** And these aren't your notes, I take it?

19 **A.** No. I don't believe so.

20 **Q.** Do you know if they're somebody's from
21 Alamar Ranch?

22 **A.** I can't be certain. It looks like
23 notes from a meeting, but I don't know.

24 **Q.** And part of what -- part of the
25 Planning and Zoning administrator's job is to meet

1 with applicants such as Alamar Ranch, to assist
2 them through the project, and, bluntly, tell them
3 how to go about it and things they need to have in
4 their application, to see if they can get it
5 approved.

6 **A.** That's correct.

7 **Q.** And at least these notes would tend to
8 reflect that somebody met with Craig Wolford, who
9 was telling whomever wrote these notes, apparently
10 on behalf of Alamar Ranch, what they should be
11 doing with their conditional use permit.

12 **A.** Yes. As I read down, that looks like
13 it's a good --

14 MR. BANDUCCI: Excuse me.

15 I'm going to object, Your Honor. We're
16 now making reference to the contents of the
17 document; no foundation laid.

18 THE COURT: Sustained.

19 Counsel, I think -- the document has
20 not been admitted, and I think to go through the
21 detail of what's in a nonadmitted exhibit is
22 problematic. I'll sustain the objection.

23 MR. BRASSEY: I'll go to a different area,
24 Judge.

25 THE COURT: All right. Thank you.

1 BY MR. BRASSEY:

2 **Q.** Mr. Tverdy, would you agree that Alamar
3 Ranch would be considered a commercial use?

4 **A.** That is an important distinction and
5 one that we talked about a lot through our
6 development process, because it -- those
7 distinctions make -- are important when it comes
8 to ordinances and such.

9 **And so --**

10 MR. BRASSEY: Your Honor, I object. I think
11 it's nonresponsive. My question is: Is it or
12 isn't it?

13 THE COURT: Well, I think the witness is
14 trying -- well, I think the comment area about why
15 it was an important distinction probably is
16 nonresponsive, and I'll strike that.

17 MR. BRASSEY: Let me reask it, Judge.

18 BY MR. BRASSEY:

19 **Q.** I apologize, Mr. Tverdy.

20 Here is my question: Do you agree or
21 disagree that Alamar Ranch was a commercial use?

22 THE COURT: Under what standard, Counsel?

23 MR. BRASSEY: Under the ordinance laws in
24 place at this time in Boise County.

25 THE WITNESS: Under one interpretation, it's

1 a commercial use. On another interpretation, it's
2 a residential use. And in either case, you know,
3 it's defined in terms of the process we need to go
4 about to get the property -- the conditional use
5 permit approved. And they're very similar in
6 either ways.

7 MR. BRASSEY: Can we hand, or have the
8 witness shown Plaintiffs' [sic] Exhibit 229?

9 I'm sorry --

10 THE COURT: 2029?

11 MR. BRASSEY: 2029. I apologize. It's
12 getting late, Judge. I'm sorry.

13 THE COURT: That's fine.

14 MR. BRASSEY: And it's not admitted.

15 THE COURT: I've got the projector turned
16 off.

17 BY MR. BRASSEY:

18 **Q.** Mr. Tverdy, do you recognize this
19 document?

20 **A.** Yes.

21 MR. BRASSEY: And, Your Honor, we would --
22 it appears this was actually presented to Planning
23 and Zoning; is that right?

24 MR. BANDUCCI: There is no objection to it,
25 Your Honor.

1 **Q.** One of your concerns with regard to the
2 commissioners' decision is a condition requiring a
3 helicopter pad; is that right?

4 **A.** That's right.

5 **Q.** And I think it's -- Mr. Tverdy, I
6 believe it's Condition 21. And my understanding
7 is, the objection is the way the commissioners
8 wrote this condition was burdensome and expensive.

9 **A.** That's correct.

10 **Q.** Okay. Tell the jury what was required
11 under the standards that are set forth in
12 Condition 21, and how much it cost.

13 **A.** To my memory -- it's not here in front
14 of me -- was that we needed to construct a helipad
15 in conformance with FAA standards, which, upon
16 later -- we didn't know what that mean [sic] at
17 the time of the hearing, because this is done on
18 the fly.

19 So later we -- we looked into it. And
20 the requirements are just extreme and difficult to
21 accomplish in terms of its construction, the
22 layout, the flight path in and out, the time that
23 it takes to get it approved, and the red tape to
24 get through the approval process.

25 **Q.** This wasn't meant -- the helipad wasn't

1 MR. BRASSEY: We would offer Plaintiffs'
2 [sic] 2029.

3 THE COURT: 2029 will be admitted and
4 published to the jury.

5 (Defendant's Exhibit No. 2029
6 admitted.)

7 BY MR. BRASSEY:

8 **Q.** Mr. Tverdy, here is my question: Under
9 the third bullet point toward the end of the
10 letter, it says, "Alamar Ranch will offer the
11 community use of the helicopter pad for any
12 medical emergencies."

13 And here is my question: Did you
14 authorize Ms. Jeppesen, or did someone from Alamar
15 Ranch authorize Ms. Jeppesen, to make this
16 representation to Mores Creek Ambulance Service?

17 **A.** Yes.

18 **Q.** And that particular offer was never
19 withdrawn at any time in the process at Planning
20 and Zoning or the county commissioners; correct?

21 **A.** No, that's right. We wanted to be a
22 good partner in the community.

23 **Q.** One of your --

24 MR. BRASSEY: Thank you, Pat.

25 BY MR. BRASSEY:

1 meant for public use, was it?

2 It was meant for emergencies?

3 **A.** Yeah. Emergency -- emergency use
4 with -- I see what you're asking, yeah. It wasn't
5 meant for helicopters to come and go. It was an
6 emergency use location, yes.

7 **Q.** Mr. Tverdy --

8 MR. BRASSEY: Your Honor, excuse me just one
9 second.

10 I apologize, Mr. Tverdy. I have too
11 many papers.

12 Let's look at Plaintiffs' Exhibit 1041
13 again. It's been admitted. And I want to go to
14 Condition 21.

15 BY MR. BRASSEY:

16 **Q.** What Alamar Ranch proposed was, "The
17 applicant will designate, in consultation with
18 Saint Alphonsus and St. Luke's Life Flight, a life
19 flight landing zone on the Alamar Ranch property."

20 Do you see that?

21 **A.** Yes.

22 **Q.** Now, if you're reading this and you're
23 trying to figure out what that means and what it's
24 going to look like, you can't tell from that
25 condition, can you?

1 **A. Well, I guess not. It's pretty clear**
 2 **to me. But yeah, there is not a construction**
 3 **drawing with it, if that's what you mean.**

4 **Q.** Well, what it says is you'll consult
 5 with Saint Al's and St. Luke's in terms of what's
 6 needed on the site, but you can't read this and
 7 tell what that means by reading that condition;
 8 correct?

9 **A. That's correct. But that's quite**
 10 **common in these types of land use situations.**
 11 **Because when we later go back to the county and**
 12 **ask for building permits, that's when those types**
 13 **of details are reviewed. The county still has the**
 14 **approval opportunity at that point.**

15 **Q.** So what you're telling the jury is that
 16 when conditions are put on the project such as
 17 this, they aren't always final because in a
 18 condition like that, you have to go back and work
 19 out the details, in a land use project such as
 20 this, as to what's actually going to occur?

21 **A. We have to go back and create**
 22 **construction drawings, and there is a very**
 23 **detailed process that we go through. Yes.**

24 **Q.** Because when you look at the condition
 25 that Alamar Ranch proposed, you can't tell what

1 was going to be involved.

2 MR. BANDUCCI: Objection. Vague.

3 THE WITNESS: I --

4 THE COURT: Just a moment.

5 MR. BRASSEY: Your Honor, I'll withdraw it.

6 THE COURT: Thank you.

7 BY MR. BRASSEY:

8 **Q.** Mr. Tverdy, here is -- here is my
 9 question: Given what you just said, that in land
 10 use projects, this is a typical situation where a
 11 condition is imposed and then further discussions
 12 are held down the line as to what the specifics of
 13 a certain condition will be -- isn't that what you
 14 just told the jury?

15 **A. In the case of construction and**
 16 **building and road designs, yes, they are**
 17 **conceptual, and then the -- because the money**
 18 **isn't spent up front to do a detailed design**
 19 **before you know what you're really designing to.**
 20 **And in the case of this helipad, that's exactly,**
 21 **you know, the situation. You don't commit the**
 22 **dollars to the project and engineers until you**
 23 **understand the real requirement.**

24 **Q.** And if Life Flight for both St. Luke's
 25 and Saint Al's came back to you and said, "You

1 have to meet the standards of Idaho Department of
 2 Aeronautics, FAA and U.S. Department of
 3 Transportation Federal Aeronautics Regulation,"
 4 are you telling the jury you would have done it?

5 MR. BANDUCCI: Your Honor, that calls for
 6 speculation.

7 THE COURT: Sustained.

8 MR. BRASSEY: Can we show the witness
 9 Defendant's -- and this hasn't been admitted --
 10 Defendant's Exhibit 2037.

11 THE COURT: 2037?

12 BY MR. BRASSEY:

13 **Q.** Mr. Tverdy you've seen this document
 14 before, haven't you?

15 **A. I think so. It looks like an email. I**
 16 **can't quite read it here, though.**

17 MR. BRASSEY: Can you, Pat, with regard to
 18 the lower section, third paragraph, that's a big
 19 paragraph, can you blow that up for Mr. Tverdy?

20 BY MR. BRASSEY:

21 **Q.** Mr. Tverdy, isn't it true that in early
 22 2009, Amy Jeppesen, the -- who had been designated
 23 as the executive director for Alamar Ranch, wrote
 24 you and indicated that this process that you went
 25 through with the conditional use permit was a

1 blessing in disguise, because of the condition of
 2 the industry and the fact that consultants won't
 3 refer students for programs that cost more than
 4 \$9,000?

5 **A. She did send me that email, yes.**

6 **Q.** And would you agree with me that in
 7 terms of the industry and how it's doing in
 8 relation to the economy, that Ms. Jeppesen would
 9 have more expertise than you?

10 MR. BANDUCCI: Your Honor, I ask that that
 11 question be limited to the time frame of this
 12 letter and --

13 THE COURT: The question is whether
 14 Ms. Jeppesen had more expertise than this witness.

15 MR. BANDUCCI: As to how the economy is --
 16 he said "is doing" --

17 THE COURT: All right.

18 MR. BANDUCCI: -- as opposed to was doing at
 19 the time.

20 THE COURT: Rephrase.

21 MR. BRASSEY: I'm sorry, Your Honor.

22 BY MR. BRASSEY:

23 **Q.** Mr. Tverdy, isn't it correct that with
 24 regard to the residential treatment center
 25 industry and how it may have been doing in

1 February of 2009, Ms. Jeppesen would have more
2 expertise than you?

3 **A. Ms. Jeppesen was working in the**
4 **industry at that time and I wasn't, so I think the**
5 **answer to that would probably be yes.**

6 **Q.** With regard to -- I'm going to jump
7 around. I know it's getting late, Mr. Tverdy.
8 You have been on the stand a long time.

9 With regard to Project PATCH, do you
10 know how many that -- that project -- how many
11 students, excuse me, that RTC started with?

12 **A. No. I do not.**

13 MR. BRASSEY: Can we show the -- it's not
14 been admitted -- the witness Defendant's
15 Exhibit 2025?

16 BY MR. BRASSEY:

17 **Q.** Mr. Tverdy, do you -- I don't want you
18 to tell me what it is. Do you recognize this
19 document?

20 **A. It's a confidentiality agreement.**

21 **Q.** Okay. Now, could you --

22 MR. BRASSEY: Can we go to the last -- at
23 the bottom of the page, can you highlight the
24 footer?

25 BY MR. BRASSEY:

1 **Q.** And Mr. Tverdy, are you able to read
2 that?

3 **A. Yes.**

4 **Q.** Isn't it true that before --

5 MR. BANDUCCI: Excuse me.

6 If we're going to be asking questions
7 about this document, it should be in evidence,
8 Your Honor.

9 THE COURT: Well, it depends on what the
10 question is. If we're talking about the
11 formation, Mr. Brassey, but I guess you're on
12 notice there is going to be an objection if we get
13 into anything substantive at all about the
14 exhibit.

15 MR. BRASSEY: Really, I just --

16 BY MR. BRASSEY:

17 **Q.** Here is my question, Mr. Tverdy: Does
18 that orient you as to time with regard to this
19 document?

20 **A. Yes.**

21 **Q.** Okay. Isn't it true that prior to
22 commencement of the Board of County Commissioners'
23 first hearing on January 28th, 2008, that counsel
24 for Alamar Ranch offered to sell the Klam Ranch to
25 one of the No Alamar folks, Paul Buker?

1 **A. There were -- we were -- faced with**
2 **this ridiculous situation we find ourselves in**
3 **with the county, we were exploring, following up**
4 **on an inquiry that we had received earlier in the**
5 **year as to somebody who was interested in the**
6 **property.**

7 **Q.** Isn't it true --

8 **A. So --**

9 **Q.** I'm sorry. Go ahead.

10 **A. So, yes, there was a private meeting,**
11 **and we asked Ms. Butler to confidentially have a**
12 **conversation with that buyer to discuss broad**
13 **strokes. But -- and so that's what that**
14 **document -- I think that's what that document is**
15 **in reference to.**

16 **Q.** And just so the jury knows, the -- you
17 and Mr. Oaas met and you had a discussion about
18 authorizing one of your lawyers, JoAnn Butler --
19 who was working on the Alamar project; correct?

20 **A. Correct.**

21 **Q.** -- you authorized her to call
22 Mr. Buker, who owned an adjoining piece of ground;
23 right?

24 **A. Correct.**

25 **Q.** And you authorized her to call, before

1 the first hearing of the Board of County
2 Commissioners, to sell the entire ranch; isn't
3 that true?

4 **A. To engage a conversation with him on**
5 **potential opportunities. I think it was -- it was**
6 **an open-ended conversation that we were asking her**
7 **to have with him.**

8 **Q.** And the conversation that Ms. Butler
9 was having with Mr. Buker had to do with whether
10 or not he was interested in buying the Klam Ranch.
11 Isn't that true?

12 **A. Yeah. I think in broad strokes, yes.**

13 **Q.** And that was prior to the first county
14 commissioner hearing?

15 **A. I don't recall exactly when that**
16 **conversation took place. I see the time stamp on**
17 **the document there, Mr. Brassey, but I'm not**
18 **exactly sure I can answer yes or no to that**
19 **question.**

20 **Q.** If there is a representation in the
21 transcript of the January 28, 2008, hearing by
22 Mr. Charney that such an offer had been made, do
23 you doubt that?

24 **A. If there was or -- I don't recall. I'm**
25 **sorry. So --**

1 **Q.** Here is my --
 2 **A.** Are you asking me if there was?
 3 **Q.** If there was a representation by
 4 Mr. Charney -- who represented Mr. Buker, didn't
 5 he?
 6 **A.** Yes, he did.
 7 **Q.** All right. If there was a
 8 representation by Mr. Charney in the January 28th,
 9 2008, hearing that JoAnn Butler had called his
 10 client, Paul Butler [sic], to talk about the sale
 11 of the property, would that indicate to you that
 12 that conversation took place before the meeting?
 13 **A.** Yes.
 14 MR. BRASSEY: Your Honor, give me just a
 15 minute. I apologize.
 16 BY MR. BRASSEY:
 17 **Q.** Mr. Tverdy, is it true that it's
 18 Alamar's belief that the fire suppression vehicle
 19 that was a condition placed on the project by the
 20 county commissioners that you mentioned and the
 21 garage was a multi-hundred thousand dollar
 22 investment that would have had to have been made
 23 by Alamar Ranch?
 24 **A.** Yes.
 25 **Q.** Mr. Tverdy, as the project manager, is

1 it correct that you didn't go to Boise County, or
 2 authorize your lawyers to go to Boise County, to
 3 seek some relief or accommodation from the
 4 conditions imposed and as are reflected in the
 5 commissioners' decision?
 6 MR. BANDUCCI: Objection, Your Honor, on the
 7 grounds previously stated.
 8 THE COURT: I'm sorry, what was the
 9 objection again?
 10 MR. BANDUCCI: Objection on the grounds as
 11 stated at the session this morning, Your Honor.
 12 THE COURT: Well, Counsel, I may be prepared
 13 to -- I'm going to overrule the objection, but I
 14 do have an instruction that I may share with you
 15 this evening, that I intend to read the jury along
 16 the lines that we discussed previously.
 17 MR. BANDUCCI: Thank you, Your Honor.
 18 THE COURT: But I'll allow the question to
 19 be asked.
 20 MR. BANDUCCI: Thank you, Your Honor.
 21 BY MR. BRASSEY:
 22 **Q.** Do you need me to rephrase it?
 23 **A.** Please.
 24 **Q.** Sure.
 25 MR. BRASSEY: You know, Your Honor, so I

1 don't get it wrong, can we -- is there a way to
 2 read it back?
 3 THE COURT: Yes.
 4 I'll ask Ms. Hohenleitner to read back
 5 the question.
 6 That assumes you had it right the first
 7 time.
 8 MR. BRASSEY: That's a big assumption,
 9 Judge.
 10 (The record was read.)
 11 THE WITNESS: The ruling is final. The
 12 ruling is final. There just was no point in
 13 proceeding. The ruling was final.
 14 BY MR. BRASSEY:
 15 **Q.** And the answer to my question is, you
 16 didn't go to the county personally, nor did you or
 17 the Alamar team authorize your lawyers to go to
 18 the county and ask for relief or accommodation;
 19 correct?
 20 **A.** Correct. The ruling was final.
 21 **Q.** A couple of things, Mr. Tverdy. You
 22 made a lot of statements this morning about the No
 23 Alamar group and some of the petitions. Do you
 24 agree with that?
 25 **A.** Yes.

1 **Q.** Or do you remember that?
 2 **A.** Yes.
 3 **Q.** Okay. Are you contending that
 4 Commissioner Zimmer, who is here, or the other
 5 commissioners can stop, or should stop,
 6 individuals who may be in the Rock Creek Bar
 7 from -- which is on Highway 21; right?
 8 **A.** Correct.
 9 **Q.** All right.
 10 (Continuing) -- that somehow the
 11 commissioners can keep people from signing
 12 petitions and making comments?
 13 **A.** Certainly not.
 14 **They can not be swayed and affected by**
 15 **those comments, though.**
 16 **Q.** Sure. But homeowners, wherever you
 17 are, have a right, however it may appear, to make
 18 comments with regard to this particular situation
 19 and the permit process.
 20 **A.** Yes, they can.
 21 **Q.** And the commissioners -- you would
 22 agree, the commissioners not only can't, but
 23 shouldn't, try to stifle the voices of people,
 24 because once you go down that road it's kind of a
 25 slippery slope, isn't it?

1 **A. Oh, certainly, yeah. And I don't think**
2 **we ever -- we ever made any statements to the**
3 **contrary. We just didn't want that clamor to be**
4 **swaying the decision, and we believe that that's**
5 **exactly what happened.**

6 **Q.** Mr. Tverdy, when you went from the
7 Green Ranch, where there were 108 beds, you
8 testified that because of comments that were made,
9 you reduced the beds by 36 beds; correct?

10 **A. Yeah, from 108 to 72.**

11 **Q.** Okay. And if, assuming my math is
12 right, if you multiply 36 beds times \$12,000 --
13 and you might do it, because math isn't my
14 special, I come up with \$432,000 a month. Does
15 that sound about right?

16 **A. Sure.**

17 **Q.** And if you multiply that by 10, that's
18 4.3 million -- actually, it's over -- it's over
19 \$5 million; correct?

20 **A. Yeah. I'm not sure where you're going,**
21 **but --**

22 **Q.** Well, when you -- when you changed the
23 project from Green Ranch to Klam Ranch, you just
24 cut out of your program somewhere, assuming my
25 math is right, between \$4- and \$5 million a year

1 think of anything else he would rather do,
2 Your Honor.

3 (Laughter.)

4 MR. BRASSEY: If there are scheduling
5 snafus, Your Honor, we can work that out with
6 other witnesses, I think.

7 THE COURT: All right. The additional
8 problem is I did have the instruction that I
9 wanted to read to the jury. I think it might be
10 better, just for several reasons, to just take the
11 recess at this time.

12 Mr. Tverdy, it won't be long tomorrow
13 morning. We'll start at 8:30 and try to have you,
14 hopefully, out of here by 9:00 at the very latest;
15 perhaps 8:35.

16 I think there are some things I need to
17 take up with the jury.

18 Ladies and gentlemen, we're going to
19 take the evening recess at this time. I'll again
20 admonish you not to discuss the case among
21 yourselves or with anyone else, nor should you
22 form or express any opinions about the case until
23 it is finally submitted to you.

24 Follow the court's admonition about
25 juror conduct as you leave the building. Be very

1 in potential revenue; correct?

2 **A. Certainly, from the original**
3 **application of 108 to 72, yes.**

4 MR. BRASSEY: Your Honor, I think I'm done,
5 but let me -- just a second.

6 Your Honor, I'm finished. Thank you.

7 Thank you, Mr. Tverdy.

8 THE WITNESS: Thank you.

9 THE COURT: It's almost the breaking point.

10 I don't know how much redirect you might have.

11 MR. BANDUCCI: Very little. Very little. I

12 believe I can do it in five minutes, Your Honor.

13 If you want, we can bring Mr. Tverdy back. I have
14 no problem with that, either. Whatever --

15 THE COURT: I have to be somewhere at 3:00.

16 If we go over at all or raise more questions, then

17 Mr. Brassey is going to have to respond, I

18 probably couldn't do it.

19 MR. BANDUCCI: Then I'm not going to --

20 THE COURT: I don't want to --

21 Mr. Tverdy, is it going to be a real
22 inconvenience to come back tomorrow morning?

23 THE WITNESS: Whatever will please the
24 court, I can do.

25 MR. BANDUCCI: I'm sure Mr. Tverdy can't

1 careful to avoid all contact with the attorneys,
2 the witnesses and the parties.

3 And do not conduct any outside inquiry
4 or investigation or research. Do not visit any
5 websites or other -- do not consult any other
6 reference materials concerning this case.

7 I think we have agreed now you will
8 convene, or you will meet at the jury assembly
9 room on the fifth floor and then be brought up
10 once you're all here.

11 And of course, I'll advise counsel to
12 stay away from the fifth floor so we don't have
13 any problem with interaction between counsel and
14 jury.

15 We'll be in recess, then, until 8:30
16 tomorrow morning.

17 (Court recessed at 2:31 p.m.)

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 141 to 388, 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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