

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

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4	ALAMAR RANCH, LLC, an Idaho limited	: Case No. 1:09-CV-00004
	liability company; and YTC, LLC, an	:
5	Idaho limited liability company,	:
		:
	Plaintiffs,	: TESTIMONY OF
6		: JOHN SAGER
	vs.	: CHRIS TVERDY
7		: DANIEL MCDONALD
	COUNTY OF BOISE, a political	: AMY JEPPESEN
8	subdivision of the State of Idaho,	: TERRY DAY
		:
9	Defendant.	:
		:
10	- - - - -	x

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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

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18 DAY 3, December 8, 2010

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20 VOLUME 3

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 Pages 389 to 670

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PROCEEDINGS

Wednesday, December 8, 2010

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

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

I don't see Mr. Tverdy. I --

MR. WOODARD: Your Honor, Mr. Tverdy is here. If we may -- and Mr. Brassey doesn't have a problem with this -- we have a witness who is going to just introduce some documents.

THE COURT: Oh, okay.

MR. WOODARD: It will take about 10 minutes, and we'll get him back to his job and on his way.

THE COURT: Yes. That's fine. Just announce the name of that witness.

I should point out to the jury, counsel often try to accommodate each other. In fact, I pretty much insist on it; but I don't need to insist on it because these are very good attorneys who work well together. To try to make it easier on witnesses and whatnot, they will sometimes take a witness out of order. That's essentially what we're doing today. Mr. Tverdy will be back on in

just a few minutes.

Mr. Woodard, please announce the name of your next witness.

MR. WOODARD: Your Honor, plaintiffs want to call Mr. John Sager.

THE COURT: Mr. Sager, would you please come around counsel table here in front of Ms. Gearhart, and she will direct you from there.

JOHN SAGER,

having been first duly sworn to tell the whole truth, testified as follows:

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

THE WITNESS: Sure. My name is John Sager. That's S-A-G-E-R.

THE COURT: You may inquire of the witness.

MR. WOODARD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WOODARD:

Q. Mr. Sager, where are you currently employed?

A. I am currently employed at Idaho Housing and Finance Association.

Q. Does that sometimes go by the acronym "IHFA"?

A. Correct. Yes.

Q. How long have you been employed there?

A. Fourteen-and-a-half years.

Q. And what is your position there, currently?

A. I am chief financial officer and senior vice president.

Q. As the chief financial officer and senior vice president, do you have supervision over the IHFA's IT Department?

A. Yes, I do.

Q. Does that include the email servers and the email policies of the IHFA?

A. That is correct. Yes.

Q. Does the IHFA have an email server?

A. It does.

Q. Do the employees of the IHFA have email addresses from which they can send and receive emails?

A. Yes, they do.

Q. Does a woman named Jeri Kirkpatrick work for the IHFA?

A. Yes, she does.

Q. And is her work email address jerik@ihfa.org?

A. Yes. That's correct.

Q. Was Ms. Kirkpatrick's IHFA email address part of an email group called NoAlamarRanch@YahooGroups.com?

A. Yes.

MR. HOWELL: Your Honor, foundation.

MR. WOODARD: I can ask him how he knows that.

THE COURT: If you would, yes. I was trying to recall back the earlier questions you asked about his responsibility, but why don't we just back up and lay the foundation, which would solve the problem.

MR. WOODARD: Okay.

BY MR. WOODARD:

Q. Mr. Sager, did you perform a search of the email server for the IHFA for emails with the term "Alamar" in them?

A. Yes. I didn't do it personally, but it was done under my direction.

Q. Okay. And in that search of the email servers, did emails to Ms. Kirkpatrick come up showing that she was part of an email group called NoAlamarRanch@YahooGroups.com?

A. Yes.

1 **Q.** Thank you.

2 Does the IHFA, as part of the course of
3 its regularly conducted business activity,
4 preserve the emails that are sent to or from an
5 IHFA email address?

6 **A.** Yes. We keep them for three years.

7 **Q.** And those emails, they are preserved
8 the moment they are sent or received -- they are
9 preserved on the server the moment they are sent
10 or received; is that correct?

11 **A.** That is correct.

12 **Q.** So any email address from or to
13 Ms. Kirkpatrick on her IHFA email address, or this
14 NoAlamarRanch@YahooGroups.com was saved on your
15 server; is that correct?

16 **A.** That is correct.

17 MR. WOODARD: Your Honor -- and as a -- I
18 want to make this go more quickly, or as quick as
19 we can. I have -- rather than bringing each one
20 of them up on the screen, if I could hand him a
21 group --

22 THE COURT: That's fine.

23 MR. WOODARD: -- of documents.

24 THE COURT: Ms. Huang, if you would help us
25 out.

1 home buyers. We also do economic development
2 activities, financing on behalf of the state, as
3 well as a host of other activities.

4 MR. HOWELL: You would agree with me,
5 Mr. Sager, that if an employee is sending or
6 receiving personal emails, that would not be
7 within the course and scope of their employment
8 with IHFA; correct?

9 THE WITNESS: That's correct.

10 MR. HOWELL: You would also agree with me
11 that the emails before you are unrelated to any
12 work performed at the IHFA; is that right?

13 THE WITNESS: That's a judgment call, but I
14 would say, yes.

15 MR. HOWELL: And -- well, there is no reason
16 that the IHFA should rely upon any of these emails
17 in the course of conduct of their business;
18 correct?

19 THE WITNESS: I would -- I would say, yes.
20 We have a -- we have a policy that requires that
21 all emails are -- belong to the company, whether
22 personal or otherwise, that are sent on IHFA --
23 through the IHFA server.

24 MR. HOWELL: Right. And I understand that
25 you have a policy. But to the extent that

1 MR. WOODARD: And I've got a copy for
2 counsel and the court, too, Your Honor.

3 BY MR. WOODARD:

4 **Q.** Mr. Sager, the court clerk has just
5 handed you what has been marked as Exhibits 1091,
6 1067, 1068, 1104, 1176, 1178, 1179, 1042, 1096 and
7 1058. Can you take a moment and look through
8 those, and then let me know if those are emails
9 that you retrieved from the IHFA's email server.

10 **A.** Yes. These are all emails that have
11 been retrieved from IHFA's email server.

12 MR. WOODARD: Thank you.

13 Your Honor, I move these exhibits into
14 evidence as the business records of the IHFA.

15 THE COURT: Any objection?

16 MR. HOWELL: Yes, Your Honor. Objection to
17 hearsay.

18 May I voir dire in aid?

19 THE COURT: You may.

20 MR. HOWELL: Thank you, Your Honor.

21 Mr. Sager, what is the business of the
22 IHFA?

23 THE WITNESS: We have a number of
24 businesses. The prime business is providing
25 housing finance, mortgage finance, for first-time

1 Ms. Kirkpatrick sent any personal emails, that's
2 not part of her job --

3 THE WITNESS: No, that's --

4 MR. HOWELL: -- is that --

5 THE WITNESS: -- correct.

6 MR. HOWELL: Okay.

7 THE WITNESS: That's correct.

8 MR. HOWELL: Your Honor, we object on
9 grounds of hearsay. We do not believe it meets
10 the exception.

11 MR. WOODARD: And Your Honor, I don't know
12 if you want me --

13 THE COURT: No. We'll discuss this at
14 sidebar, if we need to.

15 Is there any further foundation you
16 wish to lay with the witness?

17 MR. WOODARD: No, Your Honor.

18 THE COURT: All right. Why don't you
19 approach and let's discuss this.

20 (Sidebar commences as follows:)

21 THE COURT: Let me just begin, I have always
22 taken a very, I guess, maybe cramped view of
23 803(6). I think there is always a sense -- and
24 it's very widespread throughout the bar -- that if
25 a business has something in their files, which

1 would include computer files, that makes it a
2 business record. The rule is actually much more
3 limited. It requires that it be a memorandum,
4 report, record, et cetera, which can include an
5 email.

6 MR. WOODARD: Your Honor, if I point out,
7 that just says it's got to be kept in the course
8 of business. It doesn't say it has to be
9 prepared.

10 THE COURT: That's true. But it says -- I
11 think that establishes the fact that it was kept
12 as an email, and it was an email --

13 MR. WOODARD: And it's part of their
14 business records.

15 THE COURT: -- that probably meets that one
16 level of hearsay. In other words, it's not a
17 question that this is a record --

18 MR. HOWELL: It's authentic.

19 THE COURT: -- it's a record that's been
20 kept of a business activity in the form of email
21 communications. But the thing is, the nature of
22 communication itself is another level of hearsay.

23 MR. WOODARD: Your Honor, maybe we can do it
24 this way: If we can get a ruling that these are
25 the business records of the IHFA, and that the

1 emails themselves aren't hearsay; and then not
2 admit them, but as we go through them, we can deal
3 with the hearsay within the hearsay.

4 THE COURT: With Ms. Kirkpatrick or whoever.

5 MR. WOODARD: Yeah.

6 THE COURT: -- other exceptions. That's
7 exactly what you have to do. You have to deal
8 with each level of hearsay.

9 So there is no objection that this is a
10 business record in the sense that these are emails
11 kept by IHFA. The objection is that it just
12 doesn't come in because of that, because there is
13 other levels of hearsay contained. Is that
14 correct?

15 MR. HOWELL: Absolutely, Your Honor.

16 THE COURT: All right. Then let's do it
17 that way.

18 MR. WOODARD: Okay. So the emails
19 themselves aren't hearsay; it's what in them.

20 THE COURT: Exactly.

21 MR. HOWELL: And just --

22 THE COURT: Yes, speak into the mike so
23 that --

24 MR. HOWELL: This is being recorded?

25 THE COURT: It is. In fact, step over here.

1 Ms. Hohenleitner will string you up if you don't
2 get close to the mike. If she doesn't, I will.

3 MR. HOWELL: We still -- we agree that
4 they're authentic, in that they are business
5 records. But to the extent -- you know,
6 obviously, I'm not agreeing, Your Honor. I know
7 I'm not stipulating, for example, that they're
8 going to come in under 803(6), which is what I
9 think your ruling says, is that --

10 THE COURT: No. I am saying that --

11 MR. HOWELL: I just want to make sure.

12 THE COURT: What has happened is you have a
13 document that is unconnected to anything else in
14 the world. You have now connected it to IHFA,
15 that this is something they keep in the ordinary
16 course. It doesn't get the document in by itself.

17 But you will not be allowed to object
18 that, "We don't know where these emails came
19 from" --

20 MR. WOODARD: It's not the email itself that
21 is hearsay. It's what is in it is hearsay. I
22 mean, that's -- because if you got -- let's say
23 you got a letter, but you're not quoting anybody
24 in the letter, or in the email. The letter --

25 THE COURT: The email was prepared -- let's

1 say, the email was prepared by J. Kirkpatrick on
2 this date, and that's --

3 MR. WOODARD: And that's the business record
4 of the IHFA.

5 THE COURT: Exactly.

6 MR. WOODARD: Okay.

7 THE COURT: Okay.

8 (Sidebar concluded.)

9 THE COURT: Counsel, consistent with our
10 discussion at sidebar, I understand that you'll
11 offer this. Perhaps -- the court will determine
12 that, in fact, the requirements of 803(6) have
13 been met to the extent of establishing that these
14 are email communications kept by -- is it IHFA?

15 THE WITNESS: IHFA, yes.

16 THE COURT: -- IHFA, and that they bear a
17 sender that would indicate that it was Ms. -- is
18 it Kirkpatrick?

19 THE WITNESS: Yes.

20 THE COURT: And that's as far as it goes.

21 Then, as far as the contents of the
22 emails themselves, that problem of hearsay will
23 have to be dealt with later through another
24 witness.

25 MR. WOODARD: Okay.

1 THE COURT: All right? That will be the
2 court's ruling, and we'll -- it's not been
3 offered, then, at this time. We simply laid that
4 part of the foundation.

5 MR. WOODARD: Correct, Your Honor.
6 And with that, may Mr. Sager be
7 released?

8 THE COURT: Unless there is questions from
9 Mr. Howell.

10 MR. HOWELL: No, Your Honor.

11 THE COURT: All right.

12 MR. HOWELL: Thank you.

13 THE COURT: Mr. Sager, you are excused.
14 Thank you for being here.

15 THE WITNESS: Thank you.

16 THE COURT: A fairly painless experience, I
17 hope.

18 All right. I think we're ready to have
19 Mr. Tverdy retake the witness stand.

20 MR. BANDUCCI: Yes, Your Honor.

21 THE COURT: And I think it might be better
22 just to have Mr. Brassey pick up with his
23 questions, so we don't have to come back and
24 do -- unless you have agreed otherwise.

25 MR. BRASSEY: Your Honor, can we just

1 approach for a second?

2 THE COURT: Yes, you may.

3 (Sidebar commences as follows:)

4 THE COURT: Yes?

5 MR. BRASSEY: I have one other thing, Tom.
6 He said in his deposition -- I wanted to ask him
7 if the business plan was ever given to the county.
8 I've got this. We have settled on this document.

9 Tom and I talked to him about that. But I want to
10 ask him if the business plan was ever given to the
11 county. I mean, Tom, unless you changed this --

12 MR. BANDUCCI: No.

13 MR. BRASSEY: -- testimony, he said --

14 THE COURT: To avoid having to have
15 him recalled.

16 MR. BRASSEY: I don't want to bring him
17 back.

18 MR. BANDUCCI: So you want to continue your
19 questioning?

20 MR. BRASSEY: I'm just going to ask him
21 about this, and that question.

22 THE COURT: All right.

23 MR. BRASSEY: Thank you.

24 (Sidebar concluded.)

25 THE COURT: With that, Mr. Tverdy, I'll

1 remind you that you are still under oath.

2 I'm going to allow Mr. Brassey to
3 reopen his cross, to avoid having to have
4 Mr. Tverdy re-called. And Mr. Tverdy will not be
5 re-called, unless something occurs during the
6 trial that no one could have anticipated to
7 require his reappearance.

8 Mr. Brassey?

9 MR. BRASSEY: Thank you, Judge.

10 CHRIS TVERDY,
11 having been previously duly sworn to tell the
12 whole truth, testified further as follows:

13 CROSS-EXAMINATION (Continued)

14 BY MR. BRASSEY:

15 **Q.** Mr. Tverdy --

16 MR. BRASSEY: And, Pat, can we show the
17 witness, but not the jury, Defendant's
18 Exhibit 2025.

19 BY MR. BRASSEY:

20 **Q.** Mr. Tverdy, you and I talked about this
21 document briefly yesterday, didn't we?

22 **A.** Yes.

23 **Q.** And down at the bottom of the first
24 page --

25 MR. BRASSEY: If we can highlight, Pat, the

1 footer.

2 BY MR. BRASSEY:

3 **Q.** -- does that indicate to you whether
4 this was contained in the documents at Oaas Laney?

5 **A.** Yes, it does. That's the root drive of
6 a network at Oaas Laney.

7 **Q.** And would this be a document that you
8 placed into Oaas Laney's records?

9 **A.** I'm pretty sure that that is the case.
10 I don't have a specific memory, but the S: drive
11 and the date would be referred to the date when we
12 placed it in our -- on our network, yes.

13 MR. BRASSEY: And, Your Honor, we would
14 offer Defendant's 2025.

15 THE COURT: Any objection?

16 MR. BANDUCCI: No objection.

17 THE COURT: All right. 2025 will be
18 admitted and published to the jury.

19 (Defendant's Exhibit No. 2025
20 admitted.)

21 BY MR. BRASSEY:

22 **Q.** And, Mr. Tverdy, this is a
23 confidentiality agreement; correct?

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

25 **Q.** And prepared by your lawyer, Spink

1 Butler?

2 **A. Yes, it is.**

3 **Q.** And it has to do with a confidentiality
4 agreement surrounding potential negotiations for
5 the sale by Alamar Ranch of the Klam Ranch
6 property; correct?

7 MR. BANDUCCI: Objection, Your Honor. This
8 was covered yesterday, and it was asked and
9 answered.

10 MR. BRASSEY: Well, Judge --

11 THE COURT: Mr. Brassey?

12 MR. BRASSEY: -- I think it seems to me,
13 Judge, so the jury understands, I ought to be able
14 to ask the witness if that's what this document is
15 about, because the document wasn't in evidence
16 yesterday.

17 THE COURT: All right. I'll allow it, but
18 just for that purpose of tying that in to this
19 admitted exhibit. Beyond that, I will sustain the
20 objection.

21 BY MR. BRASSEY:

22 **Q.** Let me withdraw that and ask you this:
23 Mr. Tverdy, in the time frame of mid-January 2008,
24 up to January 28th, 2008, the only individual that
25 either your lawyers were dealing with, with regard

1 to the potential sale of the Klam Ranch where
2 Alamar Ranch was to be located, was Mr. Paul
3 Buker; correct?

4 **A. Mr. Buker was the only individual that
5 any conversation regarding the property was held
6 with, yes.**

7 MR. BRASSEY: Thank you. That's all I have.
8 Oh, I'm sorry.

9 BY MR. BRASSEY:

10 **Q.** Mr. Tverdy --

11 MR. BRASSEY: And I believe Plaintiffs' 1025
12 is in evidence, Judge.

13 THE COURT: It is admitted.

14 BY MR. BRASSEY:

15 **Q.** Mr. Tverdy, I just wanted to ask you
16 one thing. This is the -- well, two things. This
17 is the business plan of -- for Alamar Ranch that
18 you discussed with us yesterday.

19 **A. Yes.**

20 **Q.** And the business plan was never given
21 to anyone at Boise County at any time prior
22 to -- well, at any time prior to this litigation;
23 isn't that true?

24 **A. We were never asked to provide it.**

25 **Q.** My question is: The business plan was

1 never given to anybody from the county prior to
2 this litigation; isn't that true?

3 **A. That's true. We were never asked to
4 provide it.**

5 MR. BRASSEY: Thank you.

6 That's all I have, Your Honor. I
7 appreciate it.

8 THE COURT: All right. Mr. Banducci?

9 MR. BANDUCCI: Just a brief redirect,
10 Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BANDUCCI:

13 **Q.** Mr. Tverdy, with respect to that last
14 question asked by Mr. Brassey, in the developments
15 that you've done for either Oaas Laney or for
16 Micron, has any governing body ever asked for the
17 business plan that would contain the confidential
18 financial information of the company?

19 MR. BRASSEY: Your Honor, I object. It's
20 irrelevant. That question is irrelevant.

21 THE COURT: Just a moment, Counsel. I was
22 actually preparing -- give me just a moment.

23 Overruled.

24 THE WITNESS: No. In my experience, we have
25 never -- never been asked to provide a business

1 plan, a confidential document like that, to the
2 public agency and have it be in the public domain.
3 That would just not be appropriate.

4 MR. BANDUCCI: Thank you.

5 BY MR. BANDUCCI:

6 **Q.** Now, yesterday, Mr. Brassey talked to
7 you about the Planning and Zoning hearing, and
8 questions were asked regarding what it was that
9 Alamar agreed to do with respect to this secondary
10 ingress and egress road. Do you remember all of
11 that?

12 **A. Yes.**

13 **Q.** We could bring the transcript up, but
14 the commissioners -- who were the commissioners
15 that were engaged in that discussion with you,
16 particularly?

17 **A. To the best of my recollection, it was
18 Jon Bart, Commissioner Kane; I think those two
19 individuals.**

20 **Q.** Okay.

21 MR. BANDUCCI: Now, can we bring up for the
22 witness Exhibit -- no, not the zoning ordinance.
23 I'm sorry.

24 Are you just pulling that up, Kathy?

25 Let's bring up the decision of the

1 Planning and Zoning Commission, which is
2 Exhibit 1048.

3 THE COURT: 1048?

4 MR. BANDUCCI: Yes. That's in evidence,
5 Your Honor.

6 Ms. Savell, can you bring that to
7 page -- I think it's page 10 first. Okay. And if
8 you could enlarge the title at the top here.

9 BY MR. BANDUCCI:

10 **Q.** This is a document that came after the
11 hearing, that you discussed in depth with
12 Mr. Brassey; correct?

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

14 **Q.** And this is a document authored by
15 Jonathan Bart, Clint Evans and Jack Kane. So
16 these are the commissioners that were talking to
17 you about this secondary access road; correct?

18 **A.** Correct.

19 **Q.** Okay.

20 MR. BANDUCCI: Now, let's go forward, I
21 think, into this document three pages. Actually,
22 I was one too far. Okay.

23 And at the bottom, Ms. Savell, the
24 paragraph, "The Wilderness Ranch Road..."

25 BY MR. BANDUCCI:

1 **Q.** It says here -- this is in reference to
2 Wilderness Ranch Fire District's position on the
3 proposed CUP. It says:

4 "Like the school district, the fire
5 district has carefully evaluated the Alamar
6 application, e.g., multiple meetings, and has
7 submitted a statement, Exhibit 70, saying they do
8 not oppose it. The applicant has suggested that
9 they be required to address those issues
10 identified by Wilderness Ranch Fire Protection
11 District, Item 15, Exhibit 90. In particular,
12 during the public hearing, they
13 committed" -- Alamar committed -- "to creating a
14 second ingress/egress for the property in
15 accordance with the fire district's
16 recommendations."

17 Is that what you recall happening as a
18 result of this meeting?

19 **A.** Absolutely, without a doubt.

20 **Q.** All right. Thank you.

21 MR. BANDUCCI: You can take that down.

22 BY MR. BANDUCCI:

23 **Q.** Some questions were asked --

24 MR. BANDUCCI: Kathy, if you could put up
25 1181, slide -- I think it's 12 or 13.

1 They're both in evidence, Your Honor.
2 This is which? 12.

3 All right. Do you have the laser?

4 BY MR. BANDUCCI:

5 **Q.** Careful, Mr. Tverdy, I'm a very poor
6 shot.

7 Now -- there we go. This is the
8 property upon which Alamar was intended to be
9 located; correct?

10 **A.** Correct.

11 **Q.** Okay. And Mr. Brassey talked about
12 exits off the property other than the one that was
13 proposed by the Wilderness Ranch Fire District and
14 Alamar, which is that loop road we talked about.

15 Remember that?

16 **A.** That's right.

17 **Q.** Now, you talked about an exit off the
18 property that you were considering with the
19 Wilderness Ranch Fire District as an option. And
20 I hate to have to have you turn around -- but
21 maybe I can just do it with this.

22 Doesn't that -- wasn't that proposed
23 access -- or egress, secondary egress that you
24 were thinking about the time of this P & Z
25 hearing, something that went off in this direction

1 (indicating)?

2 **A.** Yes. That's exactly right.

3 **Q.** All right. So it would go off through
4 the trees?

5 **A.** Absolutely.

6 **Q.** So if there was a forest fire or some
7 other cataclysm on the list of Mr. Brassey's
8 potential cataclysmic events, these students would
9 have to go through a forest on fire to get off the
10 property if they used that exit; correct?

11 **A.** Yes.

12 **Q.** Okay.

13 MR. BANDUCCI: Now, Kathy, could we show the
14 layout?

15 And this, Your Honor, is from the
16 presentation materials provided on August 7th,
17 which is 1040, which is in evidence.

18 And, Ms. Savell, which page is this,
19 for the record?

20 MS. SAVELL: Exhibit 1036, at page 11.

21 MR. BANDUCCI: All right.

22 THE COURT: So this is 1040?

23 BY MR. BANDUCCI:

24 **Q.** Now, could you explain to the jury what
25 1036 --

1 MR. BANDUCCI: I think this is 10- --
 2 THE COURT: What exhibit number is it?
 3 MR. BANDUCCI: 1036, Your Honor.
 4 THE COURT: All right. 1036 is admitted.
 5 1040 is not. I thought --
 6 MR. BANDUCCI: I had the wrong number there.
 7 BY MR. BANDUCCI:

8 **Q.** Could you explain to the jury the
 9 layout of Alamar and whether it's in the trees?

10 **A.** Right. You can see by this photo, the
 11 gray scale is just -- it's a Google map photo, so
 12 the gray would be actually green, the darker
 13 gray/green. So you can kind of see the wooded
 14 area. The lightest color on the plateau is, it is
 15 just that, a plateau. It's open area.

16 So you can see how we have those
 17 buildings situated in the -- in the area, kind of
 18 pushed to the back of the property, but all out in
 19 the -- in the plateau and in the open -- open
 20 grass area out there. So, yes, it was not pushed
 21 up into the trees at all.

22 That's why we liked the property, is
 23 that from a recreation perspective we could go
 24 take advantage of the therapeutic program and
 25 recreation program up into the trees, but the

1 buildings weren't sitting -- situated in it at
 2 all.

3 **Q.** Now, there is one building that's in
 4 the trees. It's right here (indicating); correct?

5 **A.** Yeah. That's not actually a building.
 6 That is a ropes course. So for therapeutic -- so
 7 I don't know if you know what a ropes course is,
 8 but tall poles and different therapeutic exercises
 9 that take place there.

10 **Q.** Okay. Now, you mentioned in your
 11 testimony yesterday with Mr. Brassey that in
 12 conversations with the Wilderness Ranch Fire
 13 Department, that the safest place to be in the
 14 event of a fire is to stay in these buildings.

15 **A.** That's exactly correct.

16 **Q.** And then you said something about
 17 Firewise; right?

18 **A.** Correct.

19 MR. BANDUCCI: Kathy, can we bring up the
 20 Firewise illustration.

21 Now, this is also a part of the same
 22 exhibit. This is part of Exhibit 1036.

23 BY MR. BANDUCCI:

24 **Q.** Explain to the jury, if you will, what
 25 this typical fire-wise landscape layout shows.

1 **A.** Right. This is just a bird's eye view
 2 of looking down on a building. And so you can see
 3 that right next to the building there is a 10-foot
 4 area around the complete circumference of the
 5 building that is gravel, no vegetation at all.

6 Then the next zone out from there is
 7 the -- is a ground cover area that is -- is -- you
 8 can see by the dimensions here, 50 feet wide away
 9 from the buildings, again. And it's low ground
 10 cover, you know, very fairly fireproof. And then
 11 any type of tree groupings, or whatever, is
 12 outside of that zone, as well.

13 And this is -- remember, we're not in
 14 the forest, so this is protection against the
 15 range fire, the grass fires that burn up. And
 16 that's what this really is protected against.

17 And so what I spoke about yesterday is,
 18 is with this layout, plus sprinklers inside the
 19 building, and a fire-wise roof and exterior
 20 treatment on the buildings, it is the safest place
 21 to be if there is a wild- -- a grass fire burning
 22 up there.

23 **Q.** All right.

24 MR. BANDUCCI: And, Ms. Savell, could you
 25 bring up one of the pictures of the facilities.

1 This is one of the residential buildings.

2 BY MR. BANDUCCI:

3 **Q.** You talk about Firewise. Is that
 4 required by a particular code?

5 **A.** Yeah. That is within the WUI, the
 6 international WUI Code.

7 **Q.** Which is the Wildland-Urban Interface?

8 **A.** Yes.

9 **Q.** Okay. And as part of WUI, does that
 10 also require, on top of all these other things
 11 that we have talked about, that the structures be
 12 made with noncombustible materials?

13 **A.** That's right. They're specifically
 14 worried about the roof. So it has to be a, you
 15 know, a protected roof, like a tin roof or
 16 something of that nature, as what is shown on this
 17 drawing. And then the treatment of the stain and
 18 whatever that goes on the exterior of the building
 19 is also specified.

20 **Q.** Okay. And this is on top of a
 21 300,000-gallon water tank for fire prevention?

22 **A.** That's right.

23 **Q.** And a hydrant system?

24 **A.** Yes. The 300-gallon [sic] tank is a
 25 gravity-fed, pressurized system to hydrants that

1 **the fire trucks can hook up to in the event that**
2 **they need water there.**

3 MR. BANDUCCI: That's all I have. Thank
4 you.

5 THE COURT: Mr. Brassey, any recross?

6 MR. BRASSEY: Just briefly, Your Honor.

7 RE-CROSS-EXAMINATION

8 BY MR. BRASSEY:

9 **Q.** Mr. Tverdy, with regard to the hydrant
10 system and the use of fire trucks, those weren't
11 fire trucks that were going to be located at
12 Alamar Ranch on a daily basis, were they?

13 **A.** Correct. They were trucks that would
14 come from the fire district in the event of an
15 emergency.

16 **Q.** Okay. And if the fire truck couldn't
17 get there, then the hydrants wouldn't do you any
18 good, would they?

19 **A.** I guess that's correct.

20 MR. BRASSEY: Thank you.

21 THE COURT: Anything else?

22 MR. BANDUCCI: No, Your Honor. Thank you.

23 THE COURT: Mr. Tverdy, you may step down.
24 Thank you.

25 MR. BANDUCCI: May Mr. Tverdy be released?

1 MR. BRASSEY: Yes.

2 THE COURT: Mr. Tverdy, you are released
3 from any subpoena. If circumstances change, where
4 you may need to be resubpoenaed, I assume that
5 will be discussed with you by either Mr. Brassey
6 or Mr. Banducci. Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MR. WOODARD: Your Honor, the plaintiffs
10 would like to call Mr. Dan McDonald.

11 THE COURT: What was the name again?

12 MR. WOODARD: Dan McDonald.

13 THE COURT: Mr. McDonald, would you please
14 step before Ms. Gearhart to be sworn, and then
15 follow her directions from there.

16 DANIEL J. MCDONALD,
17 having been first duly sworn to tell the whole
18 truth, testified as follows:

19 THE CLERK: Please state your complete name
20 and spell your last name for the record.

21 THE WITNESS: Daniel James McDonald,
22 M-C-capital-D-O-N-A-L-D.

23 THE COURT: You may inquire of the witness.

24 MR. WOODARD: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. WOODARD:

2 **Q.** Mr. McDonald, where did you graduate
3 from high school?

4 **A.** Bonneville High School in Idaho Falls,
5 Idaho.

6 **Q.** Were you raised in Idaho?

7 **A.** I was.

8 **Q.** Where are you currently employed?

9 **A.** At the law firm of Smith Hartvigsen in
10 Salt Lake City, Utah.

11 **Q.** Do you currently reside in Utah?

12 **A.** I do.

13 **Q.** Are you a licensed attorney?

14 **A.** I am licensed by the state -- well, by
15 the Utah State Bar Association, yes.

16 **Q.** Okay. Are you familiar with Alamar
17 Ranch?

18 **A.** Yes.

19 **Q.** And how are you familiar?

20 **A.** I was retained by Oaas Laney to be the
21 attorney to advise them on Fair Housing Act,
22 Americans With Disabilities Act, and the
23 Rehabilitation Act.

24 **Q.** What was your involvement with regard
25 to the Alamar Ranch conditional use permit

1 application?

2 **A.** I was brought in after the Planning
3 Commission denied the conditional use permit,
4 because my client believed there had been
5 discrimination. And my firm had some expertise in
6 that area, and we were brought in to advise the
7 client on their rights under the Fair Housing Act
8 and other civil rights statutes.

9 **Q.** When you were brought in -- you said
10 that was after the Planning and Zoning Commission
11 had denied the application. Was that before an
12 appeal was made to the Board of County
13 Commissioners?

14 **A.** Yes. That's correct.

15 **Q.** And prior to the appeal to the Board of
16 County Commissioners, did you ever have any
17 meetings with anyone from Boise County about the
18 application?

19 **A.** Yes.

20 **Q.** Who did you meet with?

21 **A.** Well, my partner, Craig Smith, and I
22 flew to Boise on October 17th, 2007, and we met
23 with Tim McNeese, David Hargraves, who I
24 understood to be the attorneys for Boise County,
25 at the law firm of Spink Butler here in Boise.

1 And JoAnn Butler and Hethe Clark, myself and Craig
2 Smith, sat down in a conference room and we talked
3 about this situation with Mr. McNeese and
4 Mr. Hargraves.

5 **Q.** Okay. And let me interrupt you real
6 quick, just to make sure. So Mr. McNeese and
7 Mr. Hargraves, they were attorneys for Boise
8 County at this time?

9 **A.** That's what they represented to us, is
10 that they were attorneys that had been retained by
11 Boise County to represent Boise County's interests
12 on the land use application.

13 **Q.** Thank you.

14 And this meeting took place on
15 October 17th, 2007. Was that before Alamar Ranch
16 appealed to the Board of County Commissioners?

17 **A.** Yes. It was after the denial of the
18 conditional use application but prior to any
19 formal hearing or any appeal to the full county
20 commission.

21 **Q.** Mr. McDonald, what did you do, if
22 anything, to refresh your recollection of what
23 occurred at this meeting?

24 **A.** I reviewed my notes. I spoke to my
25 partner, Craig Smith. I reviewed notes of JoAnn

1 Butler's, who was the attorney licensed here in
2 Idaho that was our counterpart here in Idaho, that
3 was on our team; reviewed her notes.

4 I think that's it.

5 **Q.** Do you have an understanding of who
6 requested the meeting?

7 **A.** My understanding is that it was
8 Mr. McNeese.

9 **Q.** Okay. And I think you stated the
10 meeting took place at Spink and Butler's offices
11 here in Boise?

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

13 THE COURT: I'm sorry. Whose offices?

14 MR. WOODARD: Spink and Butler, Your Honor.

15 BY MR. WOODARD:

16 **Q.** And what was the purpose of this
17 meeting?

18 **A.** Well, it looked like this was heading
19 in the wrong direction. And I had reviewed the
20 transcript of the Planning Commission hearing and
21 had concerns that there was discrimination, and
22 that that would be perpetuated unless we got this
23 thing back on the right track.

24 And so we were trying to avoid
25 litigation. We were trying to engage in the

1 interactive process that's required under the Fair
2 Housing Act and see if we could hash things out
3 and come to some kind of reasonable, workable
4 solution for both parties.

5 It was also to educate the Boise County
6 attorneys on the law. It was our understanding
7 that Boise County had never dealt with a Fair
8 Housing Act issue.

9 And so part of what we were trying to
10 do was just help them understand our view of the
11 law and federal law, and, you know, avoid ending
12 up right where I'm at today.

13 **Q.** You said it was your understanding that
14 the Boise County attorneys had never dealt with a
15 Fair Housing Act issue before. Is that something
16 you heard from them?

17 Did they tell you that?

18 **A.** Well, it's something I had heard from
19 JoAnn Butler, but it was confirmed in the meeting.

20 **Q.** By --

21 THE COURT: Just a moment.

22 There is an objection?

23 MR. HOWELL: Objection. Hearsay,
24 Your Honor. I would move to strike.

25 THE COURT: Sustained. It would seem to be

1 hearsay.

2 BY MR. WOODARD:

3 **Q.** Did Tim McNeese or -- is it David
4 Hargraves? Did they tell you that at the meeting?

5 **A.** Yes.

6 **Q.** What topics did you get on the table at
7 this meeting?

8 **A.** Well, basically, a comprehensive -- we
9 gave them a comprehensive overview of the
10 Americans With Disabilities Act. We talked
11 about -- kind of the threshold issue was whether
12 the students at Alamar Ranch would, in fact, have
13 handicaps or disabilities under the federal
14 statutes.

15 And we walked them through the types of
16 disabilities that the students would have. We
17 walked through the definition of what it means to
18 be handicapped under the statute. We talked
19 about --

20 **Q.** Mr. McDonald, let me interrupt you; and
21 I apologize.

22 Did you tell them, in fact, that the
23 students would be handicapped?

24 MR. HOWELL: Objection, Your Honor.

25 Leading.

1 THE COURT: Sustained. Rephrase.
 2 MR. WOODARD: Well, Your Honor, he said, "We
 3 had discussions about whether they would be" --
 4 THE COURT: The question --
 5 BY MR. WOODARD:
 6 **Q.** What, if anything, did you tell them
 7 about whether the students would be handicapped?
 8 THE COURT: Thank you, Mr. Woodard. That
 9 solved the problem.
 10 THE WITNESS: We told them that the students
 11 would, in fact --
 12 MR. HOWELL: Your Honor --
 13 THE WITNESS: -- be handicapped.
 14 MR. HOWELL: -- I apologize for
 15 interrupting, but this goes to this witness'
 16 opinions, not disclosed.
 17 THE COURT: Well, what the witness is being
 18 asked is what he told representatives of Boise
 19 County, and --
 20 MR. HOWELL: Which is his opinion.
 21 THE COURT: Well, but it's a factual matter
 22 as to what was told. Whether it includes an
 23 opinion or not, it's --
 24 Ladies and gentlemen -- let me deal
 25 with it this way.

1 MR. WOODARD: Okay.
 2 BY MR. WOODARD:
 3 **Q.** So the question was what, if anything,
 4 did you tell the county attorneys about whether
 5 the students at Alamar Ranch would be handicapped?
 6 **A.** We went into the specific diagnoses and
 7 admissions criteria that would be applied to the
 8 students, and we talked about specific
 9 disabilities that they would have:
 10 oppositional -- you know, ADHD, and things like
 11 that.
 12 And we read them the definition of
 13 "handicapped" under the statute, and told them
 14 that we thought there was no question that the
 15 students would be handicapped. In fact, we
 16 cautioned them not to challenge that because the
 17 definition, you know, because of the case law.
 18 THE COURT: All right. Now, again, ladies
 19 and gentlemen, I'm going to remind you of my
 20 instruction. Mr. McDonald has not been identified
 21 as an expert witness. The opinions that he just
 22 rendered are not to be considered by you except
 23 for whatever relevance they may have that those
 24 opinions were communicated to Boise County.
 25 Proceed.

1 Ladies and gentlemen, Mr. McDonald,
 2 although he obviously has some expertise in a
 3 particular area of the law, has not been offered
 4 as an expert witness. Therefore, any statements
 5 he makes by way of an opinion, I have ruled is not
 6 going to be -- is not to be considered by you as
 7 expert testimony.
 8 However, statements that he makes to
 9 Boise County in this case are relevant and
 10 admissible, not because of the opinions contained,
 11 but because the information was conveyed.
 12 So you are not to consider Mr. McDonald
 13 as an expert. And any statements he makes as to
 14 what the law is -- first of all, I will instruct
 15 you as to what the law is at the end of the trial;
 16 but what he is testifying to is only what
 17 information was conveyed to Boise County
 18 representatives in the form of Mr. McNeese, who,
 19 as I understand, was their legal counsel at the
 20 time.
 21 So I'm going to overrule the objection,
 22 and you may proceed.
 23 MR. WOODARD: I don't recall whether we got
 24 an answer to that question.
 25 THE COURT: I don't think we did.

1 MR. WOODARD: Thank you, Your Honor.
 2 BY MR. WOODARD:
 3 **Q.** Mr. McDonald, what, if any, discussions
 4 did you have with Mr. McNeese and Mr. Hargraves
 5 about the Alamar Ranch program, the therapy in the
 6 program and the economics of the program?
 7 **A.** Well, like I was saying, we started
 8 with the definition of "handicapped," and we had
 9 a -- I had made a list of items that I wanted to
 10 cover with them. So I covered disparate
 11 treatment, disparate impact, you know, a lot of
 12 different things. So we covered the law and we
 13 briefed them on the law.
 14 And then we talked about the economics
 15 of the project. Mr. McNeese had said to us that
 16 the opponents --
 17 MR. HOWELL: Your Honor, I'll object to
 18 that. It's nonresponsive and calls for hearsay,
 19 Judge.
 20 THE COURT: Well, I think it's nonhearsay
 21 under 801(d)(2)(D). I am assuming he is an agent
 22 of the county as their attorney and is speaking on
 23 a matter within the scope of that retention. It
 24 may -- I think the other objection was
 25 nonresponsive.

1 Let's put a question back before the
2 witness, so that it -- so that the question -- the
3 answer will be responsive.

4 MR. WOODARD: Your Honor, is there any way I
5 can have read back what --

6 THE COURT: You may.

7 MR. WOODARD: -- where we were at in that?

8 THE COURT: Ms. Hohenleitner, could you help
9 us out?

10 (The record was read.)

11 THE COURT: I think just the question, let's
12 stop there.

13 MR. WOODARD: Okay. Actually, I can
14 remember where he was in the answer before he
15 started talking about what Mr. McNeese said. But,
16 Your Honor, that's fine.

17 THE COURT: Okay.

18 MR. WOODARD: I think I can ask the
19 question.

20 BY MR. WOODARD:

21 **Q.** You were talking about the economics of
22 the project. What questions did Mr. McNeese have
23 for you about that issue?

24 **A.** Mr. McNeese had expressed to us that at
25 the Planning Commission level there had been a lot

1 of concerns about the size of the project, and
2 he -- he asked us if we could reduce the size of
3 the project to, say, 24 students.

4 **Q.** And how did you respond?

5 **A.** Well, we responded by explaining to him
6 that there was really two main reasons why we
7 couldn't do that. Number one, the project
8 couldn't be economically viable with that small of
9 a census of students.

10 And number two, we explained to him
11 that the program couldn't be therapeutically
12 viable. What I mean by that is that you have to
13 have a critical mass in order to have these
14 programs for these kids work.

15 For example, they're not in the public
16 education system, and so you've got to educate
17 them. And to achieve the economies of scale to
18 make that work, you've got to have enough students
19 to make sense in hiring teachers and therapists
20 and staff, and things like that. You also have to
21 have a critical mass of students to make their
22 group therapies and their activities work and to
23 make them able to function.

24 So we explained all that and had a
25 discussion about that.

1 MR. WOODARD: Ms. Savell, can we show the
2 witness Exhibit 1084.

3 This is the January 28th transcript. I
4 think it's been --

5 THE COURT: I have turned off the jury
6 monitor. The exhibit number is what?

7 MR. WOODARD: 1084. It's the transcript
8 before the Board of County Commissioners. I don't
9 know --

10 THE COURT: Well, 1084 has been admitted.

11 MR. WOODARD: It has? Thanks, Your Honor.

12 Could we go to page 49 of 74, please,
13 Kathy?

14 And, Kathy, the Tim McNeese, can you --
15 thank you.

16 BY MR. WOODARD:

17 **Q.** So T. M. is Tim McNeese, and he says:

18 "Well, Mr. Chairman, Commissioner
19 Zimmer, you may be correct about that, but
20 remember that the application is based on staffing
21 models and factors the applicant feels is most
22 economic to them based on the 72-bed facility.

23 "If you reduce the size of that, you
24 would be adversely affecting their ability to have
25 an economic benefit, and also seriously calling

1 into question the entirety of the application
2 based on the model that's been presented and that
3 everybody, including the Planning and Zoning
4 Commission and this Commission staff, has been
5 working on, and that is the 72-bed facility. At
6 this juncture, I couldn't tell you what the
7 applicant would have to do in the way of reducing
8 that 150, 160 staff to meet the needs of 12
9 people.

10 "Do you follow me, or" --

11 Now, this was Mr. McNeese -- and I'm
12 sorry, it's not at the January meeting; it's at
13 the deliberations meeting on March 10th of 2008.

14 But what Mr. McNeese's statement is
15 here, does that comport with what you were
16 explaining to him at this meeting in October of
17 2007?

18 **A.** Yes, with one exception.

19 **Q.** Okay. And what is that?

20 **A.** He focused just solely on economic
21 viability, but we had explained to him that
22 therapeutic viability was driving the number, as
23 well.

24 **Q.** Thank you.

25 What else do you recall being discussed

1 at this meeting with Mr. McNeese?

2 **A.** We discussed his background in 42 U.S.
3 Code, Section 1983, or the Civil Rights Act of
4 1871, which is another civil rights statute, that
5 I had experience with. And so that was helpful to
6 me because he kind of spoke my language a little
7 bit, and I could take Fair Housing Act concepts
8 and explain how they related to that statute.

9 We talked about the main differences
10 between that statute and the Fair Housing Act.
11 And --

12 **Q.** What did you tell him in that regard?

13 **A.** Well, the main difference was the
14 interactive process under the Fair Housing Act,
15 that there is this -- and I don't want to --

16 **Q.** Well, what did you explain to him about
17 the interactive process?

18 **A.** We explained to him that, unlike
19 Section 1983, that there -- that the goal of --
20 that one of the purposes of the Fair Housing Act
21 is to try to --

22 THE COURT: Again, let me caution the
23 witness. You are only to testify as to what you
24 told the individual, not your independent opinion
25 about what the law is or is not.

1 But you can go ahead and answer, but I
2 just wanted to make sure that the answer is
3 properly cabined within the court's ruling.

4 THE WITNESS: Understood, Your Honor.

5 We basically explained to him what the
6 interactive process is, and that, unlike Section
7 1983, it would require some dialogue, ongoing
8 dialogue between the county and the applicant.

9 BY MR. WOODARD:

10 **Q.** Did you tell them what needed to be
11 included in this dialogue, this ongoing dialogue?

12 **A.** Well, the whole purpose of the dialogue
13 is to try to find a way to accommodate. If you
14 can -- it's to explore whether you can make a
15 reasonable accommodation or not. And --

16 MR. HOWELL: Your Honor, I'm going to object
17 and move to strike. That's not responsive.

18 THE COURT: Sustained.

19 Again, if you could just phrase your
20 responses so it's clear that what you're
21 communicating to the jury is what you told
22 someone, as opposed to your independent opinion.
23 I just can't fell from the response.

24 MR. WOODARD: That's fine, Your Honor.
25 Maybe I can rephrase the question.

1 BY MR. WOODARD:

2 **Q.** What, if anything, did you explain to
3 Mr. McNeese about reasonable accommodation and how
4 it relates to the interactive process?

5 **A.** As I recall, what we discussed was the
6 purpose of the interactive process was to explore
7 what accommodations are reasonable. And what I
8 explained was that the reason we have that
9 requirement is because what may be reasonable to
10 you may not be reasonable to me. It takes coming
11 together to understand the barriers and the goals
12 and objectives of both sides in order to
13 understand what's reasonable under the
14 circumstances.

15 So I explained to him that: You can't
16 rely on your knowledge under Section 1983, because
17 this is a little different animal.

18 **Q.** What, if anything, did you ask from the
19 county about a reasonable accommodation at that
20 time?

21 **A.** I'm sorry. I didn't understand that
22 question.

23 **Q.** Did you ask the county for a reasonable
24 accommodation at that time?

25 MR. HOWELL: I'm going to object,

1 Your Honor, to the extent that that calls for a
2 legal conclusion.

3 THE COURT: I'm sorry, Counsel. I actually
4 missed the question. Give me just a moment.

5 I think the witness can testify as to
6 the words used, but I'm concerned that the
7 question as asked might call for the witness to
8 characterize what accommodation was requested as
9 being reasonable or not reasonable.

10 Do you understand, Mr. Woodard?

11 MR. WOODARD: Yes -- Your Honor, all I want
12 to get out is whether he requested a reasonable
13 accommodation. I don't want his opinion on
14 whether it was reasonable or not. But that
15 is the --

16 THE COURT: You can ask whether he asked for
17 an accommodation. The reasonableness would have
18 to be determined through the process that's been
19 discussed.

20 MR. WOODARD: Okay. I'll change it that
21 way, Your Honor.

22 BY MR. WOODARD:

23 **Q.** Mr. McDonald, did you ask the county
24 for any accommodations at that time?

25 **A.** At that time?

1 **Q.** Yes. In this meeting.
 2 **A.** On October 17th, 2007?
 3 **Q.** Correct.
 4 **A.** No.
 5 **Q.** Okay. What did you ask him, in that
 6 regard, to do?
 7 MR. HOWELL: I'm going to object,
 8 Your Honor. He just said he didn't talk to him
 9 about that at that meeting.
 10 THE COURT: But he asked him what -- well,
 11 perhaps if the question was asked, "What, if
 12 anything, did you ask him in that regard," it
 13 would have been more proper. But I think that's
 14 the way it was understood, so I'll allow to stand.
 15 MR. WOODARD: Your Honor, I'll rephrase --
 16 THE COURT: All right.
 17 MR. WOODARD: -- so that we can clear that
 18 up.
 19 BY MR. WOODARD:
 20 **Q.** Mr. McDonald, in this conversation that
 21 you had with Mr. McNeese, was -- what, if
 22 anything, was discussed about whether Alamar Ranch
 23 would be required to appeal the decision of the
 24 P & Z or whether accommodations could be made and
 25 you would not have to go through that process?

1 **A.** Well, that was one of the purposes for
 2 me and my partner flying up there, is that at the
 3 time we had this meeting, it was uncertain as to
 4 whether we would even have to go through and have
 5 a full hearing with the county commission. And
 6 one of the items that we discussed in this meeting
 7 was whether they could simply accommodate us now
 8 by making adjustments to what the Planning and
 9 Zoning Commission had decided.
 10 **Q.** And how did Mr. McNeese respond to that
 11 request?
 12 **A.** I believe he said he would get back to
 13 us after the meeting. But we -- yeah.
 14 **Q.** Okay. And did the county make any
 15 accommodations at that time, or did you have to go
 16 through the appeal process?
 17 **A.** We did have to go through the appeal
 18 process and appeal to the full county commission.
 19 **Q.** And Mr. McNeese [sic], were you
 20 involved -- "McNeese"; I apologize. We've got too
 21 many --
 22 **A.** Too many Scottish names.
 23 **Q.** Yes.
 24 Mr. McDonald, did you participate in
 25 the appeal process?

1 **A.** I did.
 2 MR. WOODARD: Your Honor, I would like to
 3 show the witness Exhibit 1053, which is Alamar
 4 Ranch's hearing appeal brief.
 5 Mr. Brassey, I don't know if you have
 6 any objection.
 7 THE COURT: All right. Is there any
 8 objection to 1053, Mr. Howell?
 9 MR. HOWELL: Your Honor, I believe this is a
 10 document that was presented to the Boise County
 11 commissioners.
 12 Right?
 13 MR. WOODARD: Yes.
 14 MR. HOWELL: And it's part of the record.
 15 So we do not object to it, Judge.
 16 THE COURT: All right. 1053 will be
 17 admitted and published to the jury.
 18 (Plaintiffs' Exhibit No. 1053
 19 admitted.)
 20 MR. HOWELL: And Your Honor, we would ask at
 21 the appropriate time that the same instruction be
 22 given to the jury postproof with respect to the
 23 law, as the court has instructed the jury.
 24 THE COURT: I'm sorry. I'm not sure -- are
 25 you referring --

1 MR. HOWELL: We can probably address -- it's
 2 probably better addressed --
 3 THE COURT: Is that with regard to the First
 4 Amendment issue?
 5 MR. WOODARD: Your Honor, I think what he is
 6 saying is we're going to talk about what he wrote
 7 in his brief.
 8 THE COURT: Oh, opinions. I understand.
 9 I'm sorry. I'm a little dense this morning.
 10 Mr. Howell, I apologize.
 11 Ladies and gentlemen, I'm just going to
 12 remind you again, this is a brief, apparently,
 13 submitted as part of the appeal from the Planning
 14 and Zoning Commission decision to the Board of
 15 County Commissioners. And perhaps even that bears
 16 some explanation. And that's the typical process
 17 used under Idaho law when a decision is made by
 18 kind of a preliminary board like a Planning and
 19 Zoning Commission or Land Use Development
 20 Commission -- or they have different names -- the
 21 appeal is typically taken either to a city or in
 22 this case to the county, and it's actually an
 23 appellate process.
 24 And this was a brief, apparently
 25 prepared or at least in which Mr. McDonald had

1 some involvement, that was submitted to the county
2 commissioners as part of this appeal process.

3 In preparing the appeal, it, of
4 necessity, will include legal arguments, and those
5 arguments may reflect opinions by Mr. McDonald.
6 They are only -- well, and they're not even
7 opinions to be considered by you, except to the
8 extent that they reflect statements made to the
9 county, as putting them on notice as to the
10 matters contained therein.

11 So, I think, Mr. Howell, that is what
12 you were requesting?

13 MR. HOWELL: Yes. Thank you, Judge.

14 THE COURT: My apologies for not syncing up
15 with you, I guess, on what you were requesting.

16 MR. HOWELL: It's my fault, Judge. Thank
17 you.

18 THE COURT: Go ahead.

19 BY MR. WOODARD:

20 **Q.** Mr. McDonald, did you have any
21 involvement in the preparation of this brief?

22 **A.** Yes.

23 **Q.** Okay. And what portion did you -- of
24 this brief did you write?

25 **A.** **The Fair Housing Act and civil rights**

1 **portions.**

2 **Q.** And was this a brief that was submitted
3 to Boise County as part of the appeal process for
4 Alamar Ranch's conditional use permit?

5 **A.** Yes.

6 **Q.** Okay. Why did the brief include a
7 section on the Fair Housing Act?

8 **A.** **We were trying to, again, give helpful**
9 **information to the county so that they didn't make**
10 **a mistake and step on a land mine.**

11 **Q.** Okay.

12 MR. WOODARD: Let's -- Kathy, please, if we
13 could go to page 28 of the brief. I don't know
14 what that is of the exhibit.

15 And highlight the bottom section under
16 "2."

17 BY MR. WOODARD:

18 **Q.** It says: "Definition of 'handicapped
19 or disabled.' The FHA prohibits discrimination
20 against individuals due to a handicap, which is
21 defined as 'including physical or mental
22 impairment which substantially limits one or more
23 of a person's major life activities.' The
24 residents of Alamar Ranch will have professionally
25 recognized psychiatric or psychological

1 diagnoses" --

2 MR. WOODARD: And then the top part of
3 the -- thank you.

4 BY MR. WOODARD:

5 **Q.** -- "or learning disabilities
6 constituting varying degrees of mental or
7 emotional impairment or illness that interfere
8 with, inter alia, the ability to work, enjoy
9 normal social relationships, communicate, learn or
10 study. Consequently, they have qualifying
11 disabilities under the FHA."

12 Is that part of the portion of the
13 brief that you wrote?

14 **A.** Yes.

15 **Q.** And why did you put in a definition of
16 "handicapped" and tell the county that the
17 residents would be handicapped?

18 **A.** **I was trying to persuade the county**
19 **commission that the Fair Housing Act applied and**
20 **that this would be a -- not your typical land use**
21 **application.**

22 **Q.** Mr. McDonald, in your practice, do you
23 represent public entities such as cities and
24 counties and provide them with advice on Fair
25 Housing Act matters?

1 **A.** **I was in federal court yesterday for**
2 **the City of Saint George, Utah, yes.**

3 **Q.** On a Fair Housing Act matter?

4 **A.** Yes.

5 **Q.** Okay. Is that part of your regular
6 practice to do that type of work?

7 **A.** Yes. Part.

8 MR. WOODARD: Ms. Savell, let's turn to page
9 29 of the brief.

10 Right in the middle, do you see the
11 paragraph that starts out with "Decisions made"?
12 Can you expand that?

13 BY MR. WOODARD:

14 **Q.** This paragraph says, "Decisions made in
15 the face of community opposition and public clamor
16 are often inherently discriminatory because such
17 opposition is usually motivated by ill-conceived
18 stereotypes of the disabled, ignorance and
19 prejudice, which are inappropriate bases for
20 decision-making. A decisionmaker has a duty not
21 to allow illegal prejudices of the majority to
22 influence the decision-making process. If an
23 official act is performed simply in order to
24 appease the discriminatory viewpoints of private
25 parties, that act itself becomes tainted with

1 discriminatory intent, even if the decisionmaker
2 personally has no strong views on the matter."

3 Why did you insert that into the brief
4 to the county?

5 **A. Because I read the Planning Commission**
6 **transcript, the hearing transcript from the**
7 **decision made by the Planning Commission, and I**
8 **read the comments of the public, and I was very**
9 **concerned that the same thing would happen at the**
10 **County Commission.**

11 **Q.** And by "same thing," what do you mean
12 by that?

13 **A. There were a lot of discriminatory**
14 **comments made, and --**

15 MR. HOWELL: Objection, Your Honor. Here we
16 go again, as far as going into expert testimony.

17 THE COURT: Rephrase.

18 MR. HOWELL: Move to strike, Judge.

19 THE COURT: Again, we're in the same
20 posture, and I have reminded both the witness and
21 the jury as to the limitations here.

22 If we're talking -- and I assume the
23 objection is to the use of the word

24 "discriminatory comments." Is that the concern?

25 The witness can testify as to what he

1 told the county. And if this is part of that,
2 I'll allow it. But it needs to be clear that this
3 was a fact that was communicated to either
4 Mr. McNeese or to the county through the briefing
5 process.

6 So I'm going to strike that last
7 response.

8 And, Mr. Woodard, you can come back and
9 see if the witness, in fact, made such a statement
10 to the county, either through Mr. McNeese or
11 through its briefing.

12 MR. WOODARD: Okay. Let me make sure I
13 understand. I think the question was why he put
14 that in. Is --

15 THE COURT: Well, "why he put it in"; what
16 his thought process is, is not relevant. What's
17 relevant is what he told the county, what he
18 communicated to the county. To the extent that
19 what he communicated to the county reflects his
20 thinking, then that's appropriate.

21 MR. WOODARD: Okay. Your Honor, I'm going
22 to move on from that section.

23 Ms. Savell, let's turn to page 32,
24 please. And highlight the -- from "Enactment"
25 paragraph through the "Federal courts" paragraph.

1 BY MR. WOODARD:

2 **Q.** This says, "Enactment of the Fair
3 Housing Act was a clear pronouncement of a
4 national commitment to end the unnecessary
5 exclusion of persons with handicaps from the
6 American mainstream. It was intended to
7 prohibit" -- and there is a "t," I don't know if
8 that's supposed to be "the" -- "application of
9 special requirements through land use regulations,
10 that have the effect of limiting the
11 ability" -- it looks like there is something
12 missing there -- "recognized."

13 Then it says: "While state and local
14 governments have authority to protect safety and
15 health and to regulate use of land, that authority
16 has sometimes been used to restrict the ability of
17 individuals with handicaps to live in communities.
18 This has been accomplished by such means as the
19 enactment or imposition of health, safety, or land
20 use requirements on congregate living arrangements
21 among nonrelated persons with disabilities. Since
22 these requirements are not imposed on families and
23 groups of similar size or unrelated people, these
24 requirements have the effect of discriminating
25 against persons with disabilities.

1 "Congress also intended to require
2 that changes be made to traditional rules or
3 practices, if necessary, to permit a person with
4 handicaps an equal opportunity to use and enjoy a
5 dwelling. The House report to the FHA expressly
6 states that the Act is intended to prohibit the
7 imposition of terms or conditions which have the
8 effect of excluding congregate living arrangements
9 for persons with handicaps.

10 "Federal courts, which have the duty to
11 implement and follow the legislative intent behind
12 the FHA, routinely acknowledge the necessity of
13 congregate living arrangements for persons with
14 handicaps. The commercial nature of such
15 facilities is irrelevant to zoning decisions
16 because the handicapped may have little choice but
17 to live in a commercial home if they desire to
18 live in a residential neighborhood. Indeed,
19 sometimes the only way people with handicaps, like
20 the residents of Alamar, can enjoy residential
21 housing is through the on-site availability of
22 commercial support services provided by teachers,
23 counselors, therapists and other experts.

24 "Thus, even if Alamar Ranch was a
25 commercial project with residential components,

1 reasonable accommodations to allow that use in the
2 particular zone would be mandated by the Fair
3 Housing Act. But Alamar Ranch is a residential
4 project with some commercial components that are
5 an absolutely essential and integral part of the
6 rehabilitation process for the persons with
7 disabilities who will be living at Alamar Ranch."

8 Now, did you put that in the brief?

9 Was that in the brief?

10 **A. Yes.**

11 **Q.** And was that put in the brief because
12 of arguments raised by the opponents, arguing that
13 this was a commercial venture?

14 MR. HOWELL: Objection, leading.

15 THE COURT: Overruled. I mean, I think it
16 can be fairly answered one way or the other.

17 Go ahead and answer.

18 THE WITNESS: Yes.

19 MR. WOODARD: Thank you.

20 Ms. Savell, if we could go to page 35
21 of the brief. And can you highlight the
22 paragraph, "Conclusion of the FHA analysis."

23 BY MR. WOODARD:

24 **Q.** I'm going to start reading,
25 Mr. McDonald, from about midway through this

1 paragraph, the sentence that starts out, "If Boise
2 County genuinely believes..."

3 That starts out, "If Boise County
4 genuinely believes that Alamar Ranch is not
5 allowed by its conditional use regulations, then
6 Alamar Ranch will request a reasonable
7 accommodation from Boise County if and when Boise
8 County identifies what rules or policies otherwise
9 prohibit the project.

10 "Additionally, Alamar Ranch will not
11 hesitate to hold Boise County responsible for any
12 failure to make a reasonable accommodation under
13 the FHA" --

14 And the FHA, when you refer to that,
15 you're referring to the Fair Housing Act?

16 **A. That's correct.**

17 **Q.** -- "any interference with the exercise
18 of its FHA rights, any disparate impact
19 discrimination, and/or any unlawful disparate
20 treatment."

21 Mr. McDonald, when you made that
22 request, why did you put the caveat, "when Boise
23 County identifies what rules or policies otherwise
24 prohibit the project," when you asked for the
25 reasonable accommodation?

1 **A. This was a unique situation in that my
2 understanding was that Boise County allowed all
3 uses as conditional uses in its county. And
4 therefore, we didn't know how they would apply the
5 conditions, or what conditions they would apply,
6 until they issued an opinion.**

7 And so that's why I said, "if and when
8 Boise County identifies what rules or policies
9 otherwise prohibit the project." Once Boise
10 County said why they didn't think we complied with
11 the particular rule or regulation, then we could
12 ask for an accommodation from that.

13 **Q.** Okay. Thank you, Mr. McDonald.

14 MR. WOODARD: Ms. Savell, I want -- could we
15 please show the witness Exhibit 1195?

16 THE COURT: What's the exhibit number?

17 MR. WOODARD: 1195.

18 BY MR. WOODARD:

19 **Q.** Mr. McDonald, is that up in front of
20 you?

21 **A.** It says, "Alamar Ranch Applicant's
22 Rebuttal Brief."

23 **Q.** Do you recognize that?

24 **A.** Yes.

25 MR. WOODARD: Your Honor, they have

1 stipulated to the admission of the --

2 THE COURT: You are stipulating?

3 MR. HOWELL: Yeah. Again, it's part of the
4 record, so, yes.

5 THE COURT: All right. The exhibit will be
6 admitted and published to the jury.

7 (Plaintiffs' Exhibit No. 1195
8 admitted.)

9 BY MR. WOODARD:

10 **Q.** Mr. McDonald, this is the Alamar
11 Ranch's applicant's rebuttal brief in the appeal
12 process before the county.

13 Now, is it your -- what was your
14 understanding -- strike that.

15 Did this brief come after the brief
16 that we were just reading from?

17 **A. Yes.**

18 **Q.** Okay. So you filed that first brief.
19 Then, did the opponents file a brief after that?

20 **A.** As I recall, there were two briefs
21 filed, one by a group represented by Dennis
22 Charney, which I remember as NoAlamarRanch.com, or
23 something like that. I can't remember the exact
24 name. And then there was an individual citizen
25 that filed an opposition brief, as I recall.

1 **Q.** And then so -- I just want to make sure
2 I got the sequence correct. Alamar Ranch filed
3 first the brief we were just looking at
4 previously.

5 **A.** Yes.

6 **Q.** Then there were some briefs by some
7 opponents.

8 **A.** Yes.

9 **Q.** And then Alamar Ranch filed this brief.

10 **A.** Yes. **We filed this in response or**
11 **rebuttal to the opposing briefs that were filed.**

12 **Q.** Okay. And there is a -- there is a
13 stamp on the front cover of that, received by the
14 county. And what's the date on that?

15 **A.** It looks like **January 7th, 2008.**

16 MR. WOODARD: Kathy, can you expand that?

17 THE WITNESS: Oh, that date. Yeah,
18 December 24th, 2007.

19 MR. WOODARD: Okay. Thank you.

20 BY MR. WOODARD:

21 **Q.** And --

22 **A.** **Christmas Eve. I remember now.**

23 **Q.** And what was -- when was that in
24 relation to the hearing on the appeal before the
25 Board of County Commissioners?

1 **A.** Well, this was before. I believe the
2 hearing was **January 18th, 2008, or somewhere**
3 **around-about there. But this was a couple weeks**
4 **before, as I recall.**

5 **Q.** Okay.

6 MR. WOODARD: And, Ms. Savell, if we could
7 turn to page 33 of the brief.

8 And that top paragraph that starts with
9 "Accordingly," if you could expand that, please.

10 BY MR. WOODARD:

11 **Q.** Let me ask you this: Did you write the
12 section of the brief that pertains to the Fair
13 Housing Act?

14 **A.** I did.

15 **Q.** Okay. I'm going to read to you this
16 paragraph from that section. It says,
17 "Accordingly, if the county determines that one of
18 its CUP provisions" -- I assume that means
19 "conditional use permit"?

20 **A.** That's correct.

21 **Q.** -- "or policies does not allow Alamar
22 Ranch to move forward, then both sides must
23 participate in a good-faith exploration of
24 possible accommodations. If necessary, this does
25 not have to be done informally, as Mr. Charney

1 seems to suggest" --

2 Now, Mr. Charney, he was who you
3 believed was the attorney for the opponents?

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

5 **Q.** -- "rather, Section 3-5, Subsection
6 (d), of the Boise County Zoning Ordinance can be
7 utilized. Although that section gives the
8 Planning Commission power to delay a decision for
9 further study or hearing, it would seem implicit
10 in Boise County's ordinance that the Board has the
11 same power.

12 "Consequently, if the Board finds that
13 Alamar Ranch does not satisfy one or more of the
14 nine criterion [sic], it could use" -- "it could
15 issue a provisional decision subject to further
16 study or hearing on the issue of whether a
17 reasonable accommodation can or ought to be made
18 to those specific criterion [sic]."

19 Now, the first brief that we looked at
20 you said, as I recall, that what was written is
21 that: "Look, once we figure out what you guys are
22 going to do, we'll come back to you and we'll ask
23 for a reasonable accommodation."

24 Here, it looks like you're saying:
25 "Please make your decision preliminary."

1 Why did you make that change?

2 **A.** Well, you're correct in that I did say
3 that in the first brief. But between the time I
4 wrote the first brief and we wrote this brief, we
5 had discovered Section 3-5, Subsection (d) of the
6 Boise County Zoning Ordinance, which, you know, in
7 our view, as we expressed here, allowed the county
8 not to make a final decision.

9 And I was thrilled about that because
10 instead of making a final decision that the only
11 option we had at that point was to file a lawsuit
12 in district court and appeal, we could keep the
13 interactive process going. We could keep the
14 dialogue open. And that's why I made the change,
15 because I -- I was thrilled that there was a
16 provision like that.

17 **Q.** Mr. McDonald, did you attend the
18 hearing before the county commissioners on Alamar
19 Ranch's conditional use permit application?

20 **A.** I did.

21 **Q.** And was that hearing on January 28th,
22 2008?

23 **A.** I thought the 18th, but it's -- if you
24 have information that says it was January 28th,
25 then, yes.

1 **Q.** Well, we'll look at that.
 2 **A.** It was cold.
 3 **Q.** It was cold. Okay.
 4 **A.** And snowy.
 5 **Q.** And I assume you came up from Utah to
 6 attend that hearing?
 7 **A.** I did. I flew from Utah.
 8 **Q.** Describe the atmosphere at that
 9 hearing.
 10 **A.** Intense. The high school -- as I
 11 recall, it was at the high school. The entire
 12 place was packed with people, angry people.
 13 **Q.** Okay. Would you describe it as hostile
 14 towards Alamar Ranch?
 15 **A.** Absolutely.
 16 MR. WOODARD: Ms. Savell, could we please
 17 put up Exhibit 1076.
 18 This, I believe, has been admitted,
 19 Your Honor. It's the transcript of the January
 20 28th hearing.
 21 Ms. Savell, can you turn to page 88 of
 22 that transcript, towards, about two-thirds --
 23 first, highlight the "D. M." at the top. There we
 24 go.
 25 BY MR. WOODARD:

1 there instead of six homes with handicapped
 2 students there, if we had a homeowners'
 3 association with a gymnasium and a cafeteria and
 4 facilities for a planned unit development, I doubt
 5 there would be this much community opposition.
 6 The difference here is the disabilities of the
 7 students that are going to be living in these
 8 residence [sic]. But for those disabilities and
 9 but for their handicapped status, I do not think
 10 that this would generate so much community and
 11 public clamor.
 12 "Now the question has been raised by
 13 the opponents as to whether or not the students
 14 are even handicapped. The Alamar Ranch residents
 15 will be handicapped, are handicapped under the
 16 Fair Housing Act and all of the civil rights
 17 statutes that I've mentioned."
 18 And then, it goes on to the next page,
 19 and you give a definition of "handicapped" again.
 20 You had already put this in the briefs,
 21 that they were handicapped. Why were you saying
 22 this again?
 23 **A.** I didn't want them to make the mistake
 24 of, and fall on a land mine of, proceeding under
 25 the assumption that these kids were not

1 **Q.** It shows "D. M." and it says:
 2 "Commissioners, thank you for allowing me the
 3 opportunity to come here and be in your beautiful
 4 county and speak on this important issue. My
 5 name" -- "My name's Dan McDonald. I'm [sic] 215
 6 South State Street, Salt Lake City, Utah. I'm a
 7 civil rights attorney and land use attorney
 8 practicing in Utah."
 9 Was that your testimony at the hearing?
 10 **A.** Well, I hope I didn't say "I'm 215
 11 South State Street." I hope I said I live there.
 12 But I think I was a little nervous. And, yeah,
 13 that reflects basically what I said.
 14 **Q.** All right.
 15 MR. WOODARD: And then, Kathy, if we could
 16 go two-thirds of the way down, there is a sentence
 17 that starts at -- on the left-hand side, that, "As
 18 I've studied these issues..."
 19 BY MR. WOODARD:
 20 **Q.** There you testify, "As I've studied
 21 these issues and studied the facts and studied the
 22 record, the thing that has jumped out me, as an
 23 attorney who practices in the area of civil
 24 rights, is that if this was a similar development,
 25 if we were putting six single-family residences

1 handicapped.
 2 **Q.** Thank you, Mr. McDonald.
 3 MR. WOODARD: Ms. Savell, if you could turn
 4 to page 21/88. And about a quarter of the way
 5 down from the top there is a sentence that starts
 6 out, "If the commission determines..." On page 21
 7 of 88. Right there.
 8 THE COURT: We're still now within the same
 9 exhibit, correct?
 10 MR. WOODARD: Yes. We're still within the
 11 testimony -- this is still Mr. McDonald's
 12 testimony.
 13 BY MR. WOODARD:
 14 **Q.** In here you state -- you testified, "If
 15 the commission determines that the application
 16 fails any of the CUP criteria" -- again, that's
 17 conditional use permit?
 18 **A.** That's correct.
 19 **Q.** -- "a change, waiver, or exception must
 20 be offered for each condition with which the
 21 applicant isn't" -- and this says "legibly"; did
 22 you mean "legally"?
 23 **A.** I meant legally, yes.
 24 **Q.** -- "not in compliance. Now, our
 25 opponents have said there is no requirement for an

1 interactive process. That's just flatly wrong.
 2 In the Ninth Circuit, under the Rehabilitation
 3 Act, under Title 2 of the Americans With
 4 Disabilities Act -- and the Ninth Circuit hasn't
 5 expressly concluded on the Fair Housing Act, but
 6 all those acts are interpreted in tandem and
 7 consistent with one another. And federal law is
 8 clear in the Ninth Circuit, which governs this
 9 state, that there is -- there has to be some sort
 10 of interactive process.

11 "The courts don't want people just
 12 running off to court and suing people. They want
 13 people in the local setting to talk and
 14 communicate and examine ways to make this work.
 15 And so a reasonable accommodation must be offered.
 16 If a reasonable accommodation is not offered and
 17 there is just a flat denial, then there is a
 18 violation of the Fair Housing Act."

19 Why did you bring up the interactive
 20 process again?

21 **A. I didn't know what their decision was**
 22 **going to be, but no matter what the decision was,**
 23 **I wanted to keep the dialogue open with the**
 24 **county. Because very rarely does a county ever**
 25 **give you everything you ask, or just flatly deny**

1 **thing. The hostility towards me was palpable. I**
 2 **could feel it, and I felt nervous. So -- and just**
 3 **all of the comments from the public, I felt**
 4 **vulnerable. So I went and stood by a sheriff's**
 5 **deputy.**

6 **Q.** Going back to the decision, you said
 7 you received a copy of the decision. What was
 8 your reaction when you read the conditions in the
 9 decision?

10 MR. HOWELL: Objection, Your Honor. This is
 11 going to -- I'm afraid this is going to go into
 12 his opinions, et cetera, as to what the decision
 13 was.

14 THE COURT: I am probably going to have to
 15 sustain the objection at this point. I don't know
 16 how he can respond without offering his opinion.
 17 And I'm not sure why his response would be
 18 relevant, in any event, unless it explains
 19 something he did subsequently. And I don't
 20 know --

21 MR. WOODARD: Well, let me ask it this way,
 22 and if it doesn't work I'll leave the subject,
 23 Your Honor.

24 THE COURT: All right.

25 BY MR. WOODARD:

1 you.

2 **And I wanted to keep the dialogue open,**
 3 **I wanted to keep the interactive process open, to**
 4 **explore ways that we could make this work for --**
 5 **and make it a win-win for both sides, without**
 6 **having to have a federal lawsuit.**

7 **Q.** Mr. McDonald, after this hearing and
 8 after a decision was entered by the county, did
 9 you receive a copy of the decision?

10 **A. The final written decision of the**
 11 **county commission?**

12 **Q.** Yes.

13 **A. Yes, I did.**

14 **Q.** I apologize. Let me back up to the
 15 hearing real quick, before we get to the decision.

16 After you finished presenting to the
 17 commission, while you were at the hearing, what
 18 did you do?

19 **A. After I was done with my part, I went**
 20 **and stood in the back of the room next to a**
 21 **sheriff's deputy.**

22 **Q.** And why did you do that?

23 **A. The hostility towards me, being from**
 24 **Salt Lake -- and being an Idaho boy, I understand**
 25 **the whole "big city slicker from out of town"**

1 **Q.** How did the conditions that were
 2 contained in the decision entered by the county
 3 affect the project?

4 MR. HOWELL: Objection, Your Honor.

5 MR. WOODARD: I'm not asking for a legal
 6 opinion.

7 THE COURT: There is no legal opinion in
 8 there.

9 MR. HOWELL: But now we're going into how it
 10 affects the project. I mean, Your Honor, this
 11 witness has not been disclosed to talk about
 12 anything with respect to Alamar Ranch, insofar as
 13 the project's viability. I mean, it's totally
 14 outside the scope of any disclosure that this
 15 witness has.

16 THE COURT: Well, you know, I'm not as rigid
 17 on those disclosures as I am rule the Rule 26
 18 expert report. But I do think, generally, he
 19 should stay within the general subject matter that
 20 he was noted as testifying concerning.

21 I'll overrule the objection and give
 22 you some leeway.

23 MR. WOODARD: Okay. I asked the question.
 24 Is that question --

25 THE COURT: Yes. I overruled the objection.

1 THE WITNESS: The practical result, I would
2 describe as no different from Cinderella's
3 stepmother saying, "You can go to the ball, but
4 only after you scrub the floor, mend the dresses,
5 scrub the chimney," and on and on and on. That
6 was the practical effect. It killed the project.

7 MR. WOODARD: Thank you, Mr. McDonald. I
8 don't have any further questions.

9 THE COURT: Okay. Mr. Howell?

10 MR. HOWELL: Thank you, Your Honor.

11 THE COURT: For your guidance, we generally
12 take the break in about 20 minutes. So at some
13 point close to that I'll -- unless you're done by
14 then, we'll interrupt the cross-examination to
15 take a break.

16 MR. HOWELL: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. HOWELL:

19 Q. Mr. McDonald, my name is John Howell.
20 I'm one of the attorneys that represent Boise
21 County.

22 Prior to your involvement in this
23 project, did you know anybody on the Alamar Ranch
24 team or anybody at Alamar Ranch?

25 A. Yes.

1 compensated to be here today --

2 MR. WOODARD: He can ask him that.

3 THE COURT: -- you can ask that question.
4 But I think his going rate at the time would not
5 be relevant.

6 BY MR. HOWELL:

7 Q. Are you being compensated to be here
8 today?

9 A. No.

10 Q. Okay. And in any event, in
11 representing Alamar Ranch, you would agree with me
12 that you were an advocate for their position;
13 correct?

14 A. Yes.

15 Q. Okay. And when you spoke to
16 Mr. McNeese and Mr. Hargraves during the October
17 meeting -- that you talked about -- in 2007, as
18 well as when you appeared at the January 28th,
19 2008, hearing, and also when you were creating the
20 briefs, you were -- that was in the course and
21 scope of your representation as an advocate for
22 Alamar Ranch; correct?

23 A. Yes.

24 Q. And you mentioned that the brief that
25 was submitted to the commissioners, Exhibit 1053,

1 Q. Who was that?

2 A. Amy Jeppesen.

3 Q. Okay. And let me ask you this: You
4 were paid for representing Alamar Ranch; is that
5 right?

6 A. That's correct.

7 Q. You were -- you were retained, I think
8 your testimony was, by Alamar Ranch to -- to
9 address, I think your testimony -- and I don't
10 want to mischaracterize -- but to address the FHA
11 issues with respect to the application. Is that
12 right?

13 A. That was included in the course of my
14 representation.

15 Q. Okay. And you indicated that your
16 partner, Mr. Smith, and you also flew up to Boise
17 and met with folks; right?

18 A. Yes.

19 Q. And what's your hourly rate?

20 Back then, what was your hourly rate?

21 A. I do not recall.

22 Q. Okay.

23 MR. WOODARD: Your Honor, and I object to
24 the relevance of his hourly rate.

25 THE COURT: Well, I think if he is being

1 that you had a portion of the involvement;
2 correct?

3 A. Yes.

4 Q. All right. And I'll just represent to
5 you that this is Exhibit 1053. Is that fair?

6 Does that look about right?

7 A. Oh, that whole binder?

8 Q. Yeah. I can represent to you --

9 A. Is that the opening brief?

10 Q. Yes.

11 A. Yeah. It was about -- it was a thick
12 brief.

13 Q. Okay. And so you're familiar with the
14 process that the commissioners, Boise County
15 Commissioners are receiving both from the Alamar
16 side and the opponents of Alamar; correct?

17 A. That's the way it turned out, yes.

18 Q. Okay. And that's common in this
19 process when you have land use issues in front of
20 a county board or city government. Isn't that
21 fair?

22 A. No. It is not common.

23 Q. Okay. It's common, though, that --
24 you've been to many places or -- in your
25 experience as a land use attorney where you are

1 able to present testimony at a hearing; correct?

2 **A. Yes.**

3 **Q.** Okay. And as part of that, you are
4 able to submit evidence or whatever you deem
5 necessary in order to further your position. Is
6 that fair?

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

8 **Q.** Okay. Now, with respect to the
9 opponents of Alamar's briefing, you said you --
10 you indicated that you reviewed those; right?

11 **A. That's correct.**

12 **Q.** And you're aware that those were also
13 presented to the Boise County Commissioners;
14 correct?

15 **A. That's my understanding.**

16 **Q.** Okay. And we have into evidence the
17 Alamar brief and the rebuttal brief, which
18 Mr. Woodard asked you questions about.

19 MR. HOWELL: I would also move for admission
20 the opponents of Alamar brief and the Gammons
21 brief that you talked about, which is -- Counsel,
22 that's Exhibits 2015 and 201- -- or, I'm sorry,
23 2016 and -- sorry -- 2015 and 2016.

24 THE COURT: You're offering the exhibits?

25 MR. HOWELL: Yes.

1 THE COURT: Is there any objection?

2 MR. WOODARD: No objection, Your Honor.

3 THE COURT: All right. 2015 and -16 will be
4 admitted.

5 MR. HOWELL: Okay.

6 (Defendant's Exhibits 2015, 2016
7 admitted.)

8 BY MR. HOWELL:

9 **Q.** And again, you would acknowledge that
10 there was information that the county
11 commissioners were given from both sides, because
12 you were there listening to the statements and
13 arguments made by Mr. Charney; correct?

14 **A. There -- are you referring to the
15 hearing in Idaho City?**

16 **Q.** Yes.

17 **A. Yes.**

18 **Q.** Okay. You indicated that -- sorry.
19 Just a moment.

20 You talked about the -- well, you would
21 agree with me that the opponents, or anybody,
22 including you, has the right to speak to the Boise
23 County Commissioners -- or speak to the Boise
24 County Commissioners during the subject hearing?

25 **A. Are you asking for my opinion?**

1 **Q.** No. Well, you would agree with me that
2 everybody has the right to do that; right?

3 THE WITNESS: Can I give an opinion on that,
4 Your Honor?

5 I don't want to overstep my bounds,
6 but --

7 MR. HOWELL: Well, Judge, I don't mean to
8 solicit opinions.

9 THE COURT: Why don't you rephrase the
10 question?

11 MR. HOWELL: Okay.

12 THE COURT: I appreciate, Mr. McDonald,
13 you're being cognizant of my prior ruling.

14 BY MR. HOWELL:

15 **Q.** You didn't have --

16 MR. HOWELL: I'm sorry, Judge.

17 THE COURT: Go ahead.

18 MR. HOWELL: Thank you.

19 BY MR. HOWELL:

20 **Q.** During the hearing, there were a number
21 of people who spoke on behalf of the Alamar
22 project; correct? In favor of it; is that right?

23 **A. Which hearing are we talking about?**

24 **Q.** Well, you went to the January 28th,
25 2008, hearing.

1 **A. The hearing I attended?**

2 **Q.** Yes.

3 **A. Yes.**

4 **Q.** Okay. And there were people who spoke
5 out against it; correct?

6 **A. Yes.**

7 **Q.** Okay. And let me ask you this: You're
8 not saying that the county, Boise County, cannot
9 put conditions on the application; correct?

10 MR. WOODARD: Your Honor, I'm going to
11 object to that question. It's vague.

12 THE COURT: I think I understood it. If the
13 witness can't answer it, he --

14 You can answer it. If you want
15 clarification, I'll ask counsel to rephrase it.

16 THE WITNESS: I think you're asking for my
17 legal opinion, and I'm --

18 THE COURT: Well, my understanding is
19 whether -- well, that's a good point.

20 MR. HOWELL: I'll reask it, Your Honor.

21 THE COURT: I think you should rephrase it,
22 unless you want to open up the door, perhaps, to
23 some legal opinions.

24 MR. HOWELL: Thank you.

25 BY MR. HOWELL:

1 **Q.** I guess what I'm getting at is: You
2 understand, because you reviewed the materials,
3 that Alamar submitted 22 proposed conditions to
4 Boise County to put -- to place on the
5 application; correct?

6 **A.** I don't recall how many conditions were
7 proposed by my client, or whether they were even
8 proposed by my client.

9 **Q.** Okay. So you don't know one way or
10 another?

11 **A.** Don't know what?

12 **Q.** Whether conditions were proposed by
13 your client?

14 **A.** I know my client made a proposal. I
15 would have to look at a document or something like
16 that to refresh my memory, because it's
17 three years ago that -- or more, that this process
18 started.

19 MR. HOWELL: I appreciate that.

20 I have no further questions,
21 Your Honor.

22 THE COURT: Mr. Woodard, do you have any
23 redirect?

24 MR. WOODARD: No, Your Honor.

25 May he be released, so he --

1 THE COURT: I assume Mr. McDonald can be
2 released?

3 MR. HOWELL: Yes, Your Honor.

4 THE COURT: All right. Thank you. You are
5 excused and released from any subpoena, if there
6 was any issued.

7 THE WITNESS: Thank you, Your Honor.

8 MR. WOODARD: Your Honor, would you like us
9 to call our next witness, or --

10 THE COURT: Yes. Let's go ahead. I try to
11 use all the time, so we can at least get some
12 preliminary matters out of the way in the next
13 10 minutes.

14 MR. WOODARD: Your Honor, we would like to
15 call Amy Jeppesen.

16 THE COURT: All right. Ms. Jeppesen, would
17 you please step through the swinging doors around
18 counsel table and up to Ms. Gearhart here. She
19 will administer the oath and then direct you from
20 there.

21 AMY K. JEPPESEN,
22 having been first duly sworn to tell the whole
23 truth, testified as follows:

24 THE CLERK: Please state your complete name
25 and spell your last name for the record.

1 THE WITNESS: Amy K. Jeppesen,
2 J-E-P-P-E-S-E-N.

3 THE COURT: You may inquire of the witness,
4 Mr. Woodard.

5 MR. WOODARD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. WOODARD:

8 **Q.** Ms. Jeppesen, where do you currently
9 reside?

10 **A.** Boise, Idaho.

11 **And first, let me apologize. I just
12 got my bottom braces on last week. And so if I
13 say something and you can't understand me, please
14 just reask me again. My lips are getting used to
15 going over the braces. So I apologize about that.**

16 **Q.** Thank you. I will.

17 Who is your current employer,
18 Ms. Jeppesen?

19 **A.** Recovery 4 Life.

20 **Q.** And what type of business is that?

21 **A.** Drug and alcohol, substance abuse,
22 intensive outpatient [sic] and outpatient
23 services.

24 **Q.** Is that a facility for adults or youth?

25 **A.** Adults and adolescents. We have

1 **programs for both.**

2 **Q.** Does that facility take both female and
3 male residents?

4 **A.** Yes. We treat both males and females.

5 **Q.** And what is your position at Recovery 4
6 Life?

7 **A.** I'm the executive director and also one
8 of the owners.

9 **Q.** Okay. And as executive director, what
10 are your job responsibilities there?

11 **A.** To oversee the services that are
12 delivered. I manage our two other therapists. So
13 overseeing the therapy, making sure that we're
14 doing things correctly, working to make sure that
15 we're following the state regulations and
16 guidelines, helping to create the program
17 curriculum, doing some marketing, and just overall
18 maintenance of and overseeing everything that's
19 happening in our facility.

20 **Q.** Where is Recovery 4 Life located?

21 **A.** It's on Cole Road.

22 **Q.** And Cole Road and what cross-street?

23 **A.** Sorry. It's 1253 North Cole Road. So
24 it's between Fairview and Emerald.

25 **Q.** Thank you.

1 Ms. Jeppesen, could you please give a
2 brief description of your educational background?

3 **A.** Sure. I have a master's degree in
4 social work, and I'm a licensed clinical social
5 worker. I have 11 years' experience, working
6 primarily with adolescents and families in the
7 residential treatment world, as well as some
8 wilderness experience.

9 **Q.** And you talked about the "residential
10 treatment world." Can you describe for the jury
11 what that is?

12 **A.** Sure. The residential treatment
13 world -- I came out of the private pay industry,
14 which is a little bit different than the
15 state-funded residential treatment centers.
16 Private pay are -- we typically dealt with kind of
17 the higher end of the socioeconomic class.

18 Students would come to the residential
19 treatment center because they had become
20 nonfunctional at home. They weren't able to
21 continue in their home environment. So they would
22 typically have been running away, have substance
23 abuse issues, depression. They weren't doing well
24 in school. They weren't able to go to school
25 anymore.

1 The parents were saying, "We don't know
2 what to do." Typically, they had tried home
3 therapy. They had met with psychiatrists. The
4 psychiatrists kept prescribing more medication for
5 them. And finally it got to the point where these
6 kids were completely dysfunctional in their home
7 environment.

8 So what happens is, the parent then
9 seeks out help, and usually through a therapist or
10 an educational consultant they would be referred
11 to a residential treatment center. A residential
12 treatment center is a place where they go for
13 anywhere from six months to a year-and-a-half, and
14 they work on their mental health issues through
15 intensive therapy and a whole bunch of types of
16 therapy.

17 So it's a very therapeutic intensive
18 environment, where they have a really busy
19 schedule. From the time they get up in the
20 morning until the time they go to bed at night,
21 they are working on school. They are working on
22 their therapeutic issues. They are trying to
23 learn new coping skills, trying to understand the
24 things that are bothering them.

25 We also worked closely with the

1 families, because to have true success in
2 residential treatment you have to help the
3 families make some changes, educating parents,
4 working in family therapy sessions.

5 So these kids would come to heal, and
6 then they would transition back home and be able
7 to function a lot better, be able to reattend
8 school and deal with the issues that they had a
9 lot better.

10 **Q.** Thank you, Ms. Jeppesen.

11 I think I'm going to jump ahead real
12 quick and ask you a couple questions, and then I
13 want to go back to your work history. But did you
14 at some point in time work for Alamar Ranch?

15 **A.** Yes, I did.

16 **Q.** And was Alamar Ranch an RTC?

17 **A.** Yes, a residential treatment center.

18 **Q.** Correct. And thank you for correcting
19 me on that.

20 As a residential treatment center, how
21 did the type of students that Alamar Ranch planned
22 to take compare with what you just -- the students
23 you just described?

24 **A.** Alamar Ranch was proposed to be a very
25 high-end residential treatment center. And when I

1 say "high-end," what I mean by that is, part of my
2 career has been pushing for higher industry
3 standards, especially with safety and student
4 care.

5 And so Alamar Ranch was a very
6 high-end, therapeutically intensive, residential
7 treatment center for students that was supposed to
8 be located in Boise County. And it was very
9 similar to the -- where I had worked in the
10 industry before. And the ideas were -- I kind of
11 brought from my experience in the industry, and
12 taking those even one step farther and making it
13 even better than anything that was currently
14 existing in the industry.

15 **Q.** The students that Alamar Ranch was
16 going to take -- and I understand there are some
17 differences between Alamar Ranch and these
18 other -- the general description you just gave,
19 but I guess what I'm after is: Were the students
20 that Alamar Ranch was going to take -- were they
21 going to be admitted at Alamar Ranch for the same
22 reasons you talked about in general, about
23 students being admitted to Alamar --

24 **A.** Yes.

25 **Q.** -- Ranch?

1 **A. Yes.**

2 **Q.** Ms. Jeppesen, please give the jury a
3 brief description of your work history in the
4 residential treatment field.

5 **A. Sure. I began work out of graduate**
6 **school at a place called New Haven, which is**
7 **located in Spanish Fork, Utah. And New Haven is a**
8 **residential treatment center.**

9 When I started there, they were at
10 about 16, what we call 16 beds. So they had a
11 capacity of 16 students. I became the clinical
12 director there. And as I -- in the six years that
13 I worked there, we grew from a 16-bed facility to
14 a 50-bed facility.

15 My job as the clinical director was to
16 run one of the campuses that we had. So I oversaw
17 all of the therapists. We had a full nursing
18 staff. We had residential staff, which are front
19 line staff who are with the students 24/7. We had
20 a psychiatrist on staff, and also a cook and a
21 maintenance person.

22 So my job as the clinical director was
23 to oversee all of the management teams, all of the
24 staff, help to create and implement the
25 curriculum.

1 going to say what it is, not in the acronym, but
2 what it does. Can you tell the jury what JCAHO
3 does?

4 **A. Sure. So JCAHO is a regulatory body**
5 **that you -- it's quite expensive to do, and it's**
6 **very, very difficult to get, and that's why**
7 **they're considered the gold seal of residential**
8 **treatment.**

9 So they help you implement safety
10 policies, and they monitor to make sure that
11 you're implementing all the policies and
12 procedures that you have.

13 They also accredit hospitals, and most
14 hospitals are JCAHO accredited. Again, it's very
15 difficult to do in the residential industry. So
16 there is a whole set of standards that goes way
17 above and beyond anything that the state or other
18 accreditation bodies would require of you.

19 **Q.** And New Haven was accredited by that
20 body?

21 **A. Yes.**

22 **Q.** You talked about your job at New Haven
23 being clinical director. How is that different
24 from an executive director, or is there a
25 difference?

1 In the residential treatment center
2 world that I worked in, the private pay industry,
3 you have to be cutting edge. Your job is not just
4 to use what's working -- we do that, as well --
5 but to also be kind of learning what works better
6 at the same time; so, helping with the
7 programming.

8 We were also JCAHO certified. So I
9 helped with the recertification of JCAHO.

10 THE COURT: What is JCAHO?

11 THE WITNESS: JCAHO is the gold seal of
12 residential treatment --

13 THE COURT: What does --

14 THE WITNESS: -- centers --

15 THE COURT: -- JCAHO stand for?

16 THE WITNESS: Oh, I'm sorry. Joint
17 Accreditation Commissions Hospital and
18 Organization [sic], I believe. I think that's
19 correct.

20 THE COURT: I try to have witnesses avoid
21 acronyms, because the jury may not understand
22 that.

23 Go ahead.

24 BY MR. WOODARD:

25 **Q.** And, Ms. Jeppesen, I think you were

1 **A. There is a difference. We did have an**
2 **executive director. So the executive director was**
3 **over all of the 50 beds in our facility, and my**
4 **job was primarily over just one campus. So the**
5 **difference is, is that he was over everything**
6 **while I was over just one area of that.**

7 **Q.** Did you ever have another job title at
8 New Haven?

9 **A. I was also the marketing manager for a**
10 **little while. So I worked doing a lot of the**
11 **marketing, working directly with ed. consultants,**
12 **who are referral sources for these types of**
13 **programs, meeting with them, explaining what we**
14 **did, talking with parents, and working with**
15 **admissions, as well.**

16 **Q.** Okay. Let me -- you said ed.
17 consultant. Is that short for educational
18 consultant?

19 **A. I'm sorry. Educational consultants.**

20 **Q.** Okay. And explain -- I think you said
21 these educational consultants are the referral
22 source. What do you mean by that?

23 **A. So when families are struggling and**
24 **they don't know what to do with their child, and**
25 **they're kind of at the end of their rope and, you**

1 know, they've tried everything again, they have
2 tried therapy, they have tried psychiatrists,
3 typically, a home therapist would refer them to
4 what we call an educational consultant.

5 And an educational consultant, their
6 job is to know all of the top programs. Because
7 what you have is you have people that are
8 advertising on the Web and may not be delivering
9 the services that they're promising. You have
10 different types of residential treatment centers.

11 And so educational consultants, their
12 job is they go around the country, they tour the
13 programs, they personally visit the programs, and
14 their job is to know the very top, very best
15 programs in the United States. So a lot of --
16 well, almost all of the referrals that we worked
17 with in our programs came directly from an
18 educational consultant.

19 So a family would visit with the
20 educational consultant. They would give them two
21 or three programs to go and look at. Then the
22 family would choose a program from that list.

23 **Q.** And, Ms. Jeppesen, so then one of the
24 things it sounds like your job as the marketing
25 person at New Haven is, you built relationships

1 with these educational consultants.

2 **A.** Yes.

3 **Q.** Any other job positions you had at New
4 Haven?

5 **A.** I started there as a therapist, primary
6 therapist, and -- but a therapist, a clinical
7 director and a marketing director.

8 **Q.** Okay. And after New Haven, where did
9 you go work?

10 **A.** I worked at New Haven for six years,
11 and then I went to work for a place called CERTS.
12 I'm trying to think of what the acronym even --
13 Certified Educational Recreational Therapeutic
14 Schools, I think is what it -- we always just
15 called it CERTS.

16 CERTS was a company that wanted to do a
17 startup facility called La Europa in Salt Lake
18 City, Utah. So they came and offered me a
19 position as the executive director to run their
20 two existing programs, Moon Ridge and Kolob, and
21 then to do a startup for them called La Europa in
22 Salt Lake City, Utah.

23 So I took the position, and we opened
24 La Europa. And at the same time they decided to
25 also start up a program called Mountain Springs

1 Academy in Utah. So I actually ended up doing two
2 startups with CERTS, and was the executive
3 director over all four programs. So three of
4 those were residential treatment centers, and one
5 was a therapeutic boarding school.

6 **Q.** Describe for the jury the difference
7 between a residential treatment center and a
8 therapeutic boarding school.

9 **A.** Okay. There is a spectrum of care, so
10 depending on where you land in that spectrum. So
11 a therapeutic boarding school is over here on this
12 end of the spectrum. So if I'm going to -- if my
13 child needs a therapeutic boarding school, they're
14 mainly struggling in school, they might have a few
15 behavioral issues, but they're pretty functional
16 at home. They just need a little bit more
17 structure.

18 So a therapeutic boarding school has a
19 lot of students per staff. The main focus of that
20 is school, school, school. It's basically kind of
21 a structured school. It would be like a boarding
22 school, only they add a small therapeutic
23 component, which usually consists of a couple more
24 staff than you would have at a regular boarding
25 school. Typically, they don't even offer therapy

1 on-site, typically.

2 So and then you would have -- a
3 residential treatment center would be somewhere in
4 the middle of the spectrum. A residential
5 treatment center is a place where kids who are
6 struggling with some kind of mental health
7 diagnosis or substance abuse issue, that's where
8 they would go.

9 Because the focus of a residential
10 treatment center is therapeutic intensity. So
11 they're going to work on their bipolar issues,
12 their obsessive-compulsive disorder issues, their
13 depressive issues, their anxiety issues, their
14 substance abuse issues.

15 And so if a student has become
16 nonfunctional at home, they're not a very good fit
17 for a therapeutic boarding school because they're
18 probably going to be pretty nonfunctional there,
19 as well, because there is not the same amount of
20 therapeutic intensity. So that student would go
21 to a residential treatment center because of the
22 therapeutic intensity.

23 So the difference is the amount of
24 therapy that they're getting, the staff-to-student
25 ratio, and the focus. A residential treatment

1 center is focused on therapy, helping them to
2 rehabilitate their life and get back to some level
3 of normal functioning.

4 THE COURT: Is this a good breaking point?
5 If not --

6 MR. WOODARD: That's fine, Your Honor.

7 THE COURT: I was trying to find a time
8 where we could take the break, and we were getting
9 a little beyond the normal breaking point.

10 Ladies and gentlemen, I'll again
11 admonish you not to discuss the case among
12 yourselves, not to form or express any opinion
13 about the case until it is finally submitted to
14 you.

15 We'll be in recess for 15 minutes.

16 (Recess.)

17 (Jury present.)

18 THE COURT: I'll note that the jury
19 is present.

20 Ms. Jeppesen, I'll remind you, you are
21 still under oath.

22 Mr. Woodard, you may resume your direct
23 examination of the witness.

24 BY MR. WOODARD:

25 **Q.** Ms. Jeppesen, I think when we left off,

1 the wilderness setting itself.

2 **Q.** So it's kind of the first step?

3 **A.** Yes.

4 **Q.** How about a detox center? How does
5 that fit in with a residential treatment center?

6 **A.** As a residential treatment center, you
7 are not a medical facility, and so you can't
8 provide detox. So if a student coming into the
9 program needs detox, they're not appropriate for
10 residential at that time. They would go to a
11 detox facility, which usually would be like Saint
12 Al's, here in the valley, has a detox,
13 Intermountain.

14 It's usually a three- to seven-day
15 program, where they simply go, they're medically
16 monitored to make sure that everything is going to
17 be okay. And then once they're medically cleared,
18 they could go into a residential program.

19 The difference is they have doctors on
20 staff, you know, the 24/7 hospitalization model.

21 **Q.** After the CERTS where you were in
22 charge of several different facilities and did two
23 start-ups, where did you go to work from there?

24 **A.** I went to work for Alamar Ranch.

25 **Q.** How long did you work at CERTS?

1 you were explaining the difference between a
2 therapeutic boarding school and a residential
3 treatment center. I'd like to ask you this
4 question: How does a wilderness treatment program
5 differ from a residential treatment center?

6 **A.** In a wilderness program, students
7 are -- it's a shorter stay, so they're usually
8 there anywhere from six to ten weeks. It's still
9 very therapeutically intensive, and it's --
10 they're -- instead of living in a building with
11 staff, they're actually living outside. So the
12 wilderness program that I worked for, they would
13 create shelters. They had backpacks. They had
14 their sleeping bags.

15 The wilderness program plays into the
16 curriculum, in that if the student is really
17 struggling, having a hard time, sometimes sending
18 them to a wilderness program first helps break
19 through a lot of that denial of that they have
20 some issues, they have some problems, and gets
21 them ready to hit the residential treatment center
22 ground running.

23 So wilderness treatment program is
24 really focused on some short-term therapeutic
25 interventions, and a lot of that is done through

1 **A.** Almost two years, I believe.

2 **Q.** Okay. And how was it you became
3 involved at Alamar Ranch?

4 **A.** Well, this pesky lady named Paula
5 Barber (phonetic) kept calling me. She had asked
6 for references throughout the industry of who
7 people felt like were, you know, kind of rising,
8 the rising stars in the industry, so to speak.
9 And so she kept calling me and asking me --
10 leaving messages that she wanted me to call her
11 back. And I wasn't really that interested, but I
12 called her back to let her know I wasn't really
13 interested. And in talking with her, she said a
14 lot of things that really kind of sparked my
15 interest in the Alamar Ranch project.

16 **Q.** And what was that?

17 **A.** She talked about -- well, one, it was
18 in Idaho. I'm from Idaho. I was born and raised
19 in Idaho and kind of had it in the back of my mind
20 that I wanted to go back to Idaho at some point in
21 my career.

22 Two -- so that wasn't the most
23 important thing. The most important thing to me
24 was she talked about how this was really going to
25 be created as kind of a high-end, high-quality,

1 best-of-the-best facility.

2 And, at the time, I was serving on the
3 NATSAP board, which is the National Association of
4 Therapeutic Schools and Programs. It's a national
5 organization. And we had really been working for
6 higher standards of care in the industry. And as
7 she talked about what Alamar Ranch was going to
8 be, it really fit along the lines of those higher
9 standards of care. And so it really excited me to
10 be able to come in and create something like that.

11 **Q.** When did you begin working for Alamar
12 Ranch?

13 **A.** November of 2006.

14 **Q.** November of 2006. Ms. Jeppesen, the
15 evidence that was presented yesterday showed that
16 Alamar Ranch filed a conditional use permit
17 application in December 2006. Is that your
18 recollection?

19 **A.** Yes. It was shortly after I started.

20 **Q.** Okay. But that was before the Green
21 Ranch conditional use permit application for
22 Alamar Ranch had been withdrawn? Is that
23 accurate?

24 **A.** Yes. Yes. They had just submitted --
25 just after I started, so I came right before

1 Thanksgiving. So just after I started, they
2 submitted the conditional use permit for the Green
3 Ranch property location.

4 **Q.** What was your job responsibility at
5 Alamar Ranch?

6 **A.** My job was the executive director. So
7 as the executive director, it was to oversee the
8 process, create and write the program, and
9 eventually it would be to hire all the staff that
10 would be working for us, create our training
11 models.

12 At that time, it was really to start
13 putting the programmatic pieces together so that
14 we kind of had -- we had a kind of shell of what
15 we wanted to do, but really started to build
16 around that, and then helping out with the
17 conditional use permit process.

18 **Q.** So when you were hired by Alamar Ranch,
19 there wasn't a facility up and operating?

20 **A.** No.

21 **Q.** Okay. Why did you leave your job at
22 CERTS, where you were in charge of several
23 different facilities, to go with a venture that
24 wasn't up and running yet?

25 **A.** That's a great question. Because I

1 was -- I was building my custom dream home in
2 Utah, and it was kind of at the highlight of my
3 career, and things were going really well. We
4 opened two start-ups, and they were just going
5 really, really well.

6 But it was when I came over and I met
7 with Erik and Steve and Chris and the Oaas Laney
8 team that I -- when I was meeting with them, as we
9 began to talk about kind of what we -- what they
10 wanted Alamar Ranch to be, it really just fit with
11 everything -- I had always had a dream of creating
12 kind of my kind of ultimate residential treatment
13 center. And their dream of a residential
14 treatment center fit with my dream. And they were
15 so excited about the project.

16 And I loved the fact that they were
17 doing it because they wanted to give something
18 back. They really wanted to provide a high
19 standard and a high quality of care, and they were
20 open to all of these -- this realm of
21 possibilities of possibly doing a nonprofit leg,
22 to give back to the community and all of these
23 different things, that other places where I had
24 worked, that wasn't even something they were
25 interested in doing at all.

1 So I was impressed with their honesty.
2 I was impressed with their integrity, and I was
3 really impressed with where they wanted to go with
4 Alamar Ranch.

5 **Q.** Thank you, Ms. Jeppesen. I'm going to
6 move along a little bit forward on the timeline.
7 You started at Alamar Ranch before the Green Ranch
8 application was withdrawn?

9 **A.** Mm-hmm.

10 **Q.** Do you recall an application being
11 filed for a conditional use permit on -- by Alamar
12 Ranch on a piece of property called the Klam
13 Ranch?

14 **A.** Yes.

15 **Q.** And were you involved in the
16 conditional use permit process for Alamar Ranch at
17 Klam Ranch?

18 **A.** Yes.

19 **Q.** Ms. Jeppesen, I'm going to -- I'm going
20 to show you an exhibit, Exhibit 1036.

21 MR. WOODARD: And this has been admitted,
22 Your Honor.

23 THE COURT: Yes.

24 MR. WOODARD: Can we have that shown to the
25 witness, please.

1 THE COURT: I'm sorry. I turned it off just
2 to make sure we didn't mistakenly put something
3 up.

4 MR. WOODARD: Thank you, Your Honor.
5 BY MR. WOODARD:

6 **Q.** Ms. Jeppesen, do you recognize -- this
7 is the first page of a document; do you recognize
8 this document?

9 **A.** Yes.

10 **Q.** Is this a PowerPoint presentation that
11 was given to the Planning and Zoning Commission by
12 the Alamar Ranch team?

13 **A.** Yes.

14 MR. WOODARD: And, Kathy, could you please
15 turn to the next slide.

16 BY MR. WOODARD:

17 **Q.** On this it says, "Alamar Ranch
18 presenters," and it lists "Amy Jeppesen." And
19 what does the "LCSW" stand for?

20 **A.** Licensed clinical social worker.

21 **Q.** Okay. Do you recall presenting to the
22 Planning and Zoning Commission at this hearing?

23 **A.** Yes.

24 **Q.** Okay.

25 MR. WOODARD: Ms. Savell, if we could go to

1 slide 4.

2 BY MR. WOODARD:

3 **Q.** And, Ms. Jeppesen, did you assist in
4 the preparation of these -- this PowerPoint
5 presentation?

6 **A.** Yes, I did.

7 **Q.** Okay. Can you explain for me what you
8 were trying to convey to the Planning and Zoning
9 with this slide?

10 **A.** Yes. **The No Alamar Ranch or the**
11 **opposition to the project were trying to paint**
12 **Alamar Ranch as, basically, a juvenile prison,**
13 **that we were going to have all these kids there**
14 **that were going to rape, pillage, and plunder**
15 **their households.**

16 **And I really wanted the Planning and**
17 **Zoning Commission to understand the purpose and**
18 **where we fit in the spectrum. That was not the**
19 **purpose, nor where we fit in the spectrum. So I**
20 **presented this to help -- to give them a basic**
21 **understanding of the spectrum of residential**
22 **treatment centers.**

23 **So you do have treatment centers that**
24 **take those kind of folks, and we refer to those as**
25 **lockdowns. That would be a lockdown. So they're**

1 locked down 24/7. They usually have a lower
2 staff-to-student ratio. It's basically
3 management. And they're very behavioral shaped
4 treatment centers. So they are kind of a lot like
5 our prison systems for adults only for juveniles.
6 They provide a low level of therapy.

7 **And, again, the No Alamar Ranch folks**
8 **were really trying to paint Alamar Ranch into**
9 **"this is who they are," which, in fact, that isn't**
10 **what Alamar Ranch was set up to be at all.**

11 **Alamar Ranch was set up to be in the**
12 **middle of the spectrum, so we would be dealing**
13 **with kids that had some kind of mental health**
14 **diagnosis, like bipolar, obsessive-compulsive**
15 **disorder, depression, anxiety, some -- and most of**
16 **the time the students would also have some kind of**
17 **substance abuse or substance dependence issue.**

18 **And we also weren't on the other end of**
19 **the spectrum, because another thing that was being**
20 **said about Alamar Ranch is that, you know, we were**
21 **not going to have very many staff, and these kids**
22 **were just going to be running free. And so we**
23 **weren't on the therapeutic boarding school, which**
24 **is a less structured end of the spectrum.**

25 **We're right in the middle, so we have**

1 **a high -- on a therapeutic boarding school you**
2 **have -- you don't have a lot of therapy, you have**
3 **some structure, and it's mainly school focused.**
4 **And on -- where Alamar Ranch sits, you take a lot**
5 **of people with mental health diagnoses, substance**
6 **abuse and dependence issues. It's a high**
7 **therapeutic intensity, and you have a high student**
8 **to -- you have a lot of staff for students.**

9 **And on a lockdown, that's where you**
10 **have your people that are, typically, adjudicated**
11 **in some way. They have some kind of mental**
12 **psychosis, and it's more behavioral shaped. It's**
13 **not a real therapeutic focus. They're working on**
14 **changing behaviors.**

15 **Q.** I'm sorry, Ms. Jeppesen. When you said
16 "adjudicated," does that mean that they've gone
17 through the criminal system?

18 **A.** Typically, yes.

19 **Q.** Okay. And when you're talking a little
20 bit about the types of students that Alamar Ranch
21 would take, what percentage of the students that
22 Alamar Ranch would take would have a physical or a
23 mental impairment which would substantially limit
24 one or more of their major life activities?

25 **A.** All. All would have that. That's the

1 whole reason that they go to a residential
2 treatment center, because if they could make it in
3 their home environment, they wouldn't be put into
4 a residential treatment center. If they were able
5 to -- again, these kids had therapy, they had a
6 home psychiatrist, some of them were in therapy
7 two or three times a week.

8 And the bottom line is, I mean, some of
9 our kids were hospitalized for suicide attempts,
10 and then once they were medically stable, they
11 were placed in the residential treatment center.
12 They were running away, they had substance abuse
13 issues. Some of our kids would stay in bed and
14 would not get out of bed and not go to school.

15 And if you think about what an
16 adolescent's job is at that age in their life,
17 it's to go to school. We, as adults, we go to
18 work; that's our job, that's our main focus. And
19 theirs is to go to school. And they were not able
20 to function or focus or be successful in that
21 environment.

22 **Q.** What is the -- you have on there, under
23 "Alamar Ranch," "High staff-to-student ratio."
24 What's the significance of that?

25 **A.** Well, in order to create the

1 therapeutic intensity that we wanted -- and this
2 is another reason that I was really attracted to
3 the project -- is that we were -- our goal was to
4 have for every four students, one front-line
5 staff.

6 Now, the requirements in the state of
7 Idaho is one to eight, and in those requirements
8 you can count anybody. You can count the
9 gardener. You can count the guy that's, you know,
10 mowing the lawn. You can count the cook in that
11 staff ratio. Alamar Ranch, our goal was to have
12 one trained staff for every four students. We
13 weren't counting the therapists. We weren't
14 counting the cook. So our staff would be able to
15 provide part of that therapeutic intensity that we
16 were relying on to have our outcomes, our success.

17 **Q.** Was that amount of staff necessary for
18 the therapeutic program you were planning to
19 provide?

20 **A.** Yes.

21 **Q.** What was the ratio of therapists to
22 students going to be at Alamar Ranch?

23 **A.** Well, we wanted to also -- again, our
24 focus here is really having that intensity. Part
25 of therapeutic success comes from my ability to

1 relate or interact with my therapists or interact
2 with staff in the moment that I need to; right?
3 So if I'm going to see a therapist once a week,
4 and I don't see them anytime after that, it's hard
5 for me to work on those issues.

6 So we had deemed that we would have six
7 students for every one therapist so that that
8 therapist would have time to spend in the
9 community, walking around, participating,
10 interacting, and understanding where that student
11 was.

12 **Q.** Thank you. Was there going to be a
13 psychiatrist on staff at Alamar Ranch?

14 **A.** Yes.

15 **Q.** More than one or just one?

16 **A.** Well, it probably would have ended up
17 being more than one, but to start out, in the
18 first phase, we would have had one.

19 And the reason we were doing that,
20 again, is a lot of these kids were coming in on a
21 lot of medications, and so really understanding
22 and getting their medications regulated correctly
23 and kind of looking at what they need or don't
24 need, the psychiatrist was an important figure.

25 **Q.** And I don't know if your prior answers

1 covered this, so you can let me know, but what did
2 you mean by "therapeutic focus" there under Alamar
3 Ranch?

4 **A.** Well, a therapeutic focus is -- so the
5 beauty of the residential treatment center is you
6 kind of have them in a bubble, so to speak, so
7 you're able to observe their interactions with
8 peers, their interactions with staff, their
9 interactions with everything that's going on. So
10 having a therapeutic focus means that you have
11 highly trained staff that understand the
12 therapeutic philosophies and are able to apply
13 those.

14 They don't actually do therapy like the
15 therapist would do, but they understand what's
16 going on, and they're able to talk to students in
17 the moment when they're struggling. Having
18 therapists on board, master's-level clinicians
19 that provide that intensive therapy.

20 And then also having -- the other piece
21 of it is helping them learn how to live a normal
22 life again; right? We don't want to create a
23 whole bunch of therapeutic weirdos, so to speak,
24 you know, where they're just so "therapized" that
25 they don't know how to function when they go back

1 home.

2 So it's also adding facets to your
3 program that allow that to happen. And some of
4 the facets we were going to add is equine therapy.
5 And equine therapy is not just riding horses and
6 enjoying riding horses; it's actually working with
7 horses in a way that you can understand and look
8 at some of your issues and -- especially
9 relationship issues. And then having them have
10 some chores around that, which was also
11 therapeutic.

12 So taking care of those horses,
13 teaching them responsibility, teaching them how
14 taking care of something else translates into
15 self-care, having a ropes course, so having some
16 outside recreational activities that they could
17 do. And so teaching them new things that they
18 like, helping them find new interests, but also
19 using that for the therapeutic value of, hey, when
20 you're afraid to do something, how do you overcome
21 that? How do you work on that? How do you move
22 through that?

23 **Q.** Ms. Jeppesen, was there going to be a
24 ropes course at Alamar Ranch?

25 **A.** Yes.

1 And sometimes the students would have a
2 fear of heights. Sometimes -- I know it's kind of
3 shocking with adolescents, but they would be
4 oppositional and say, "I'm not doing that; there's
5 no way." So helping them, say, "How do you deal
6 with things that you don't want to do in your
7 life? Is it okay?"

8 We also -- at New Haven we had a
9 10-foot wall that was part of our ropes course.
10 So sometimes they would have to do group
11 activities where they had to get each other over
12 the 10-foot wall, so how do I work with others,
13 how do I interact and relate to others. Do I see
14 other people as objects that I just use for what I
15 need, or do I have the ability to create those
16 relationships. So rope courses are great.

17 And we also use them with parents.
18 It's so fun to watch the parents because they're
19 all about, "Go, Little Johnny, go." And then when
20 we say, "And it's your turn to go up, too,"
21 they're like, "Whoa, wait a minute here, wait a
22 minute." Also having the parents participate in
23 those activities really helps them to bond as a
24 family.

25 **Q.** Thank you, Ms. Jeppesen.

1 **Q.** And what's the therapeutic reason for
2 the ropes course?

3 **A.** Oh, ropes course are great because --
4 we always say that's where a lot of people's
5 issues come out because -- so a ropes course -- I
6 don't know if you're familiar with those or not,
7 but it's -- they're usually kind of on telephone
8 poles, and they have different things that you
9 have to do. So you might have to climb up 30 feet
10 in the air and walk across the wire, and, of
11 course, you have a safety harness on or something
12 like that. And there's just a lot of activities
13 that you can do with a ropes course.

14 So if I'm a person that has a fear of
15 something or I always self-defeat, so I don't
16 think I'm good enough to accomplish something, and
17 I come up to a task that's really difficult for
18 me, like figuring out -- because the logs that you
19 use to get to the top are therapeutically spaced,
20 so it's very difficult to do, and you kind of --
21 it's not just, I'm going to scamper up to the top
22 here and, wow, there I am. It's I have to figure
23 out how do I get to that next log and how do I get
24 up here? And after I get there, what do I do? So
25 there's problem-solving skills.

1 Now, what was the size of -- the
2 ultimate size of Alamar Ranch planned to be in
3 terms of number of students?

4 **A.** 72.

5 **Q.** And this therapeutic program that
6 you've been talking a little bit about right here,
7 how did the size of the facility relate to the
8 therapeutic program?

9 **A.** It was actually really important. It
10 was actually critical, because in order to provide
11 the types of staffing that we wanted to provide
12 and the types of therapeutic events or
13 possibilities that we also wanted to provide, we
14 had to have 72 to do that. So because of the
15 costs, one of the most expensive things in
16 residential treatment is the staff, especially
17 that type of a staffing ratio. It's very, very
18 expensive.

19 So by making it 72, and we had talked
20 about having a campus of 36 and a campus of 36,
21 each of the students would live in a house of 12,
22 so it would have a small feel. My house would be
23 kind of where a lot of activities took place, but
24 they would have the ability to use the equine
25 therapy, the horses, the ropes course, all of that

1 could be shared. We also wanted to put in a gym
2 because we know that the winter we didn't want
3 them to -- we wanted them to be able to be active
4 and participate in things in the winter, as well.

5 MR. WOODARD: Thank you, Ms. Jeppesen.

6 May the witness be shown Exhibit 2019.

7 THE COURT: 2019?

8 MR. WOODARD: Mr. Brassey, I believe this is
9 one of your exhibits. I don't know if you have an
10 objection to it.

11 MR. BRASSEY: No.

12 THE COURT: Is there any objection?

13 MR. BRASSEY: No.

14 THE COURT: All right. Exhibit 2019 will be
15 admitted.

16 (Plaintiffs' Exhibit No. 2019
17 admitted.)

18 BY MR. WOODARD:

19 Q. Ms. Jeppesen, do you recognize this
20 document?

21 A. I do.

22 Q. Again, it has a date on it, May 5th,
23 2006. That was before you joined the Alamar Ranch
24 team; right?

25 A. Yes, that's correct.

1 Q. Okay. But you've reviewed this
2 document after you joined Alamar Ranch?

3 A. Yes.

4 Q. Okay. What was your understanding of
5 what this document was used for?

6 A. Well, educational consultants have a
7 conference twice a year where they come together
8 and have classes on kind of industry standards,
9 ways to be better, and programs also come and are
10 able to interact with educational consultants,
11 update them on students and talk about new parts
12 of their programs.

13 So my understanding is that -- I
14 believe it was Chris or someone from the office
15 went to the Independent Educational Consultant
16 Conference, and this was a presentation that they
17 had.

18 Q. Okay. Did you ever go around and speak
19 with educational consultants about the Alamar
20 Ranch program?

21 A. Yes.

22 Q. And was the reception you got to the
23 program favorable?

24 A. Yes, very. They were actually quite
25 excited about it, as I talked about some of the

1 cutting-edge therapy things that we were going to
2 do, and the reaction was really great, I thought.
3 They were excited and quite disappointed when it
4 didn't come to fruition.

5 Q. And these educational consultants,
6 these are the folks that would be referring
7 students to attend Alamar Ranch?

8 A. Yes.

9 MR. WOODARD: Ms. Savell, could we turn to
10 slide 3; it's the one that states "Mission
11 Statement?"

12 BY MR. WOODARD:

13 Q. And this says, "We strive to restore
14 quality of life and advance healthy adolescent
15 development with youth by seeking to empower the
16 individual and reduce threatening risks through
17 building awareness and practicing interventions."

18 I know this was in May of 2006, and I
19 believe you filed the application for Klam
20 Ranch -- was that in April of 2007?

21 A. For the Klam Ranch?

22 Q. Yes.

23 A. I think that's right. I don't recall
24 exactly.

25 Q. Sometime in mid-2007?

1 A. Mm-hmm.

2 Q. Okay. So this is about a year before
3 that. Did this mission statement, did it remain
4 the same between when you prepared this and when
5 Alamar Ranch was seeking a conditional use permit
6 for the Klam Ranch property?

7 A. Yes.

8 Q. Okay.

9 MR. WOODARD: Ms. Savell, can we go to
10 slide 5?

11 BY MR. WOODARD:

12 Q. This has, "Description of Services.
13 Residential treatment program, therapeutic program
14 integrated with educational, residential living,
15 and recreational activities, equestrian therapy,
16 accredited educational curriculum and aftercare
17 program."

18 Did the services that -- does that
19 accurately describe the services that Alamar was
20 going to provide when it was seeking to build on
21 the Klam Ranch property?

22 A. Yes.

23 Q. We talked a little bit about Equine
24 Therapy and why it's important. Tell me about the
25 aftercare program and what that is about.

1 **A.** Well, that's really what separated
2 Alamar Ranch from the rest of the residential
3 treatment industry. For years in the residential
4 industry, residential treatment industry, we had
5 seen kind of a growing trend that kids would do
6 really well in residential treatment and then they
7 would struggle a bit as they were going home,
8 because when they were outside of that structure,
9 it was hard for them to make that transition. So
10 other companies had started transitional programs,
11 but they were separate from the residential
12 treatment center.

13 And one of the cutting-edge things that
14 we wanted to do at Alamar Ranch was provide that
15 aftercare. So not only did we provide the
16 residential care, but then we help you transition
17 your child home. So providing an aftercare
18 program that kind of makes a seamless transition
19 for that step down, increasing the ability of the
20 child and family to be successful once the child
21 got home; instead of kind of having them go home,
22 and then all of a sudden there's a dramatic drop,
23 and then they would usually get back to the place
24 that they were, but it would take some time. And
25 it was quite frustrating for parents and families.

1 at those things when you already feel like a
2 failure in your life. So Adlerian Therapy is
3 focused on a strength-based perspective.

4 So it's focusing on what you are doing
5 well and what you are good at and then helping you
6 look at your deficits in a safe, safe way. So
7 instead of just coming up to you and pointing out,
8 "Well, you know, you were running away, you were
9 using drugs, you know, take some accountability
10 for that."

11 Adlerian Therapy would say, "Okay,
12 let's look at, you were pretty creative. You
13 snuck out of your parents' house, so that tells me
14 you're pretty smart. You know, you kept doing it.
15 It tells me that you have the ability to
16 problem-solve when you really want something. So
17 can we use that same ability to help you be
18 successful in your life? You really wanted to get
19 out of your parents' house, you really wanted to
20 use drugs, so you created a solution for yourself.
21 How could we create a solution that allows you to
22 be successful here in moving forward in your
23 life?"

24 MR. WOODARD: Ms. Jeppesen, [sic] could we
25 go to slide 11?

1 And we attributed that, in the
2 residential treatment industry, to after they'd
3 been in a highly structured environment, it was
4 difficult for them to make that transition back
5 home and for parents to start practicing the new
6 skills that they had and all those kinds of
7 things.

8 **Q.** Thank you, Ms. Jeppesen.
9 Ms. Savell, could you show us slide 9
10 of that same exhibit?

11 Okay. This talks about the therapy
12 program. The first thing is Adlerian Treatment
13 Model. When Alamar Ranch was going to be at the
14 Klam Ranch -- and I hope I'm pronouncing that
15 right -- were they going to have an Adlerian
16 Treatment Model?

17 **A.** Yes.

18 **Q.** Okay. And can you explain for the jury
19 what that means?

20 **A.** Adlerian Therapy is -- it's great
21 because behavioral therapy is focused on -- and
22 cognitive behavioral therapy is focused on your
23 deficits, what you're not doing well, what you're
24 struggling with. Those things have to be
25 addressed, but it's oftentimes difficult to look

1 BY MR. WOODARD:

2 **Q.** This is slide "Educational Program."
3 Was the educational program that's presented in
4 this slide, did that remain the same when you were
5 planning to build Alamar Ranch at Klam Ranch?

6 **A.** Yes.

7 **Q.** Okay. Tell me what you mean by an
8 "accredited academic curriculum."

9 **A.** So in order to be successful, again, we
10 wanted -- going back to that adolescent's first
11 job is education, so they're going to be in
12 residential treatment for six months to a year and
13 a half. So we wanted to provide a way for them to
14 get caught up and then to go home and be
15 successful in school. So being an accredited
16 educational program allowed for those credits that
17 they got while in treatment to transfer home to
18 their home school so they wouldn't go home behind.

19 Most of the time they came to us
20 behind, and we had a lot of success in getting
21 them caught up and then transitioning them back.
22 So accreditation was really important for that
23 reason.

24 **Q.** Okay. And they were going to get
25 credit towards graduating from high school or if

1 they're in junior high, credit towards their
2 schooling --
3 **A.** Yes.
4 **Q.** -- at the school?
5 **A.** Yes. And they would go to school for a
6 certain portion of the day.
7 MR. WOODARD: Kathy, if we could go to slide
8 15 real quick.

9 BY MR. WOODARD:

10 **Q.** Ms. Jeppesen, at the bottom of this
11 slide it says, "Participation in meal preparation,
12 household chores, and horse care."

13 I think we talked about it a little bit
14 earlier, but the chores and this meal preparation
15 and that kind of stuff, was that part of the
16 therapy?

17 **A.** Yes. Again, it goes back to teaching
18 them responsibility. And when they learn how to
19 take care of themselves, there's an inherent sense
20 of self that comes from that; there's a good
21 feeling. So if I'm responsible to do the chores
22 in my house, right, and I'm living in a house of
23 12, and I'm supposed to help with the dishes, and
24 I don't, and then my 11 other peers go to eat
25 breakfast in the morning and there's no clean

1 dishes, there's kind of an accountability model
2 that builds itself within that house. So it helps
3 them learn how to be responsible, how to follow
4 through, and how to be part of a team.
5 **Q.** And we talked about the communities of
6 12 students.

7 **A.** Mm-hmm.

8 **Q.** Were those going to be almost like
9 self-contained, self-sufficient communities?

10 **A.** Yes. Again, we wanted them to have
11 that feeling of camaraderie and feeling of -- that
12 they were a part of something and yet be able to
13 be kind of separated in a way with just 12
14 students, so that they would be able to continue
15 with that therapeutic intensity.

16 **Q.** But with that, why do you need 72?

17 **A.** Again, it goes back to the model, the
18 therapeutic model that we were using. So the
19 staff, the facilities that we were providing, in
20 order to really -- and the aftercare, because
21 that's also quite expensive, it involves more
22 staff, so in order to provide this program, we had
23 to have 72 students.

24 **Q.** And, I mean, would it be fair to say
25 that this -- it was kind of like six mini

1 residential treatment centers of 12, and then they
2 pooled and shared their resources and shared
3 facilities. Is that a fair description?

4 **A.** Yeah, that's a fair description. And
5 it also allowed us to provide a lot more
6 individualized treatment, too, because having
7 those six different facilities, we might have some
8 students in one house that were maybe struggling
9 with a particular issue that we had a few students
10 in the other house, so we could combine and do a
11 group that allowed for that to take place, whereas
12 we couldn't do that in the small one.

13 **Q.** So if you only had 12, you couldn't do
14 that kind of therapy?

15 **A.** No. It would be more generalized
16 therapy.

17 MR. WOODARD: Kathy, we can take that down.

18 BY MR. WOODARD:

19 **Q.** What type of emergency personnel would
20 you have on site?

21 **A.** We had -- the staff were there 24/7, so
22 there would always be staff, so staff during the
23 day, staff in the night. Our staff would be
24 first-aid and CPR trained and also trained in
25 emergency response procedures. So they would be

1 trained to cover all of the basic kind of minor
2 type of emergencies that could occur. We also
3 would be creating safety plans so that if, you
4 know, someone fell down and got hurt, there would
5 be a plan in place of exactly what you do, how you
6 contact and what you do when that happens.

7 MR. WOODARD: Ms. Savell, can we go back to
8 Exhibit 1036. Can you find the slide that -- I
9 think it's slide 7 where it talks about the
10 students they wouldn't take.

11 BY MR. WOODARD:

12 **Q.** And was this part of the presentation
13 that you made, this slide, Ms. Jeppesen, to the
14 Planning and Zoning Commissioners?

15 **A.** Yes.

16 **Q.** And the types of individuals there
17 listed that you wouldn't take, are those the type
18 of individuals that would be in a lockdown
19 facility?

20 **A.** Most of them, yes.

21 **Q.** Okay. Explain to the jury what the
22 screening process was that you would have to make
23 sure that none of these types of individuals were
24 accepted into Alamar Ranch?

25 **A.** Right. Well, at a residential

1 treatment center, your first priority is safety.
 2 And in order to create a safe environment for the
 3 students and the staff and the community, first of
 4 all, you have to know who you're good at treating
 5 and who you're not good at treating. And so it's
 6 really important that you have a stringent
 7 screening process in place that allows for you to
 8 screen out people that really don't fit your
 9 program.

10 So, typically, what happens is an
 11 educational consultant will call and make the
 12 referral, and then the family will call and talk
 13 with the admissions person. The admissions person
 14 will gather a whole bunch of information. A lot
 15 of these kids at home have had a full battery of
 16 psychological testing done, and so they're usually
 17 coming with that to the program. So we review the
 18 psychological testing. If they didn't have
 19 psychological testing, we usually recommended that
 20 they get it before we would accept them so that we
 21 could screen out anything that needed to be
 22 screened out.

23 So then the admissions person would
 24 also, typically, make contact with the home
 25 therapist, because sometimes, believe it or not,

1 their major life activities, I think; is that
 2 correct?

3 **A.** Yes, that's correct.

4 **Q.** What percentage of the students, based
 5 on your experience, did you believe that Alamar
 6 would take that would have had some alcohol or
 7 substance abuse issues?

8 **A.** Well, typically, what I've seen in the
 9 industry is about 90 percent come in with some
 10 kind of a substance abuse or dependence issue.

11 **Q.** Okay.

12 **A.** They usually have two. They're what we
 13 call dual or co-occurring diagnoses. So they
 14 usually have a substance dependence abuse or an
 15 abuse issue, and then they have some kind of
 16 mental health issue -- a diagnosis, as well.

17 **Q.** Okay. And you would say about
 18 90 percent -- or how many would have some type of
 19 mental health diagnoses?

20 **A.** All.

21 **Q.** All.

22 MR. WOODARD: Kathy, on Exhibit 1036, can we
 23 go to slide 9, I believe, of the program
 24 oversight.

25 BY MR. WOODARD:

1 the parents' view of what was going on wasn't
 2 always the same as what the therapist saw.
 3 Sometimes parents would minimize what was
 4 happening.

5 So the admissions person would contact,
 6 typically, the home therapist or psychiatrist to
 7 get an idea there, to screen out if any of these
 8 things were going on.

9 Once they had determined that
 10 that -- that they were an appropriate candidate,
 11 the next step is does the family feel like it's a
 12 good fit. Because if the family doesn't feel like
 13 it's a good fit, we're not going to be successful
 14 in treatment, either. So the families would,
 15 typically, fly out and tour the program, visit
 16 with the staff, meet the staff, and get a feeling
 17 for if this felt like the right place to put their
 18 child. And then they would be accepted to the
 19 program.

20 **Q.** Thank you, Ms. Jeppesen.

21 And with regard to -- we can bring that
 22 down, Kathy -- the types of students that Alamar
 23 Ranch would accept, you testified earlier that
 24 they would -- they would have mental and emotional
 25 issues that would prevent them from functioning in

1 **Q.** Ms. Jeppesen, was this one of the
 2 slides that you presented to the Planning and
 3 Zoning Commission?

4 **A.** Yes.

5 **Q.** And the -- under "Licensing and
 6 Accreditation" it says, "Mandatory licensure
 7 through the Idaho Department of Health and
 8 Welfare." So the plan was for Alamar Ranch to be
 9 licensed by the Idaho Department of Health and
 10 Welfare?

11 **A.** Yes.

12 **Q.** Okay. And then you talk about
 13 voluntary accreditations through the Joint
 14 Commission on Accreditation of Healthcare
 15 Organizations, JCAHO. You talked about that
 16 earlier being the gold-seal standard. Is that a
 17 tougher oversight process than the Idaho
 18 Department of Health and Welfare?

19 **A.** Oh, yes. Yes. And that's why most
 20 residential treatment centers don't even try to
 21 achieve JCAHO. It's not that they're bad, it's
 22 just very, very difficult to do, and the process
 23 is very stringent.

24 **Q.** So was it Alamar's plan to obtain
 25 accreditation from the Joint Commission on

1 Accreditation of Healthcare Organizations?

2 **A.** Yes.

3 **Q.** How would you describe the expense of
4 obtaining that accreditation?

5 **A.** Well, that's another reason a lot of
6 programs don't go for it is because it's just too
7 expensive. It is incredibly, incredibly
8 expensive. You have to -- first, you have to go
9 through the process of learning and understanding
10 all of the rules and regulations that have to be
11 in place, the processes that have to be in place.
12 Then you have audits. They come out and audit.
13 There's a cost of joining JCAHO. Then there's the
14 cost of the audits, and it's incredibly expensive.

15 **Q.** So you have to have a certain number of
16 students to be able to afford obtaining that kind
17 of accreditation?

18 **A.** Yes.

19 MR. WOODARD: Ms. Savell, could we go to
20 slide 10, "Points to Remember"?

21 BY MR. WOODARD:

22 **Q.** I want to direct you down to Item 4,
23 "Alamar Ranch can be a strong asset to Boise
24 County." And Mr. Tverdy has talked a little bit
25 about that, so I don't want you to go into the

1 whole program, but can you explain to the jury why
2 you believe Alamar Ranch was going to be a benefit
3 to the county?

4 **A.** Sure. I went to the juvenile justice
5 meetings once a month up in Boise County and heard
6 a lot of kind of what was going on in the county
7 and the resources that they didn't have. There
8 was a lot of talk about not having any therapists.
9 They had a lot of kids that were getting into
10 trouble, and they had nowhere to send them. There
11 was a lot of complaining about Health and Welfare
12 not providing those types of resources for a rural
13 county.

14 So I was really excited because we were
15 developing a nonprofit organization to give back
16 to the county, and we would have the resources to
17 do that. So with our ropes course we could
18 allow -- there's a nonprofit, Isaiah's Ranch, that
19 worked with kids in that county, but they're
20 really underfunded, and they're not able to do
21 everything they want to do because of that. And
22 so we could provide for them our ropes course, and
23 they could do some of their summer camps using our
24 ropes course.

25 We also would have master's-level

1 clinicians. One of the things we were looking at
2 with a nonprofit was helping them start a family
3 counseling center in Idaho City, and we would
4 provide some of our clinicians to do that, to
5 spend some time there and to provide some
6 counseling. We also were looking at providing
7 parenting classes at Alamar Ranch because we would
8 have the facilities to do that. So we could bring
9 parents and students in, or doing one day on the
10 ropes course with some of these kids that were
11 really struggling in the county. So I was really
12 excited about that.

13 I also believed that we would have a
14 great ability to financially impact the county in
15 a positive way. Because, from my experience
16 before, one of the things that we require is that
17 the parents come every two months for what we call
18 a parent weekend where they do intensive therapy,
19 and then if the student is on a high enough level,
20 they take the student and go do some family
21 activities.

22 And my experience before is that they
23 usually chose to do those family activities very
24 close to the treatment center. So they would be
25 taking their students, at times, out to eat at the

1 local restaurants or going and touring some of the
2 local things, shopping in a local convenience
3 store, buying gas, different things like that. So
4 I believed we would have a pretty positive
5 financial impact on the community itself.

6 **Q.** Thank you, Ms. Jeppesen.

7 Based on the program that Alamar Ranch
8 was going to provide and your participation in the
9 development of that program and your experience
10 with other programs in this field, how would you
11 describe Alamar's program in comparison with other
12 RTCs?

13 **A.** Well, we -- the program we were
14 designing was -- our goal was really to be the top
15 program in the nation. And we would have been
16 very competitive with the top programs that are
17 currently out there. I believe that we would have
18 been the top program in the nation.

19 **Q.** What did you do to determine whether
20 Alamar Ranch would be successful in finding
21 students and filling 72 slots in Alamar Ranch?

22 MR. BRASSEY: Your Honor, I object. Calls
23 for speculation.

24 MR. WOODARD: I asked her what she did.

25 THE COURT: The question was "What did you

1 do?"

2 MR. BRASSEY: Oh, I'm sorry. I apologize.
3 I withdraw it.

4 THE COURT: The objection is overruled.
5 Proceed.

6 THE WITNESS: So what did I do to find out
7 if there would be students to fill that type of
8 facility?

9 BY MR. WOODARD:

10 **Q.** Yes.

11 **A.** Well, I stayed very involved in the
12 industry, meaning I stayed in contact with ed.
13 consultants. I also stayed in contact with other
14 residential treatment facilities that I was
15 familiar with or knew from different things that I
16 had done in the industry.

17 I stayed in contact with NATSAP, which
18 is that National Association of Therapeutic
19 Schools and Programs. And really stayed on top of
20 kind of what was going on in the industry, what
21 were the trends, and talked with especially
22 educational consultants about, "This is the type
23 of program that we're offering. What do you
24 think?" And I got a very positive feedback about
25 that, so I believed that we could fill 72 beds.

1 where you worked, you didn't say Alamar Ranch.
2 When did you leave Alamar Ranch?

3 **A.** I believe it was June.

4 **Q.** Of what year?

5 **A.** June '08.

6 **Q.** June of 2008?

7 **A.** Mm-hmm.

8 **Q.** Okay. And were you laid off?

9 **A.** Yes, I was.

10 **Q.** And is it your understanding you were
11 laid off because they weren't able to -- Alamar
12 Ranch wasn't able to build Alamar Ranch due to the
13 decision that was entered on the conditional use
14 permit?

15 **A.** Yes.

16 **Q.** So this -- these emails look like
17 they're February 22nd of 2009, so a little over
18 half a year from when you were laid off from
19 Alamar Ranch; is that accurate?

20 **A.** That's correct.

21 **Q.** Okay. Where were you working at the
22 time you sent this -- the first bottom email to
23 Chris Tverdy?

24 **A.** WinGate Wilderness Therapy in Utah.

25 **Q.** So this was a wilderness therapy

1 MR. WOODARD: Thank you.

2 May the witness be shown Exhibit 1108.

3 And, Mr. Brassey, I believe this is
4 also your 2037. Do you have any objection to it?

5 MR. BRASSEY: I just want to make sure I
6 know what I'm looking at.

7 THE COURT: Are you moving?

8 MR. WOODARD: Yes. I'd like to move the
9 admission.

10 THE COURT: Is there any objection?

11 MR. BRASSEY: No.

12 THE COURT: Exhibit 1108 will be admitted
13 and published to the jury.

14 (Plaintiffs' Exhibit No. 1108 admitted
15 and published.)

16 BY MR. WOODARD:

17 **Q.** Ms. Jeppesen, do you recognize this
18 document that's in front of you?

19 **A.** Yes.

20 **Q.** Is that email correspondence between
21 you and Mr. Tverdy?

22 **A.** Yes.

23 **Q.** Did this take place -- well, let me
24 back up.

25 When I asked you earlier this morning

1 program rather than a residential treatment
2 center?

3 **A.** Yes.

4 MR. WOODARD: Okay. I'd like to,
5 Ms. Savell, if we could expand the paragraph that
6 says, "To answer your question."

7 BY MR. WOODARD:

8 **Q.** In that it says, "To answer your
9 question, yes, we do see kids through the winter.
10 It has been an interesting change, working outside
11 in the dirt through all types of weather. I have
12 been sitting out there in a blizzard wondering
13 what I am doing here. Crazy, huh? The good thing
14 is that we have had a lot of kids in the program."

15 Now, let me ask you something. Was
16 WinGate -- when you started working for them,
17 WinGate Wilderness program, was that a start-up?

18 **A.** Yes.

19 **Q.** When did it begin?

20 **A.** So I started in June of '08, and
21 they -- we had our first student -- we were still
22 in the process of getting licensed, and our first
23 student came in the program about the end of July
24 of '08.

25 **Q.** Okay. When you say "we have a lot of

1 kids in the program," are you saying we have a lot
2 of students -- or I should say youth in the
3 WinGate Wilderness ranch program, is that what
4 you're talking about?

5 **A. WinGate Wilderness Therapy, yes.**

6 **Q. Wilderness Therapy. Too many ranches.**

7 **A. I know.**

8 **Q. The next line that we read on there**
9 says, "Lucky for us each of us have a
10 long-standing reputation in the industry or we
11 would not be around anymore."

12 When you said -- say "each of us," who
13 are you talking about there?

14 **A. There were myself and two other**
15 **therapists, as well as the executive director**
16 **there, and we all had long-standing reputations in**
17 **the industry.**

18 **Q. And why was that lucky for you?**

19 **A. Well, at that time -- so thinking about**
20 **June of '08, that's when the whole economy just**
21 **crashed down, and the residential treatment**
22 **industry, as well as the wilderness therapy**
23 **industry, was really struggling right then. And**
24 **so programs were closing, wilderness programs were**
25 **closing. And if you were opening a program and**

1 you didn't have people that had a long-standing
2 reputation in the industry, consultants weren't
3 referring to you at all.

4 So, lucky for us, we had four people
5 that had a very strong industry reputation. And I
6 actually had the strongest, and I filled my group
7 first out of everyone else that was there because
8 of the reputation that I had in the industry.

9 **Q. So is it my understanding that,**
10 notwithstanding what was going on in the economy,
11 because of your reputation, you were able to fill
12 all the slots for your portion of the program?

13 **A. Yes.**

14 MR. WOODARD: Can we -- Ms. Savell, can we
15 expand the next paragraph?

16 BY MR. WOODARD:

17 **Q. There you say, "although I'd much**
18 **rather be working at Oaas Laney." What did you**
19 **mean by that, "I'd much rather be working at Oaas**
20 **Laney"?**

21 **A. Well, my understanding is Alamar Ranch**
22 **was a subsidiary of Oaas Laney. And so I worked**
23 **for Alamar Ranch, was managed by Oaas Laney. So**
24 **Chris was my boss, and he worked for Oaas Laney,**
25 **so kind of -- I don't know, I felt like I worked**

1 for Oaas Laney.

2 **Q. Okay. And I think what I was asking**
3 **for is you said you would much rather be working**
4 **for them. Why would you rather be working for**
5 **them? I take it than WinGate; is that what you**
6 **meant?**

7 **A. Right, right. Well, when I lost my**
8 **job, it was, again, kind of a downturn in the**
9 **industry, and I had to go back to being a**
10 **full-time therapist, which was kind of hard, being**
11 **an executive director, a clinical director. And**
12 **so that was difficult.**

13 But more important than that is that we
14 had just -- our team was great. And, I mean, we
15 had -- we had really endured a lot, and there was
16 a camaraderie there and a support there, and it
17 was great working with people that had the same
18 mission and interest and vision as I did. And my
19 experience at WinGate wasn't the same. And so I
20 really -- I would have much rather been working
21 for Alamar Ranch and Oaas Laney at that time than
22 WinGate.

23 **Q. Thank you. And to go on with the rest**
24 **of this sentence, so you say, "although I would**
25 **much rather be working at Oaas Laney," you then**

1 say, "I do have to say that it was a blessing in
2 disguise for Oaas Laney that we weren't able to
3 get started building in this economy."

4 What did you intend when you were
5 writing that to Mr. Tverdy?

6 **A. Well, we had been through -- this was**
7 **one of the toughest experiences I had ever been**
8 **through in my life and Chris was there and Erik**
9 **was there. You know, I had come from being a**
10 **leader in the industry, very well-respected on a**
11 **national basis, to a group of people who, at some**
12 **points, I feared for my own safety. And we had**
13 **gone through this really horrific experience**
14 **together of people criticizing, making fun of,**
15 **calling us liars. Sometimes, if there would have**
16 **been stones in the parking lot, I feel like we**
17 **would have gotten stoned. And it was really,**
18 **really tough.**

19 And to have it end the way that it
20 ended, it was -- it was incredibly disappointing.
21 And I -- I wrote this to Chris because I knew he
22 was really struggling, too, with feeling
23 disappointed about the fact that it didn't go
24 through. Sorry. I haven't really talked about
25 this since it all happened.

1 So I really wanted him to know that,
2 you know, hey, it didn't get started the way that
3 we wanted to, and it would have been difficult to
4 do because we had encountered so many expenses and
5 so many delays and so many different things, and
6 in that particular time of the economy it would
7 have been really difficult to do. So I was kind
8 of trying to console him like, hey, you know, I
9 know it's hard, but, you know, it would have been
10 really difficult to do at that period of time.

11 **Q.** Thank you, Ms. Jeppesen. I understand
12 this is hard for you to talk about.

13 The next line in this paragraph says,
14 "It's really rough for the RTC industry right
15 now." And that was in February, February 22nd of
16 2009. Has your opinion of the industry changed
17 since that time?

18 **A.** Yes. It actually turned out to be kind
19 of a positive thing for the industry. What
20 happened is that when the economy first hit, there
21 were a lot, a lot of programs in the industry, and
22 a lot of people were doing things, they were
23 cutting corners, they were not living up to
24 industry standards, because people were just
25 opening a lot of facilities. And what happened is

1 to you in early 2009?

2 **A.** June. June of -- yeah, in early 2009.
3 So June of '08 to 2009. But when -- when I left
4 WinGate, that was no longer the case.

5 **Q.** Okay. And by that you mean ed.
6 consultants were referring to programs over --

7 **A.** Yeah.

8 **Q.** -- with tuition over \$9,000?

9 **A.** Yes, they were. And, again, I go back
10 to New Haven and Telos as a reference to that.

11 **Q.** The tuition of 9,000, that's 9,000 per
12 month; right?

13 **A.** Per month, right.

14 **Q.** So when you talked about New Haven
15 having a tuition somewhere between 11-5 and
16 12,000, that was 12,000 per month?

17 **A.** Per month, mm-hmm.

18 **Q.** The same thing with Helios?

19 **A.** Telos.

20 **Q.** Telos.

21 **A.** Telos tuition is 11-5 a month, and it's
22 a boys program. And La Europa is also full, which
23 is one of the programs I ran at CERTS, and they
24 are 10-5 a month.

25 **Q.** And did you say there were waiting

1 all of those facilities got weeded out.

2 And what's really interesting about
3 that is the facilities that still stand today are
4 the high-end facilities like Alamar Ranch. And
5 these other facilities who were cutting back on
6 services, cutting back on -- those are the
7 facilities that really got weeded out in the
8 economic downturn.

9 And in talking with a few of my
10 colleagues who are still in the industry, like New
11 Haven, you know, their tuition is somewhere in the
12 11-5, 12 range. You know, they're full, and they
13 have kids kind of waiting to come in. Telos,
14 which is a boys program in Utah, they have --
15 their tuition as 11-5, as well, and they're full.
16 So the programs that had that high reputation that
17 were delivering high-quality services and showing
18 good outcomes, they have stayed in the industry.

19 **Q.** Thank you. I think with what you just
20 said, I want to take you to the second-to-the-last
21 sentence in that paragraph. And it says, "Most
22 ed. consultants are now saying they won't refer to
23 a program that costs more than 9,000. Lots of
24 programs have dropped their prices to survive."

25 That's what ed. consultants were saying

1 lists for some of these programs?

2 **A.** New Haven has a waiting list. I'm not
3 sure about Telos, but I know they're full; they're
4 staying full.

5 **Q.** How do you know that? Is it through
6 your contacts in the industry?

7 **A.** Yes.

8 **Q.** What was Alamar Ranch's starting
9 tuition going to be?

10 **A.** 7-5, 7,500 a month.

11 **Q.** So about the time that these ed.

12 consultants who were saying they're not going to
13 refer to programs that cost more than 9,000 per
14 month, Alamar was going to be at about 7,500 per
15 month?

16 **A.** Yes.

17 **Q.** Was it Alamar's plan to, then,
18 gradually, over time, raise that tuition price?

19 **A.** Yes.

20 **Q.** Would it be fair to say that this was
21 kind of like an introductory price to get some
22 momentum and get the facility filled?

23 **A.** Yes. And that's very standard in the
24 industry. So to -- for ed. consultants to want to
25 give you a try and to use your program, usually

1 what you do is you offer some kind of a lower rate
2 in the very beginning, and then you go to your
3 normal rate after that. And that's kind of a,
4 hey, give us a try, you know, you know us, give us
5 a try. And then it helps them, because they can
6 go to families that couldn't afford some of the
7 higher, higher-end programs and give them an
8 opportunity to get treatment, as well.

9 **Q.** Ms. Jeppesen, what's the key to
10 attracting students to a start-up residential
11 treatment center?

12 **A.** Well, it's the staff that you have and
13 their reputation. You know, that's what I found.
14 I've found that to be true over and over in the
15 industry. So if you hire quality therapists that
16 have a reputation in the industry, Ed consultants
17 trust them. They know the work they do, and they
18 trust them. If you have an executive director
19 that has a strong reputation, they trust that
20 person. Your marketing and admissions person has
21 a reputation, strong reputation, they trust that
22 person, as well.

23 **Q.** How confident are you, sitting here now
24 in 2010, and with your understanding of what's
25 going on in the residential treatment center

1 industry now, that Alamar Ranch would have been
2 able to fill 72 students?

3 **MR. BRASSEY:** Your Honor, I object. It's
4 been asked and answered.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** I'm very confident. You know,
7 we had a build-out plan. It wouldn't have been
8 all 72 students the first day. It would have been
9 somewhere from three to five years. I believe
10 that would -- that could happen.

11 **MR. WOODARD:** Thank you.

12 May the witness be shown Exhibit 1005.
13 This has not been admitted, Your Honor.

14 **THE COURT:** I've turned off the jury
15 projector.

16 **BY MR. WOODARD:**

17 **Q.** Ms. Jeppesen, we're going to expand
18 that a little bit so you can read it.

19 **MR. WOODARD:** Kathy, is there a way to
20 scroll so that she can at least see what the -- I
21 guess it does show who the top email is from.

22 **BY MR. WOODARD:**

23 **Q.** Do you recognize these -- this
24 document?

25 **A.** Yes, I do.

1 **Q.** Is this document, does it contain
2 emails that were either sent by you or received by
3 you in the course of your business at Alamar
4 Ranch?

5 **A.** Yes.

6 **MR. WOODARD:** Your Honor, I'd move its
7 admission.

8 **THE COURT:** Any objection?

9 **MR. BRASSEY:** Your Honor, I would just
10 object. I think they're hearsay as to the email
11 sent from another individual. I don't believe
12 it's a business record.

13 **THE COURT:** I don't know who the
14 communication is with or, perhaps, if you -- well,
15 is there an exception to the hearsay rule that you
16 want to suggest?

17 **MR. WOODARD:** Yes, Your Honor. It's a
18 business record if it's emails that were sent --
19 well, let me ask one more question.

20 **BY MR. WOODARD:**

21 **Q.** Is this a -- this email correspondence
22 here, was it kept at Alamar Ranch in the regular
23 course of its business and its files?

24 **A.** Yes.

25 **MR. WOODARD:** Your Honor, I move the record

1 as fitting within the business record exception.

2 **THE COURT:** Well, that may get into
3 evidence, the existence of an email in which
4 Ms. Jeppesen was a part of, but the communications
5 contained in the email would still be hearsay,
6 unless there's some --

7 **MR. WOODARD:** Your Honor --

8 **THE COURT:** Maybe we can discuss this at a
9 sidebar, if need be. I don't know who the
10 communication -- who's --

11 **MR. WOODARD:** They're not quoting anybody.

12 Those two -- it's no different than if it was a
13 letter. It's just correspondence. The business
14 records exception should get past that level of
15 hearsay.

16 Now, if she was -- if there was
17 something in the email that says, "I heard
18 so-and-so said this," that would be the hearsay
19 within hearsay.

20 **THE COURT:** I understand. We may have to
21 come to a sidebar. Is it all on one page? Is
22 this all on one page?

23 **MR. WOODARD:** Yes.

24 **MS. SAVELL:** Two pages.

25 **MR. WOODARD:** Oh, there's two pages?

1 I'm sorry, Your Honor. There's
2 two pages.
3 THE COURT: I, perhaps, should know this,
4 but Mr. Bulow is who?
5 MR. WOODARD: Mr. Bulow is one of the
6 opponents of Alamar Ranch.
7 THE COURT: Okay.
8 MR. WOODARD: The guy that kept the -- he
9 was the guy that ran the website.
10 THE COURT: So by way of foundation, I
11 understand the witness to have said that this is
12 an email communication that she was involved in
13 while she was at Alamar Ranch and that it was a
14 regularly maintained record of Alamar Ranch?
15 MR. WOODARD: Correct.
16 THE COURT: Could you go to the next page so
17 I can see?
18 MR. WOODARD: Sure.
19 Ms. Savell, will you expand that for
20 the judge.
21 THE COURT: Mr. Brassey, I don't see a
22 communication here by Mr. Bulow, other than just a
23 dialogue in setting up an agreement to, perhaps,
24 meet. If that is a disputed issue as to whether
25 such communication took place, but there's no --

1 MR. BRASSEY: Judge, I just didn't want
2 to -- I wasn't trying to --
3 THE COURT: No, I understand.
4 MR. BRASSEY: I'm not saying I don't care, I
5 just didn't want to --
6 THE COURT: So I'm going to admit the
7 exhibit. But, again, you know, it's not enough
8 just to say that it was in a file. You really
9 have to look at the business record exception and
10 jump through the hoops, but in this case I don't
11 think it's a problem. Okay?
12 MR. BRASSEY: Thank you, Judge.
13 (Sidebar concluded.)
14 THE COURT: The exhibit will be admitted,
15 and I've published it to the jury. That's Exhibit
16 No. --
17 MR. WOODARD: 1005.
18 (Plaintiffs' Exhibit No. 1005 admitted
19 and published.)
20 MR. WOODARD: Ms. Savell, if we could go to
21 the second page of the exhibit and expand that.
22 BY MR. WOODARD:
23 **Q.** Ms. Jeppesen, do you know who Brian
24 Bulow is?
25 **A.** Yes.

1 so I'm not sure it's being offered to prove the
2 truth of anything asserted by Mr. Bulow.
3 MR. BRASSEY: Your Honor, can we have a
4 sidebar? I don't want to say --
5 THE COURT: Yes, please.
6 (Sidebar commences as follows:)
7 MR. BRASSEY: I don't really care about this
8 email so much, Judge. I just don't want to -- I
9 don't want to let an email in and then somebody
10 takes the position that --
11 THE COURT: No. Let's lay the ground rules
12 now. Now, the business record exception is
13 intended to allow a company to maintain records
14 that they relied upon in their business, and they
15 relied upon the reliability of it. That's why
16 it's an exception to the business record.
17 MR. BRASSEY: Right.
18 THE COURT: All that establishes, though, is
19 that a record was kept in that company, which is
20 kind of what we discussed this morning. It
21 doesn't take care of multiple levels of hearsay.
22 Our discussion here suggests that there
23 is no other hearsay. It's just simply a
24 communication to set up a meeting and/or discuss,
25 perhaps, some misinformation that was on the --

1 **Q.** And who is he?
2 **A.** He represented himself as one of the
3 leaders of No Alamar Ranch, one of the leaders of
4 the opposition to this project. He also -- my
5 understanding is he created the No Alamar Ranch
6 website and posted information there. I know he
7 was quite active in a lot of the No Alamar Ranch
8 projects.
9 **Q.** Why are you communicating with
10 Mr. Bulow in this email?
11 MR. BRASSEY: Your Honor -- excuse me,
12 Ms. Jeppesen.
13 In addition, Judge, I'm going to object
14 because there's no showing that the commissioner,
15 the decision was made -- this conversation or this
16 data had any bearing on the outcome.
17 THE COURT: Now, this might be an
18 appropriate time for the court to instruct the
19 jury. The first of the two instructions we
20 discussed this morning indirectly bears upon this
21 kind of an issue, so I may instruct the jury now
22 on that issue. I'm going to allow -- after that,
23 and perhaps with some further clarification, I'm
24 going to allow the witness to respond.
25 Ladies and gentlemen, it's going to

1 take me a moment here to bring up the language
2 that I want to use.

3 Yesterday, and perhaps even a little
4 bit today, you heard testimony concerning public
5 comments and position taken by members of the
6 public, particularly Boise County citizens, in
7 which they oppose this proposed residential
8 treatment center.

9 Now, in that regard, I want to instruct
10 you that the statements made by its citizens
11 cannot be attributed to the Defendant Boise
12 County. I would further instruct you that Boise
13 County could not prevent its citizens from making
14 public statements about the project and, for that
15 matter, engaging in these types of discussions
16 without violating those citizens' constitutional
17 rights of free speech. However, the statements in
18 opposition to the project may be considered by you
19 in determining the effect, if any, which such
20 opposition had upon the county commission in their
21 decision-making.

22 So while I've admitted this exhibit,
23 which includes communications by Mr. Bulow, who is
24 not an employee of Boise County -- he was, again,
25 a concerned citizen -- these statements cannot be

1 attributed to Boise County, because he was simply
2 a concerned citizen, and Boise County lacked the
3 ability and, in fact, was prohibited from trying
4 to restrain such communications by its citizenry.

5 So with that understanding, I'll allow
6 the witness to go ahead and respond.

7 MR. WOODARD: Thank you, Your Honor.
8 BY MR. WOODARD:

9 **Q.** Ms. Jeppesen, do you remember my
10 question?

11 **A.** No.

12 **Q.** Okay. I don't blame you. Let me ask
13 you the question. And, actually, why don't we
14 read the email, and then I'll ask you a question.

15 I'm reading from your email on the
16 bottom, and it says, "Hello, my name is Amy
17 Jeppesen, and I am the executive director of
18 Alamar Ranch. In reading your website and
19 subsequent links, I noticed you have a lot of
20 misinformation about what Alamar Ranch is and what
21 type of treatment we will be providing. I would
22 like to clear up some of this misinformation."

23 Do you have a recollection of what the
24 misinformation was that was on the website?

25 **A.** I don't -- I don't recall -- I don't

1 recall all of what it was. Again, it was -- the
2 best that I can recall is that they kept trying
3 to -- the website was trying to paint us into the
4 picture of that we were going to be taking these
5 kids that were going to harm citizens and do --
6 you know, that were going to be just out causing
7 havoc in Boise County and eating up all the
8 resources. And so I would guess, to the best of
9 my recollection, it was something along those
10 lines, something somewhere in there, but I don't
11 recall exactly what it was.

12 **Q.** Okay. So you wrote an email to
13 Mr. Bulow asking him about that. Did you and
14 Mr. Bulow ever discuss by -- because he says in
15 the email, "but I'm open to a phone call this
16 evening." Did you guys ever have a phone
17 conversation about this?

18 **A.** Not that I remember.

19 **Q.** Do you know whether some of the
20 misinformation that you were concerned about was
21 removed from the website after you raised this
22 issue with him?

23 **A.** Some of it at that time was, but then
24 later on, subsequent websites down the road, there
25 was a lot of misinformation that was on the site.

1 **Q.** Okay. And you said "subsequent
2 websites." Is that a different website or
3 subsequent versions of things that were put on
4 this website?

5 **A.** Subsequent versions of the website. So
6 they were updating it with new information all the
7 time, and some of the new information it was
8 updated with --

9 **Q.** Okay.

10 **A.** -- would be misinformation.

11 **Q.** Do you recall having a meeting before
12 this -- the Alamar's conditional use permit
13 application went before the Planning and Zoning
14 Committee, do you remember having a meeting with
15 local residents around the time of these emails,
16 the January of 2007 time frame?

17 **A.** January of 2007, let's see. Chris and
18 I had gone to visit with -- let's see, 2007, I
19 believe we were on -- still on the Green Ranch
20 conditional use permit.

21 **Q.** Correct.

22 **A.** So Chris and I had gone to meet with
23 some of the neighbors in Osprey, trying to explain
24 the project and help them understand, get a better
25 understanding of what we were doing, what was

1 **happening. A lot of people wouldn't meet with us.**
 2 **A couple three or four people did. And then**
 3 **later --**

4 MR. BRASSEY: Your Honor, I object.

5 I'm sorry. Excuse me.

6 I object. I think it's nonresponsive.

7 And, also, if it's on the Green Ranch application,
 8 which was still in effect at this time, it's in
 9 a -- I understand it was a residential treatment
 10 center, but it's a different -- it was a different
 11 application.

12 THE COURT: Mr. Woodard, it does seem to me
 13 we're getting a little far afield here. If you're
 14 going to, very quickly, tie this into something
 15 that applies to this application, I'll give you
 16 some leeway; otherwise, I would suggest we move
 17 on.

18 BY MR. WOODARD:

19 **Q.** Ms. Jeppesen -- Your Honor --
 20 What kind of reaction did you receive
 21 to the Klam Ranch application from the community?
 22 Let me just make it more easy. Was the community
 23 opposed?

24 **A.** Yes.

25 MR. BRASSEY: Judge, I'm sorry. Your Honor,

1 I object. I think that's vague. I mean, that
 2 implies everybody in the community.

3 MR. WOODARD: And I'll correct that,
 4 Your Honor.

5 THE COURT: It needs to be rephrased,
 6 Counsel.

7 BY MR. WOODARD:

8 **Q.** Was there a large opposition to the
 9 Klam Ranch application from the citizen -- the
 10 residents of the Osprey Subdivision?

11 **A.** Yes.

12 **Q.** Okay. And was there an opposition from
 13 those same residents to the Green Ranch
 14 application?

15 **A.** Yes.

16 **Q.** And was one of the reasons you moved
 17 from the Green Ranch to the Klam Ranch to try to
 18 appease that opposition?

19 **A.** Yes.

20 **Q.** Okay.

21 MR. WOODARD: I'll move on, Your Honor.

22 THE COURT: Thank you.

23 MR. WOODARD: May the witness be shown
 24 Exhibit 1022.

25 And that's been admitted, Your Honor.

1 Ms. Savell, can you show her the second
 2 page, as well.

3 BY MR. WOODARD:

4 **Q.** On the second page, Ms. Jeppesen, is
 5 that a letter from you to Mr. McCarthy?

6 **A.** Yes.

7 **Q.** Okay. And the date of the letter is
 8 February 19, 2007.

9 And Ms. Savell, can you -- the bottom
 10 paragraph, bullet point, "Alamar Ranch." It says,
 11 "Alamar Ranch is committed to partnering with the
 12 local community to improve the capability of
 13 public services in our area. We look forward to
 14 making a significant contribution to the
 15 Wilderness Ranch Fire District to enable the
 16 construction of a new firehouse within the Osprey
 17 Subdivision."

18 Tell me what you're writing about
 19 there.

20 **A.** Well, we had been meeting with John
 21 McCarthy from the Wilderness Ranch Fire District
 22 to understand what we needed to do to comply with
 23 the -- with the laws around fire safety and what
 24 we needed to do as far as sprinkler systems,
 25 different things like that.

1 **So in meeting with him, one of the**
 2 **things we talked about is he brought up that when**
 3 **Osprey was made a subdivision, they had committed**
 4 **to donate a piece of land to Wilderness Ranch,**
 5 **because Wilderness Ranch covered Osprey and would**
 6 **also cover the Klam Ranch at the time, but it**
 7 **covered Osprey. But they didn't have the funds to**
 8 **build the firehouse.**

9 **And our interest was -- what we kept**
 10 **trying to do was to partner with the community and**
 11 **to find ways to make things work. So we said,**
 12 **"Okay, if they've donated the land, then what**
 13 **we're willing to do is make some kind of financial**
 14 **contribution. We can't, you know, afford to build**
 15 **a whole building, but we can make some kind of a**
 16 **financial contribution that would allow you to**
 17 **build your firehouse. And the nice part about**
 18 **that is it's in Osprey; if there's a problem at**
 19 **Osprey, a house burns, you're right there. If we**
 20 **have an issue, you're right there." So it**
 21 **brings -- it was really kind of a win-win for both**
 22 **of us.**

23 **Q.** Thank you. You weren't going to pay
 24 for the fire crew or the equipment or anything
 25 like that, you're just -- some portion of money to

1 help pay for the building?

2 **A. Yes. Because he had talked about that**
3 **they were going to do some fundraising for it and**
4 **write for some grants and different things like**
5 **that, so we were just going to make some type of a**
6 **financial contribution to help.**

7 **Q. Okay. And did you ever get to a point**
8 **where you discussed how much?**

9 **A. No.**

10 MR. WOODARD: Let's go to the first page of
11 this exhibit. And can you expand that, the body
12 of that letter, Ms. Savell.

13 BY MR. WOODARD:

14 **Q. Ms. Jeppesen, do you recall receiving a**
15 **copy of this letter?**

16 **A. I do.**

17 **Q. And was -- did Alamar Ranch ever make**
18 **the contribution?**

19 **A. No.**

20 **Q. No. And why was that?**

21 **A. Well, we received the same letter,**
22 **basically stating that Osprey did -- was**
23 **rescinding their offer of the piece of land due to**
24 **the Alamar Ranch project, because -- my**
25 **understanding is -- we had made an offer to make a**

1 published to the jury.

2 BY MR. WOODARD:

3 **Q. Ms. Jeppesen, do you recall receiving**
4 **this letter from Mr. Ravenscroft?**

5 **A. I believe I received it from the**
6 **Planning and Zoning. He had submitted it to the**
7 **Planning and Zoning administrator, and I received**
8 **it from them.**

9 **Q. Okay. So it's part of the conditional**
10 **use permit process that was submitted to Planning**
11 **and Zoning, and you got a copy?**

12 **A. Correct.**

13 **Q. Were you surprised to receive this**
14 **letter?**

15 **A. Yes, I was.**

16 **Q. And why?**

17 **A. Mike -- Mike Crowley and Lauren**
18 **Carlson, who were also working on the Alamar Ranch**
19 **project, had gone and visited with**
20 **Mr. Ravenscroft, explained Alamar Ranch, talked**
21 **about the standards of care, the safety, things we**
22 **were implementing. And the report of their**
23 **discussion that they gave to me is that --**

24 MR. BRASSEY: Your Honor, I object. It's
25 hearsay.

1 **contribution to the building. If the Alamar Ranch**
2 **project went through, they wouldn't allow**
3 **Wilderness Ranch Fire District to build on that**
4 **piece of land.**

5 **Q. So if Alamar Ranch was going to be**
6 **approved, they didn't want a fire station on their**
7 **property?**

8 **A. Right. They had been putting**
9 **tremendous pressure on John working with us, and**
10 **trying to get him to find some way that Alamar**
11 **Ranch couldn't be built, and so then they sent**
12 **this letter saying, hey, we're basically not going**
13 **to allow you to build your building on our land.**

14 MR. WOODARD: Can the witness be shown
15 Exhibit 1184?

16 Your Honor, I don't remember if it was
17 plaintiff's copy or defendant's copy of this,
18 yesterday, that was admitted. It's the July 24,
19 2007, from Gordon Ravenscroft.

20 MR. BRASSEY: I think it was ours.

21 THE COURT: Well, okay.

22 MR. WOODARD: You know, let's show 2026,
23 then.

24 And that's been admitted, Your Honor.

25 THE COURT: All right. 2026, then, will be

1 THE COURT: Sustained.

2 BY MR. WOODARD:

3 **Q. Did you write a response to this**
4 **letter?**

5 **A. Yes.**

6 MR. WOODARD: And that's Exhibit 1035. Has
7 that been admitted? Can you show that to the
8 witness and court and Mr. Brassey.

9 THE COURT: What's this exhibit number?

10 MR. WOODARD: 1035, Your Honor.

11 Your Honor, while they're deciding
12 whether they're going to object, I'll ask some
13 foundational questions, if that's all right.

14 THE COURT: All right. Go ahead.

15 BY MR. WOODARD:

16 **Q. Ms. Jeppesen, is this --**

17 MR. WOODARD: Ms. Savell, can you show her
18 the second page?

19 BY MR. WOODARD:

20 **Q. This shows that it was a letter from**
21 **Lauren Carlson to the Planning and Zoning**
22 **Commission?**

23 **A. Correct.**

24 **Q. Were you involved in the preparation of**
25 **this letter?**

1 **A. Yes, I was.**

2 **Q.** And was this a letter that Alamar Ranch
3 sent to Boise County Planning and Zoning as part
4 of the conditional use permit application process?

5 **A. Yes. It was a response to the Gordon
6 Ravenscroft letter.**

7 **Q.** Okay. It's in response to the letter
8 we just saw?

9 **A. Yes.**

10 **Q.** Okay.

11 MR. WOODARD: Your Honor, I move its
12 admission.

13 THE COURT: Any objection?

14 MR. BRASSEY: No.

15 THE COURT: All right. The exhibit will be
16 admitted. That's Exhibit 1035.

17 (Plaintiffs' Exhibit No. 1035
18 admitted.)

19 MR. WOODARD: And, Ms. Savell, can you
20 expand the paragraph right above the bullet points
21 and then the bullet points at the bottom of the
22 page. Yes, with "At this time." Thank you.

23 BY MR. WOODARD:

24 **Q.** So it says, "At this time, we believe
25 the following concerns mentioned in Mr.

1 Ravenscroft's letter have been addressed or are
2 subject to Alamar Ranch's proposed conditions of
3 approval."

4 Now, is it your understanding that
5 Alamar Ranch had -- on its own, had proposed some
6 conditions of approval that it was going to live
7 by?

8 **A. Yes. Yeah, we proposed those, again,
9 trying to work with some of the concerns the
10 community had, trying to say, "Okay, hey, this is
11 what we can do to resolve that concern."**

12 **Q.** Okay. And so this -- here, you're --
13 it looks like you're telling the county how the
14 concerns of Mr. Ravenscroft's letter have been
15 taken care of; is that accurate?

16 **A. Yes, that's correct.**

17 **Q.** Okay. So the first bullet point, it
18 says, "Alamar Ranch plans to widen or replace the
19 existing single-lane bridge that crosses Grimes
20 Creek in order to accommodate the traffic."

21 Was that something that you were going
22 to do?

23 **A. Yes.**

24 **Q.** The second one says, "Alamar Ranch is
25 working with the Wilderness Ranch Fire District to

1 provide a secondary access for emergency
2 vehicles."

3 Now, in that bullet point right there,
4 is it that you were proposing to do what
5 Wilderness Ranch required you to do as far as the
6 secondary-access concerns?

7 **A. Yes.**

8 **Q.** It says, "Alamar is working with"
9 -- the third bullet point -- "Alamar Ranch is
10 working with Wilderness Ranch Fire District to
11 successfully implement Firewise best practices and
12 the International Wildland-Urban Interface Code
13 and the 2003 International Fire Code.

14 "Alamar Ranch will install and
15 regularly test an emergency generator to supply
16 electricity for alarms, exit route illumination,
17 emergency communications systems, et cetera."

18 Ms. Savell, can we show the next page
19 and blow up those bullet points?

20 "Alamar Ranch will install the
21 appropriate radio communication system, as
22 suggested by Mr. Ravenscroft, to ensure
23 communication with county service providers.

24 "Alamar Ranch will include in the
25 emergency management plan, the logistics of

1 providing adequate food, water, supplies, linens,
2 pharmaceuticals, et cetera, under emergency
3 conditions.

4 "Alamar Ranch will work with Saint
5 Alphonsus' and St. Luke's Life Flight to designate
6 a Life Flight landing zone"?

7 **A. Yes.**

8 **Q.** Those are all things that Alamar Ranch
9 was willing to do?

10 **A. Yes.**

11 **Q.** Okay. And was it your understanding
12 that doing all those things would satisfy the
13 concerns that were raised in Mr. Ravenscroft's
14 letter?

15 **A. Yes.**

16 **Q.** During the process before the Planning
17 and Zoning Commission, after you sent that letter
18 to Mr. Ravenscroft, did you hear anything more
19 from Mr. Ravenscroft before this matter was
20 decided by the Planning and Zoning Commission?

21 **A. I don't believe that we did. I don't
22 recall exactly, but I don't recall receiving
23 anything from him.**

24 MR. WOODARD: May the witness be shown
25 Defendant's Exhibit 2058?

1 Your Honor, I don't believe this has
2 been admitted yet.
3 THE COURT: It's a defense exhibit. Is
4 there any objection?
5 MR. BRASSEY: Your Honor, just a second. I
6 can't see it very well.
7 MR. WOODARD: We have a copy, Andy, that's a
8 little brighter -- Mr. Brassey, I apologize.
9 MR. BRASSEY: Is there more than that?
10 MR. WOODARD: There's another page, yes.
11 Can you show him the other page?
12 MR. BRASSEY: Your Honor, there are two
13 separate emails. I have no objection to page 1 of
14 Exhibit 2058. I have an objection to the second
15 page of Exhibit 2058.
16 MR. WOODARD: Your Honor, this is -- well,
17 one, it's their exhibit, so there's two pages --
18 THE COURT: But even --
19 MR. WOODARD: I don't know what his
20 objection is.
21 THE COURT: What is the objection?
22 MR. BRASSEY: It's hearsay.
23 THE COURT: Let me look at it. Could you
24 bring up the second page?
25 Who is the author of the second page?

1 MR. WOODARD: The first email is from -- can
2 we back -- the first email, on the second page
3 it's Ms. Jeppesen, I believe; and the first page
4 is Mr. Bibbens.
5 MR. BRASSEY: Your Honor, can we have a
6 sidebar, and I can explain my objection.
7 THE COURT: Yes, please approach.
8 (Sidebar commences as follows:)
9 MR. BRASSEY: Two things, one, the second
10 page -- Amy Jeppesen wasn't at this meeting she's
11 reporting on. She's getting a report from someone
12 at Spink Butler.
13 Second, this has to do with the meeting
14 Mr. McDonald testified about today, and it seems
15 to me --
16 THE COURT: That's the October 17th or
17 something?
18 MR. BRASSEY: Correct. So, Judge, this is
19 clearly hearsay, first.
20 And, second, we had the witness here
21 today who actually testified about that
22 conversation. So this is --
23 THE COURT: Mr. Woodard, what are you going
24 to use it for? And if, in fact, she's reporting
25 secondhand about a meeting she didn't attend, I

1 think that would be problematic.
2 MR. WOODARD: I agree with you, Your Honor.
3 I was going to talk about the first page, but the
4 exhibit is two pages, so I don't know if you're
5 modifying your exhibit or --
6 THE COURT: Well, let's admit page 1. We've
7 done that with some other exhibits.
8 MR. BRASSEY: We have got to admit the
9 top -- sorry, Judge, but we shouldn't admit this
10 lower section. We can admit the top. And if you
11 want us --
12 THE COURT: All right. We can redact
13 that --
14 MR. BRASSEY: Yeah.
15 THE COURT: -- at an appropriate time. And
16 if you can't -- the problem is you probably don't
17 have the ability to show it to the jury.
18 MR. WOODARD: This part -- we can show
19 this --
20 THE COURT: What I can do is I'll turn off
21 the jury monitor until you've zoomed in on what is
22 going to be admitted and then turn on the jury
23 monitor. Okay?
24 MR. BRASSEY: So we're not going to do below
25 that point?

1 THE COURT: Right.
2 MR. BRASSEY: Thank you, Judge.
3 THE COURT: Okay.
4 (Sidebar concluded.)
5 THE COURT: I understand, Counsel, then we
6 will agree that Exhibit 2058 will be redacted to
7 exclude all but the top, roughly, two-thirds of
8 the first page. The rest will all be redacted.
9 (Defendant's Exhibit No. 2058, page 1
10 admitted.)
11 MR. BRASSEY: Thank you, Judge.
12 THE COURT: And if you want to highlight
13 that portion that we're going to actually admit as
14 the exhibit.
15 MR. WOODARD: Ms. Savell, go up so that
16 it -- where it has -- right there.
17 THE COURT: Is that --
18 MR. WOODARD: Yes, Your Honor.
19 THE COURT: -- what you need?
20 Mr. Brassey, is that consistent with
21 the redaction?
22 MR. BRASSEY: Yes. Yes, Your Honor. Thank
23 you.
24 THE COURT: All right. I'll publish that to
25 the jury.

1 BY MR. WOODARD:

2 **Q.** Ms. Jeppesen, do you recognize this
3 email?

4 **A.** Yes.

5 **Q.** Okay. And who is Stephen Bibbens?

6 **A.** He worked at Oaas Laney helping out
7 with a lot of the financial things, working with
8 banks and working on a lot of financial
9 spreadsheets and different things like that.

10 **Q.** Is he an accountant?

11 **A.** I believe so, yes.

12 **Q.** Okay. And this is an email from him to
13 you and Chris Tverdy; correct?

14 **A.** Correct.

15 **Q.** Okay. And this is in October of 2007.
16 So this is about the time you're starting up the
17 Klam Ranch conditional use permit process;
18 correct?

19 **A.** Correct.

20 **Q.** Actually, it's at the time you were in
21 the appeal for that process?

22 **A.** Yes. I think it's the appeal.

23 **Q.** Yeah. It says, "I talked with John
24 Hall regarding financing. He indicated that he
25 could not get financing until we had a CUP in

1 place. With that said, he has agreed to begin the
2 approval process without the CUP in order to
3 obtain a conditional approval based on the
4 understanding that a CUP is required to gain
5 financing."

6 Ms. Jeppesen, what was your involvement
7 in obtaining financing for the project?

8 **A.** I was kind of updated. Chris and
9 Steven were really the two point people on that.
10 And so I did, at one point, go and visit with one
11 of the banks that we were looking at. I know we
12 were looking at a couple or three different banks.
13 Just to give them an idea of what the program was
14 about, but really I -- that was kind of -- they
15 just updated me on where we were at with the
16 financing, but that was really my involvement.

17 **Q.** Do you know any more about the status
18 of the financing at this time other than what's
19 written in this email?

20 **A.** Just that I know we had been working
21 with either two or three banks at the time, and
22 just, again, trying to find what would be the best
23 fit, financially, for the project. So this was
24 one of the -- one of the folks we were working
25 with at that time.

1 **Q.** Okay. Thank you.

2 MR. WOODARD: Your Honor, there actually is
3 a portion of that second page that doesn't deal
4 with the meeting that Mr. Brassey -- can we
5 sidebar?

6 THE COURT: See if you can work it out with
7 Mr. Brassey very briefly. And if so, just report
8 an agreement. If not, we'll take it up at a
9 sidebar.

10 MR. BRASSEY: Your Honor, maybe we better
11 approach.

12 THE COURT: All right. Approach.

13 (Sidebar commences as follows:)

14 MR. WOODARD: Your Honor, the portion that
15 I'm talking about is she's reporting about a
16 meeting with John McCarthy, the Wilderness Ranch
17 fire chief, and about what occurred and
18 communications with Mr. McCarthy, who is the
19 county's fire --

20 MR. BRASSEY: Well, he's not -- he's
21 Wilderness Ranch now. And I'd have to confess,
22 Judge, how that exactly fits in, but I don't know
23 that John's --

24 THE COURT: Was there a Fire Protection
25 District that's been created, and is he head of

1 that?

2 MR. WOODARD: Yes.

3 MR. BRASSEY: Well, there are several.

4 THE COURT: Well, I think fire protection
5 districts, technically, are separate from the
6 county and sometimes overlap counties.

7 MR. WOODARD: Okay. I guess the question,
8 then, is what Mr. McCarthy says a party opponent
9 admission or not?

10 THE COURT: Well, I would say probably not.
11 But if it is -- if it was information that was
12 conveyed to the county, you may offer it just to
13 show that it was conveyed to the county.

14 MR. WOODARD: I don't know that it was.

15 THE COURT: All right. I think it's
16 probably just going to be problematic, then.

17 MR. WOODARD: Okay.

18 THE COURT: Okay?

19 MR. BRASSEY: Thank you, Judge.

20 (Sidebar concluded.)

21 BY MR. WOODARD:

22 **Q.** Ms. Jeppesen -- actually, strike that.

23 Ms. Jeppesen, do you know who Sheriff
24 Roeber is?

25 **A.** Yes.

1 **Q.** And at the time of the Alamar
2 conditional use permit process, was he the sheriff
3 for Boise County?

4 **A.** Yes and no.

5 **Q.** Okay. Explain that to me.

6 **A.** So the head -- gosh, I can't even
7 remember his -- so they had a sheriff, a Sheriff
8 Brodie, when we first started. Then he left, then
9 they had kind of a temporary sheriff, and then
10 they had Sheriff Roeber.

11 **Q.** Okay. During this conditional use
12 permit process, did you ever meet with Sheriff
13 Brodie to discuss what concerns he may have with
14 the project?

15 **A.** Yes. Just a second, I have to think
16 about that. I met with him. He would attend the
17 juvenile justice meetings that I attended. And
18 Chris and I actually met with him and asked
19 him -- we actually met with him and another person
20 was there that works with the juvenile justice
21 department, and I can't remember her name right
22 now, but -- and asked him what concerns that they
23 had. And he expressed the concern of it being
24 taxing to the -- to the Sheriff's Department. We
25 talked a little bit about that, and he seemed like

1 he was -- he was resolved with that. He didn't
2 seem like he had that concern when we left that
3 meeting.

4 **Q.** Okay. How about Sheriff Roeber? Did
5 you ever have any meetings with Sheriff Roeber to
6 discuss Alamar Ranch?

7 **A.** Yes.

8 **Q.** Okay. What did you discuss with him
9 and what did he tell you?

10 **A.** Talked to him --

11 MR. BRASSEY: Judge, I object. I apologize.
12 But can we approach? I want to make sure I
13 understand the court's ruling.

14 THE COURT: As to the --

15 MR. BRASSEY: As to hearsay.

16 THE COURT: All right. Are you referring to
17 a statement by an agent, the 801(d)(2)(D)?

18 MR. WOODARD: Yes, Your Honor.

19 THE COURT: Well, let's do to head off
20 further problems.

21 (Sidebar commences as follows:)

22 MR. BRASSEY: He's the sheriff. And I just
23 want to make sure that anything he says is the
24 court going to -- and then I'll quit objecting.

25 THE COURT: The statement -- 801(d)(2)(D)

1 says that "any statement made by an agent or" -- I
2 think it says -- "servant made within the scope of
3 their employment," so as long as he's not talking
4 about some -- as long as he's talking about
5 something that's sheriff related, then I think
6 that is attributed to the county.

7 MR. BRASSEY: Just lay -- I mean, I'm not
8 telling you what to do, but lay foundation that it
9 was not just some off-the-cuff somewhere else --

10 MR. WOODARD: Well, I asked her, "What did
11 you talk about with the conditional use permit
12 process?"

13 THE COURT: The question is it has to be
14 within -- I mean, if you asked him something about
15 zoning, he has nothing to do with zoning. It has
16 to be something to do with his law enforcement
17 role.

18 MR. BRASSEY: I understand.

19 MR. WOODARD: It seems to me, I mean, I
20 understand that the Wilderness Ranch Fire District
21 is different from the sheriff, but if we can't get
22 out what these agencies who report to the Planning
23 and Zoning are telling us about their concerns --

24 THE COURT: Step closer to the mic. That
25 was my point earlier. If, indeed, a communication

1 was made to -- was then passed on to the county,
2 then that becomes relevant. The fact that you
3 were informed of something is not particularly
4 relevant, anyway, unless it was conveyed to the
5 county.

6 MR. WOODARD: Well, if Wilderness Ranch
7 tells us they approve of whatever we did, and they
8 told us that in a meeting, I mean, that's still
9 relevant to show that -- and then there's no
10 objection from Wilderness Ranch that comes in at
11 the -- at the hearing.

12 THE COURT: Well, you may be able to -- it's
13 by a party opponent, and Wilderness Ranch is not a
14 party.

15 MR. BRASSEY: Well, first of all, you've got
16 letters that you put in yesterday and discussed,
17 from John McCarthy, that talk about what he's --

18 MR. WOODARD: And I want to talk about what
19 he -- their discussions that led up to those
20 letters.

21 MR. BRASSEY: Well, but that's hearsay,
22 because that never got passed on to anybody.

23 THE COURT: If you, in fact, take those
24 letters and say, "Was this based upon an
25 understanding on your part that," then I think she

1 can testify as to her understanding.
2 MR. WOODARD: But if the sheriff -- if I ask
3 her --

4 THE COURT: Well, the sheriff is a different
5 matter. The sheriff is a representative or agent
6 of a party opponent.

7 MR. BRASSEY: And I'm just saying that
8 they're not off swimming somewhere --

9 THE COURT: Okay.
10 (Sidebar concluded.)

11 THE COURT: Proceed.

12 BY MR. WOODARD:

13 Q. Ms. Jeppesen, you said you met with
14 Mr. Roeber. When you met with him, were you
15 discussing concerns that he may have had or not
16 had with the Alamar Ranch project?

17 A. Yes.

18 Q. Okay. As far as it relates to
19 his -- the sheriff's office, the concerns that the
20 sheriff's office has?

21 A. Yes.

22 Q. Okay. And what did you and Mr. Sheriff
23 Roeber discuss?

24 A. He said he -- I talked to him about
25 Alamar Ranch, what we were planning to do, the

1 published to the jury.
2 (Plaintiffs' Exhibit No. 1072 admitted
3 and published.)

4 BY MR. WOODARD:

5 Q. Ms. Jeppesen, you say, "Hello, Sheriff
6 Roeber. I have been reviewing the Alamar impact
7 study that you provided to the commissioners. I'm
8 attaching a letter I have written to provide more
9 information about Alamar Ranch, as well as some
10 documents that are contained in the official
11 record. I appreciate the time you took to
12 complete your study and look forward to working
13 with you in the future to make sure that Alamar
14 Ranch has the least impact on your department."

15 MR. WOODARD: Can you go to the third page,
16 Ms. Savell?

17 MR. BRASSEY: Is there more than one page of
18 this?

19 MR. WOODARD: Yes.

20 MR. BRASSEY: Judge, can I -- I apologize.

21 THE COURT: Well, we're about three minutes
22 away from the -- is there an objection?

23 MR. BRASSEY: I don't object to -- I didn't
24 realize there were more pages than this page. We
25 have the exhibits, Judge. I wasn't looking at a

1 impacts that we had predicted that it would have
2 on his department. His reply to that was he
3 didn't have any concerns. But he couldn't get
4 involved in it because it would be political
5 suicide.

6 Q. Thank you, Ms. Jeppesen.

7 MR. WOODARD: Can the witness be shown
8 Exhibit 1072?

9 THE COURT: I'm sorry?

10 MR. WOODARD: Exhibit 1072, Your Honor.

11 BY MR. WOODARD:

12 Q. Ms. Jeppesen, is this an email that you
13 sent to Sheriff Roeber and Patti Burke and Tim
14 McNeese?

15 A. Yes.

16 Q. Okay. And were you, in this email,
17 forwarding on information about the impact that
18 Alamar Ranch would have or would not have on the
19 county?

20 A. Yes.

21 MR. WOODARD: Your Honor, I'd move its
22 admission.

23 THE COURT: Any objection?

24 MR. BRASSEY: No.

25 THE COURT: The exhibit will be admitted and

1 hard copy, and I didn't realize.

2 THE COURT: Okay. Are we -- are you going
3 to use the additional pages?

4 MR. WOODARD: Yes, Your Honor. I just asked
5 page 3 to be shown.

6 THE COURT: Well, we can take the break now.
7 We'll take a 15-minute recess, and that will give
8 counsel a chance to -- we're right at the breaking
9 point, anyway. So let's take a 15-minute recess,
10 and we can resolve that issue.

11 All right. We'll be in recess, then,
12 for 15 minutes.

13 I'll, again, admonish the jury not to
14 discuss the case among yourselves or with anyone
15 else, nor should you form or express any opinions
16 about the case until it is finally submitted to
17 you.

18 We'll be in recess for 15 minutes.

19 (Recess.)

20 THE COURT: I will note the jury is present.

21 I also want to thank Ms. Yant for
22 filling in for us as court reporter this
23 afternoon.

24 Ms. Jeppesen, I will remind you that
25 you are still under oath.

1 Mr. Woodard, you may continue with your
2 direct examination.
3 MR. WOODARD: Your Honor, I believe when we
4 left off we were at whether there is an objection
5 to 1072.

6 MR. BRASSEY: There is not.

7 THE COURT: There is none?

8 MR. BRASSEY: No. Thank you, Your Honor.

9 THE COURT: Exhibit 1072, I think it has
10 already been admitted. So we can just proceed.
11 BY MR. WOODARD:

12 **Q.** Ms. Jeppesen, in this e-mail you
13 represent some attachments, and I am going to have
14 Ms. Savell turn to page 3 of the exhibit. This
15 document that is addressed to Sheriff Roeber, is
16 that one of the things you had attached to that
17 e-mail?

18 **A.** Yes.

19 MR. WOODARD: Ms. Savell, if we could expand
20 the paragraph that says: "A distinguishing
21 characteristic." Thank you.

22 BY MR. WOODARD:

23 **Q.** Did you write this page?

24 **A.** I co-wrote this with Lauren Carlson.

25 **Q.** So both of you wrote it together?

1 **A.** Um-hmm.

2 **Q.** Is that a "yes"?

3 **A.** Yes. I'm sorry, yes.

4 **Q.** You say: "A distinguishing
5 characteristic of these different programs, and
6 the one we know you are interested in," and I
7 assume there you mean Alamar?

8 **A.** "Distinguishing factor."

9 **Q.** "A distinguishing" -- okay, thank you.
10 "Is the varying levels of calls

11 generated. This level is not directly correlated
12 to the size of the facilities. You recognized
13 this in your study stating student capacity did
14 not appear to be a strong predictor of calls for
15 service rates."

16 Had Sheriff Roeber performed a study?

17 **A.** When I met with him he said it was
18 someone in his office that actually performed that
19 study, but he submitted it to Planning and Zoning.

20 **Q.** That quote you have there, is that a
21 quote from his study?

22 **A.** Yes, it is.

23 **Q.** Then you say in the next sentence:

24 "Your insight is not only correct, but absolutely
25 critical. Program size is simply not as important

1 as the quality derived from program structure.
2 Program structure and accompanying quality
3 determines the number of calls a residential
4 treatment center will generate to the local
5 Sheriff's Department."

6 So that is what you put in this letter
7 that was not only sent to Mr. Roeber, but was also
8 sent to Patti Burke and Tim McNeese; is that
9 correct?

10 **A.** That is correct.

11 MR. WOODARD: Then, Ms. Savell, if we could
12 turn to the next page and the last paragraph that
13 starts out "Given this information." Can you
14 expand, please.

15 BY MR. WOODARD:

16 **Q.** There you state: "Given this
17 information, the number of calls that will be
18 generated to your department by Alamar Ranch will
19 be significantly less than the 36 calls per year,
20 as you identified in your study. In fact, the
21 program most like Alamar Ranch that was included
22 in the study, Boulder Creek Academy, generated
23 only .04 calls per bed. If this same ratio is
24 applied, the emergency calls generated by Alamar
25 Ranch should be in the low single digits. The

1 findings of Dr. Peter Crabb, who studied emergency
2 responses to the number of RTCs in a number of
3 states that were similar to Alamar Ranch and
4 Boulder Creek Academy, show the same experience."

5 You say the Boulder Creek Academy was a
6 program most like Alamar Ranch. What did you mean
7 by that?

8 **A.** The structure of it was similar. They
9 don't have as high of staff-to-student ratio as we
10 would have had, but the structure of the program
11 was similar. I would have to look at Sheriff
12 Roeber's study, but I believe we identified he --
13 some of the places that they had called actually
14 were not residential treatment centers. So I
15 would have to look at it to be able to identify
16 that. But it was as similar as you could be of
17 the places they studied to the Alamar Ranch
18 program.

19 **Q.** Ms. Jeppesen, do you know who Craig
20 Wolford is?

21 **A.** Yes.

22 **Q.** Was he the Planning and Zoning
23 administrator when you first became involved with
24 Alamar Ranch and the conditional use permit
25 process?

1 **A. Yes.**

2 **Q.** What was your sense of Mr. Wolford's
3 position with respect to the project Alamar Ranch?
4 MR. BRASSEY: Your Honor, I object to the
5 form of the question. I object to the form, his
6 "sense" of the project.

7 THE COURT: I will overrule the objection.
8 The witness may answer.

9 THE WITNESS: I'm sorry, can you ask me
10 again.

11 BY MR. WOODARD:

12 **Q.** Yes. I said: What was your sense of
13 Mr. Wolford's position with respect to the
14 project?

15 **A. He made it very clear when we worked
16 with him, because we worked with Mr. Wolford on
17 the CUP application we did on the Green Ranch as
18 well as on the Klam Ranch. He was very clear in
19 both instances that his job as the Planning and
20 Zoning administrator was to be completely neutral
21 about for or against the project and simply to
22 help the applicant get through the zoning, the
23 Planning and Zoning process. He explained that as
24 helping us file the right paperwork, helping us
25 fill out the application -- not fill out the**

1 **were thinking about, what they were doing nor the
2 commissioners at any time with me.**

3 **Q.** Did he ever provide strategies for
4 defeating the opposition?

5 **A. No.**

6 **Q.** Now, he wasn't the Planning and Zoning
7 administrator throughout the whole conditional use
8 permit process, right?

9 **A. No, he was not.**

10 **Q.** At some point Ms. Patti Burke became
11 the Planning and Zoning administrator, correct?

12 **A. That is correct.**

13 **Q.** Do you recall when in the process that
14 occurred?

15 **A. We were in the process, I think we had
16 filed our appeal from our -- we had the Planning
17 and Zoning meeting. It was a tie vote, so it
18 counted as a denial. And I believe we had filed
19 our appeal when she came on. We had already filed
20 the appeal or we were just about to. Somewhere
21 right in there.**

22 **Q.** So it would be fair to say somewhere
23 around the beginning of the appeal process?

24 **A. Yes.**

25 **Q.** During the appeal process, did you ever

1 application, but submit the application. He also
2 told us it was also his responsibility to, with
3 the Alamar folks as well, to remain impartial and
4 provide them with information as needed.

5 **Q.** Information on how to go through the
6 process?

7 **A. I think he was providing them with
8 information like that was coming into the Planning
9 and Zoning Department, like the documents that
10 were being submitted.**

11 **Q.** Did Mr. Wolford ever tell you what the
12 commissioners were thinking? What their thoughts
13 were towards the project?

14 **A. No.**

15 MR. BRASSEY: Your Honor, I -- well, she did
16 not identify what commissioner, so with a "no"
17 answer, Judge --

18 THE COURT: Thank you.

19 BY MR. WOODARD:

20 **Q.** Would that answer of "no" apply to both
21 the P & Z Commissioners and the Boise County
22 Commissioners?

23 **A. He did not discuss it. He was very
24 clear about where the boundary was, and he did not
25 discuss where the Planning and Zoning, what they**

1 meet with Ms. Burke at the Planning and Zoning
2 offices?

3 **A. I did.**

4 **Q.** Tell me about your first meeting with
5 Ms. Burke.

6 **A. Well, it was difficult to get a meeting
7 with Ms. Burke. I approached her and had called
8 and approached her trying to set up a meeting.
9 She felt like she needed to speak with the legal
10 team and the commissioners before she could meet
11 with me. I tried to explain to her my
12 understanding of the Planning and Zoning
13 administrator, that they are to meet with the
14 applicant. I knew there was a lot of
15 misinformation about Alamar Ranch, and I just
16 wanted to make sure she, first, had all the
17 documentation she needed, and second, just tell
18 her a little bit about the project.**

19 **When she did agree to meet with me, she
20 had me come up to the Planning and Zoning office.
21 When I came in the door, she escorted me to the
22 supply closet and had me have a seat in the supply
23 closet, and then she kept me there for about two
24 hours.**

25 **Q.** Let me ask this: Did she tell you why

1 she had you meet in the supply closet?

2 **A.** She said there were a lot of eyes and
3 ears that I do not really want knowing about
4 whatever. She said, "There are a lot of eyes and
5 ears in this town. I feel more comfortable
6 meeting with you here in the closet."

7 **Q.** How did it strike you when you were
8 meeting in the closet?

9 **A.** It felt weird, quite honestly. It was
10 very small, we were knee to knee, and it was quite
11 uncomfortable. It was just uncomfortable for me.
12 It just felt weird. I did not really have a
13 chance to speak in the supply closet. I was there
14 for about two hours and Patti just spoke at me,
15 talking about how Craig Wolford had done this all
16 wrong, and if she were the Planning and Zoning
17 administrator this would be totally different.

18 And that she has always had a dream of
19 making an RTC herself and it should be put in
20 Idaho City. I really did not have a chance to
21 speak during almost the entire meeting.

22 **Q.** What, if anything, did she say about
23 what -- you mentioned Idaho City. What, if
24 anything, about whether this project would be
25 approved if it was in Idaho City?

1 documentation that she had.

2 So my discussions with her, when I did
3 get to have a discussion with her, she was -- it
4 was, again, usually accusatory of something I did
5 not have or did not do. There was no room for
6 questions or answers or if I did ask her a
7 question, she would say, "I can't give you the
8 answer to that. My job is just simply to gather
9 the documentation."

10 **Q.** Have you ever met Patti Burke's father?

11 **A.** No, I have never met him.

12 **Q.** Do you know who he is?

13 **A.** I do.

14 **Q.** What is his name?

15 **A.** Sandy Sims.

16 **Q.** How do you know who he is?

17 **A.** He was the developer of Osprey
18 Subdivision, which was the property across the
19 river from the Klam Ranch where Alamar Ranch would
20 be located.

21 **Q.** What was your perception of how
22 Ms. Burke viewed this project as located at Klam
23 Ranch?

24 **A.** Well, from my meeting with her in the
25 closet, it was very clear to me she did not

1 **A.** She said that if we had gone through
2 her, she would have told us to put it in Idaho
3 City, she would have picked a spot and she would
4 have gotten it through.

5 **Q.** I think you said you did not really --
6 that you were not really able to say anything in
7 this meeting.

8 **A.** No, she just talked and talked. If I
9 tried to ask a question -- I was trying to talk
10 about kind of the reason that I was there. And I
11 could not even get a question out. She would just
12 talk right over the top of me.

13 **Q.** Through the process on the appeal, how
14 would you describe her cooperation level?

15 **A.** Very uncooperative.

16 **Q.** Why is that?

17 **A.** Well, I would call again just to touch
18 base with her and she would not return my calls.
19 When she would return my calls, it was usually she
20 was asking for or wanting documentation that we
21 had already provided and trying to position it as,
22 "Oh, look, Alamar Ranch hasn't provided this or
23 Alamar Ranch hasn't provided that." Indeed, she
24 already had the documentation, she just hadn't
25 gone through the appeal application or any of the

1 approve of where it was located or of the project.
2 Again, I am going off of the comments she was
3 making about how -- the impression I left with is:
4 This is not going through. This is not going to
5 happen.

6 **Q.** Did she ever disclose to you that her
7 father was the developer of Osprey or did you have
8 to learn that from another source?

9 **A.** I don't -- I don't recall. I don't
10 recall her ever disclosing that to me, but I think
11 I knew that prior to her being reinstated.

12 **Q.** Now, Ms. Jeppesen, you attended the
13 Monday public meetings of the commissioners; is
14 that accurate?

15 **A.** That is correct.

16 **Q.** For what period of time did you attend
17 those Monday meetings?

18 **A.** Oh, gosh, I went every Monday. Well,
19 probably like six months or so. I cannot give you
20 an accurate time frame, but it was for quite a
21 while. And I attended -- I think I only missed
22 two due to illness, but I went every Monday.

23 **Q.** You attended the public hearing in
24 January of 2008 on Alamar Ranch's conditional use
25 permit application?

- 1 **A. Yes.**
 2 **Q.** You presented information there?
 3 **A. I did.**
 4 **Q.** The PowerPoint that we showed for the
 5 Planning and Zoning Commission, there was a
 6 similar PowerPoint that was prepared for the
 7 commissioners, the county commissioners, correct?
 8 **A. That is correct.**
 9 **Q.** Containing some of that same
 10 information?
 11 **A. Yes.**
 12 **Q.** Did you attend the deliberations
 13 hearing that occurred in March of 2008?
 14 **A. Yes. Is that where they had the**
 15 **decision? Is that the meeting you are referring**
 16 **to?**
 17 **Q.** Yes.
 18 **A. Yes, I did.**
 19 **Q.** After that hearing was over, did you
 20 attempt to talk to Mr. Day?
 21 **A. I did.**
 22 **Q.** When I say "Mr. Day," Commissioner
 23 Terry Day?
 24 **A. I did.**
 25 **Q.** Tell me what occurred when you went

- 1 state of Utah in the RTC business, correct?
 2 **A. Yes; that is correct.**
 3 **Q.** You indicated to me when I took your
 4 deposition that you actually had some supervision
 5 as the executive director over four centers. Do
 6 you remember telling me that?
 7 **A. Yes.**
 8 **Q.** And were those four centers in separate
 9 locations?
 10 **A. They were.**
 11 **Q.** So they were four separate facilities?
 12 **A. Yes.**
 13 **Q.** One of the facilities was a facility
 14 called La Europa that had 15 girls in it; is that
 15 right?
 16 **A. At the time?**
 17 **Q.** Yes.
 18 **A. I think we --**
 19 **Q.** I think you indicated to me it was 15
 20 and you were going to try to go to 50 -- excuse
 21 me, you were going to try to go to 30.
 22 **A. I was going to say 30 or 32, I believe.**
 23 **Yeah, I believe we were somewhere in that 15**
 24 **range.**
 25 **Q.** But at the time they had 15 girls and

- 1 to -- well, why were you going to talk to him?
 2 What were you going to do and tell me what
 3 occurred?
 4 **A. I went over, after they had issued the**
 5 **decision, I guess you would say, and everything**
 6 **they had done, I went over just to -- I wanted to**
 7 **shake each of the commissioners' hand and tell**
 8 **them I appreciated the time they took to look at**
 9 **this. As I walked up to Commissioner Day, he was**
 10 **speaking to some of the no Alamar Ranch folks. He**
 11 **said something to the effect of, "Well, we showed**
 12 **them. We will teach them to try to do something**
 13 **like this in our county."**
 14 MR. WOODARD: Thank you, Ms. Jeppesen. No
 15 further questions.
 16 THE COURT: Cross-examination.
 17 MR. BRASSEY: Thank you, Your Honor.
 18 CROSS-EXAMINATION
 19 QUESTIONS BY MR. BRASSEY:
 20 **Q.** Good afternoon, Ms. Jeppesen. I am
 21 Andy Brassey. You and I have met before.
 22 **A. We have.**
 23 **Q.** Ms. Jeppesen, when you were hired or
 24 just before you were hired to be the executive
 25 director at Alamar Ranch, you were working in the

- 1 you were going to go to 30. Does that sound
 2 right?
 3 **A. That sounds right.**
 4 **Q.** Then you were the executive director
 5 over, is it Kolob Canyon?
 6 **A. Kolob.**
 7 **Q.** And that had 12 girls, correct?
 8 **A. Yes.**
 9 **Q.** Then Moonridge had 16 girls, correct?
 10 **A. Correct.**
 11 **Q.** And Mountain Springs had 20 boys?
 12 **A. Boys and girls; correct.**
 13 **Q.** Were a couple of those not RTCs?
 14 **A. Mountain Springs is a therapeutic**
 15 **boarding school.**
 16 **Q.** So your experience, at least right
 17 before you came to Alamar Ranch, was with smaller
 18 facilities than the 72 beds planned at Alamar
 19 Ranch?
 20 **A. Well, New Haven was 50.**
 21 **Q.** Say again?
 22 **A. New Haven was 50 when I left New Haven.**
 23 **They were smaller, but New Haven was 50.**
 24 **Q.** You had been at New Haven before?
 25 **A. Right.**

1 **Q.** Right.
 2 But right before you came to Alamar
 3 Ranch, at least the facilities you were involved
 4 in, were 15, 12, 16, and 20, correct?
 5 **A.** Yes.
 6 **Q.** Were those facilities JCAHO approved?
 7 **A.** We were in the process of working on
 8 getting JCAHO approved.
 9 **Q.** So you hadn't obtained it yet, but with
 10 that number of students you were seeking JCAHO
 11 approval?
 12 **A.** For -- correct. Because the four
 13 facilities ran under one company. So given the
 14 fact that we could have one approval for
 15 C.E.R.T.S. that could cover the facilities, it
 16 made it feasible.
 17 **Q.** Tell the jury, with regard to JCAHO,
 18 which also accredits hospitals, they accredit
 19 St. Luke's here in Boise, don't they?
 20 **A.** Yes, I believe so. I'm not sure, but I
 21 think they do.
 22 **Q.** You would guess they would?
 23 **A.** I would.
 24 **Q.** With the JCAHO approval for an RTC,
 25 what is the approval for? What are you getting

1 approved?
 2 **A.** So help me out a little bit more. I
 3 guess I don't understand exactly what you are
 4 asking.
 5 **Q.** Well, JCAHO for a place like St. Luke's
 6 involves record keeping, care, what sort of
 7 systems they have in place, doesn't it?
 8 **A.** Yep.
 9 **Q.** So my question is: For a residential
 10 treatment center, what is it that JCAHO would come
 11 approve?
 12 **A.** The same types of things as they do for
 13 a hospital. So they -- really, what JCAHO does,
 14 it is like I talked about, it is the golden seal
 15 of approval. They have a higher level of safety
 16 requirements; so processes, policies, procedures
 17 for safety. Paperwork, are you doing what you say
 18 you are going to do? Instead of saying, "We are
 19 treating," are you actually documenting that you
 20 are treating? Do you have master treatment plans?
 21 Does that master treatment plan flow into progress
 22 notes? They look at the facilities, the physical
 23 facilities. They inspect them really thoroughly
 24 to determine they are safe and appropriate for the
 25 students that are receiving care there. So a lot

1 like they would with a hospital.
 2 **Q.** In the hospital, of course, it involves
 3 medical care. Does it involve medical care more
 4 than medical care at a place like Alamar Ranch?
 5 **A.** Well, you have both. So the answer to
 6 that is both because you have a nursing staff and
 7 a psychiatrist on staff. So they want to make
 8 sure the policies you are using for medication
 9 management are correct and that they meet the
 10 required state guidelines and national guidelines.
 11 They want to make sure the psychiatrist is doing
 12 his job.
 13 Then it also involves the mental health
 14 side. They are looking at the therapy piece. Are
 15 you providing the type of therapy you say you are
 16 providing? Do you have certified qualified
 17 therapists? Which in the hospital that would look
 18 like are your doctors certified, qualified? Are
 19 they providing the documentation. I'm sorry, it's
 20 a long answer.
 21 But it is both.
 22 **Q.** That is something you represented to
 23 the County, to first Planning and Zoning in your
 24 CUP application that Alamar Ranch would seek JCAHO
 25 accreditation, correct?

1 **A.** Yes.
 2 **Q.** With regard to a document we talked
 3 about just a minute ago, Plaintiffs' Exhibit 1072,
 4 which was your reply to Sheriff Roeber, one of the
 5 things that was represented to Sheriff Roeber was
 6 that you would be adhering to standards required
 7 by JCAHO, correct?
 8 **A.** Correct.
 9 **Q.** Now, the Alamar Ranch was going to be
 10 in phases, wasn't it?
 11 **A.** Yes.
 12 **Q.** And can we -- I apologize. Strike
 13 that.
 14 Can we look at Plaintiffs' Exhibit
 15 1019 -- or I'm sorry, Plaintiffs' Exhibit -- I
 16 apologize, Ms. Jeppesen. It is Defendant's
 17 Exhibit 2019.
 18 MR. BRASSEY: I am sorry, Pat.
 19 BY MR. BRASSEY:
 20 **Q.** This is a presentation by PowerPoint, I
 21 assume.
 22 **A.** You know, I was not at this conference,
 23 so I'm not sure about it.
 24 **Q.** This is documentation you talked about
 25 would have been presented to the Independent

1 Educational Consultants Conference by, I think you
2 said Chris Tverdy?

3 **A. I believe it was Chris.**

4 **Q.** That occurred in May of 2006, correct?

5 **A. As far as I know; that is correct.**

6 **Q.** It says May 5, 2006, right?

7 **A. Yep. I was not working at the time, so**
8 **all I can go off is what it says.**

9 **Q.** Independent educational consultants are
10 who RTCs market to in part because you want the
11 consultants to send students your way?

12 **A. That is correct.**

13 **Q.** How do the consultants get paid?

14 **A. The families pay them independently.**

15 **Q.** There is -- do you know whether it is
16 any percentage of the cost of the facility?

17 **A. Well, the Independent Educational**
18 **Consultants Conference and the higher standard of**
19 **care would say no, they should not be receiving**
20 **any portion of the payment. So if they are**
21 **involved in, it is called IECA, it's the**
22 **Independent Educational Consultants Association,**
23 **then they have to sign an ethical document saying**
24 **they are not doing that, because we consider that**
25 **to be unethical.**

1 that was being marketed by Alamar was 72; is that
2 right?

3 **A. According to the presentation, yes.**

4 MR. BRASSEY: Now, can we show -- it hasn't
5 been admitted, Your Honor -- the witness
6 Plaintiffs' Exhibit 1004.

7 THE COURT: Exhibit 1004 has been admitted.

8 MR. BRASSEY: I apologize, Your Honor. I
9 did not realize it had.

10 BY MR. BRASSEY:

11 **Q.** Ms. Jeppesen, at the time the Green
12 Ranch application was made, that was December 8,
13 2006, correct?

14 **A. That is correct.**

15 **Q.** You were, by that point in time, had
16 been employed by Alamar or Oas Laney?

17 **A. I was new. I had been there maybe a**
18 **week, week and a half at that time.**

19 **Q.** At the time the application was made,
20 you were there?

21 **A. Correct.**

22 **Q.** When the Green Ranch application was
23 made, the number of beds went up from 72 to 108,
24 it increased by 36, didn't it?

25 **A. Yes.**

1 **Q.** Thank you.

2 MR. BRASSEY: Can we go to, I believe it is
3 page 14.

4 BY MR. BRASSEY:

5 **Q.** Ms. Jeppesen, at the time of this
6 conference in May of 2006 in Chicago, the Green
7 Ranch application had not been made, had it?

8 **A. No.**

9 **Q.** As you look at this picture, do you
10 know where this is?

11 **A. I do not.**

12 **Q.** Do you know if that is Garden Valley?

13 **A. I don't know.**

14 **Q.** Do you know whether the site that was
15 being marketed by Alamar in May of 2006 in Chicago
16 was actually a site, a potential site, in Garden
17 Valley?

18 **A. That I do not know.**

19 MR. BRASSEY: Can we go back to the start.
20 Go ahead, I'll tell you when to stop. Sorry, I
21 didn't mark the page.

22 There you go.

23 BY MR. BRASSEY:

24 **Q.** Sorry, Ms. Jeppesen.

25 In May of 2006, the number of residents

1 **Q.** The basis of that was what?

2 **A. I don't know the basis of why it went**
3 **up to 108. I know we looked at: Do we present**
4 **this in phases? Like do we ask for this many and**
5 **then go back and ask for this many later? That**
6 **was a question that was asked of me.**

7 **My response to that was: If we think**
8 **we are going to build 108 beds, we need to go in**
9 **and be up-front about that right from the get-go.**
10 **So I am not sure why it changed, but I know my**
11 **part of it was whatever we are going to do, we**
12 **need to be up-front and honest about it.**

13 **Q.** What gave you the idea that you could
14 ask for a number of beds at one point in time and
15 then go back and ask for more?

16 **A. Some residential treatment centers in**
17 **the industry do that. Sometimes -- it is just**
18 **like any kind of business. Sometimes when you get**
19 **into the business you discover that it can expand**
20 **and maybe you have the ability to serve more than**
21 **you did before.**

22 **For example, New Haven, when I first**
23 **started there, their dream was really to be two**
24 **houses, 32-bed facility. Then as we went on and**
25 **had a lot of success and we had a lot of requests**

1 for us to expand, we went back and asked for more
2 beds.

3 **Q.** You had actually had that experience in
4 Utah before you came to Alamar Ranch, correct?

5 **A.** Yes.

6 **Q.** When you did that, one of the things
7 you did was you went to the governing body and
8 said, "Well, we have been in business for awhile,
9 here is what we have done, here is how we are
10 doing. We would like more beds and we think our
11 past performance justifies that." Is that kind of
12 a summary?

13 **A.** I didn't have a lot to do with the
14 process when it happened with New Haven, so I
15 don't know that I can really answer that. But
16 that seemed like the process.

17 **Q.** In your current employment here in
18 Boise, is Recovery 4 Life involved at all with
19 Redmont?

20 **A.** I purchased the company from Redmont.
21 So Redmont has no involvement at this time.

22 **Q.** Is Redmont a company that Oaas Laney
23 was involved in?

24 **A.** Explain what you mean by "involved in."

25 **Q.** Did they have any ownership interest or

1 any interest in assisting Redmont at all, do you
2 know?

3 **A.** I do not believe they had any owner
4 interest in Redmont. I am still struggling a bit.
5 Are you asking me if they had ownership or are you
6 asking me if they were assisting Redmont? What is
7 it that you are --

8 **Q.** I will just ask you if they were
9 assisting.

10 **A.** Assisting. Oaas Laney had a piece of
11 property that Redmont was looking at to purchase.
12 And as far as anything else they were doing with
13 Redmont, I don't know.

14 **Q.** I take it you wanted to get back to
15 Idaho.

16 **A.** I did.

17 **Q.** And had you actually lost your job in
18 Utah?

19 **A.** No.

20 **Q.** Did someone at Oaas Laney put you on,
21 so to speak, to this facility that might be a good
22 fit for you?

23 **A.** Yes; Chris did.

24 **Q.** Chris Tverdy?

25 **A.** Yes.

1 MR. BRASSEY: Can we show the witness
2 exhibit Plaintiffs' Exhibit 1025.

3 I apologize, Ms. Jeppesen. Let's look
4 instead at Alamar's application, which I believe
5 is Plaintiffs' Exhibit 1029. I want to look at
6 page 27.

7 BY MR. BRASSEY:

8 **Q.** Ms. Jeppesen, the jury has heard some
9 about phases. When the application was made,
10 there was a basic timeline that I assume is an
11 estimate of, assuming the program was approved,
12 when the various phases would come into being?

13 **A.** Yes.

14 **Q.** I assume in this business that when you
15 are timing these things, it is the best estimate
16 given the circumstances that you know about at the
17 time the application is made?

18 **A.** Correct.

19 **Q.** Assuming for argument's sake that the
20 phase program as reflected in the application
21 would have been met, completion of phase one would
22 have been in July 2008 and Alamar Ranch would have
23 had a capacity for 24 residents, right?

24 **A.** If it were to go as we had planned in
25 the application, yes.

1 **Q.** Assuming 24 kids showed up on day one,
2 there would only be 24 children, adolescents, at
3 Alamar Ranch because the second phase was not
4 going to come into being until January 2009?

5 **A.** So I'm sorry, what are you asking me?

6 **Q.** Is that correct? Sorry.

7 **A.** According to our plan at that time we
8 presented, yes.

9 **Q.** So for the start-up of the project,
10 assuming you had all the students show up at one
11 time, best case scenario, you would have had 24
12 students in phase one? If you opened the doors
13 and they all showed up, the most you were going to
14 have for a period of time was 24?

15 **A.** Correct.

16 **Q.** Likely, and you know in the industry,
17 you would have actually had less than 24 for a
18 period of time, wouldn't you?

19 **A.** Are you asking me if -- are you asking
20 me if we opened the door would we have 24 the
21 first day?

22 **Q.** Right.

23 **A.** No, we wouldn't. It would take some
24 time. That is why the phases were spaced out, to
25 plan for that fill time.

1 **Q.** You indicated that when the project
2 started, one of the things RTCs do is they put a
3 certain price on that may be attractive to
4 consultants so you can get students and the
5 consultants can get familiar and comfortable with
6 your program, right?

7 **A.** Yes.

8 **Q.** Then after a period of time Alamar
9 Ranch was going to increase that price to \$12,000
10 per student per month, correct?

11 **A.** My recollection -- I still have trouble
12 with some words.

13 **Q.** You disclosed it this morning, so --

14 **A.** My recollection is that I thought we
15 were somewhere in the ten-five range. I know we
16 had talked about a number of different things, but
17 I thought we had kind of settled out in the
18 ten-five range.

19 **Q.** For the first phase of this project, I
20 take it Alamar was not going to be JCAHO approved?

21 **A.** Right. And the thing you should know
22 about JCAHO approval is that it takes a long time
23 to get. It is not something you would get -- it
24 is usually a two- to three-, even more year
25 process to get.

1 was to build it out so they would receive the same
2 therapeutic programming, we would try to get the
3 equestrian up and running, and build a ropes
4 course, but again, those things would take time.
5 But the basic therapeutics parts of the program as
6 far as the therapy, the staff, those things would
7 be the same.

8 MR. BRASSEY: Can we publish Ms. Jeppesen's
9 deposition, Your Honor.

10 THE COURT: Yes, if you provide it to
11 Ms. Gearhart.

12 THE CLERK: The deposition of Amy Jeppesen
13 taken October 16, 2009, is published.

14 MR. WOODARD: Your Honor, is it being used
15 for impeachment?

16 THE COURT: I assume so.

17 MR. BRASSEY: Yes.

18 THE COURT: I think that would be the only
19 proper use for it since Ms. Jeppesen is not
20 employed or a party of the Plaintiffs.

21 MR. BRASSEY: Counsel and Ms. Jeppesen,
22 I want you to turn to page 125. When you are
23 there, let me know. When you are there I am going
24 to ask you some questions. I am going to read you
25 something and then ask you some questions.

1 **Q.** You were not going to be JCAHO approved
2 right off the bat?

3 **A.** No. That is why what we committed to
4 do was to seek to get JCAHO approval.

5 **Q.** Let me ask you this question: With
6 regard to the program that Alamar Ranch had
7 designed for the students, isn't it true with
8 regard to education, therapy, and all phases of
9 the program, that if in phase one you only had 24
10 students, those students would receive the exact
11 same program as students coming at a later time?

12 **A.** Again, what is it that you are asking
13 me?

14 **Q.** I am asking you that in the first phase
15 and the students who were there, they would
16 receive the same program that the students would
17 receive as the program numbers increased?

18 **A.** So when you are speaking about
19 "program," can you give me some definition?

20 **Q.** All programs.

21 **A.** All programming. Well, in the phases
22 also later came the gym. So there would be some
23 differences in the programming they would receive
24 from the beginning until the end. I can't
25 remember which phase the gym was in, but the plan

1 MR. WOODARD: 125?

2 MR. BRASSEY: Correct.

3 THE WITNESS: Okay, I am there.

4 BY MR. BRASSEY:

5 **Q.** I want to look at page 125, line 18,
6 question: "Okay. In one or more of the other
7 depositions there was an indication that for a
8 period of time the price of admission, so to
9 speak, I think was going to be \$7,500 a month and
10 then it was going to go up. Do you have any
11 recollection of that?" Answer: "Yes."

12 "Okay. Why was that?" Answer: "A lot
13 of times when you're doing a start-up type of
14 program, you do kind of an introductory rate so
15 that you can -- so students can have an
16 experience. A lot of times consultants are more
17 willing to refer to a start-up if you know there
18 is some kind of a discount or introductory rate
19 because they want to give it a try and see what
20 the program is going to be like. So we're talking
21 about doing an introductory rate for a few
22 students of a lesser cost to allow for students to
23 come in and for educational consultants to have an
24 experience with our programs as well as the
25 family, too, and then going back to what our

1 normal rate would be, and that's pretty customary
2 in the industry."

3 Question: "Okay. So the price was
4 more of an incentive, so to speak, of the
5 educational consultants to say, okay, we will take
6 a look at this start-up RTC?" Answer: "That's
7 correct."

8 Question: "It wasn't a reflection on
9 the therapy the kids would receive?" Answer:
10 "No."

11 "Okay. So for those students who were
12 there, I'm going to call it under the start-up
13 price; is that okay?" Answer: "Introductory,
14 sure."

15 Question: "Introductory. I'm just
16 trying to make sure we're talking about the same
17 thing. For those kids who were there, the
18 programs that were designed would have been
19 therapeutic for those kids?" Answer: "It would
20 have been the same program that any student
21 attending Alamar Ranch under any rate would
22 receive."

23 Question: "Okay. And I assume
24 whenever the first phase was filled, those 24 kids
25 would have been receiving therapeutic treatment as

1 described in the application. I'm just trying to
2 figure out, what page is it?" Answer: "15."

3 Question: "And it goes on from there.
4 It's more than one page, isn't it?" Answer: "The
5 therapeutic part of the program is just one page.
6 And then it goes into education. It goes into
7 each of the components."

8 Question: "Let me ask you this: I
9 didn't mean to exclude education and some of the
10 other things. What I'm trying to get at is for
11 the first phase kids, if there were 24 there, they
12 were to receive the full value of the program,
13 including therapeutic value?" Answer: "Are you
14 asking would they receive the exact same program
15 as other students coming at a later date?"

16 Question: "Yes." Answer: "Yes."
17 Did I read that right?

18 **A. Yes, sir.**

19 MR. WOODARD: Your Honor, I still do not see
20 where that is impeachment, but --

21 THE COURT: Well, it is in. What she said
22 is in. I'm not sure how impeaching it was, but I
23 will allow this to stand.

24 Again, I will caution you, Counsel, to
25 make sure there is a direct conflict between the

1 prior testimony and the trial testimony in order
2 to use it for impeachment.

3 Go ahead.
4 BY MR. BRASSEY:

5 **Q.** Ms. Jeppesen, here is a question, and
6 that is: In order for the kids to receive the
7 benefit of the program, the first 24 kids or
8 students that came in would receive the benefits
9 of the program that Alamar had designed just like
10 kids who came later, correct?

11 **A. Yes. Are you -- I'm sorry, can you say
12 that again.**

13 **Q.** Sure.

14 You had a first phase and the program
15 was designed a certain way that you have
16 described.

17 **A. Right.**

18 **Q.** Isn't it true that in the first phase
19 when you had 24 kids, those kids were going to
20 receive the full benefit of the program and you
21 did not need 72 to give full benefit, including
22 therapeutic value of the program, to the phase one
23 kids?

24 MR. WOODARD: Your Honor, I am going to
25 object that it lacks foundation and it misstates

1 her testimony.

2 THE COURT: I am going to overrule the
3 objection.

4 If you agree with Counsel's statement,
5 so indicate. If not, I will allow you to explain
6 your answer.

7 THE WITNESS: I kind of agree. Then I have
8 to explain. But I kind of agree.

9 So I think what you are asking me is is
10 that we could provide the full aspects of the
11 program to the 24 and we did not need the 72 to be
12 able to do that; is that correct?

13 BY MR. BRASSEY:

14 **Q.** Right.

15 **A. My answer to that is we could, but we
16 would be suffering as a business and running at a
17 loss, so we could not remain viable as a business
18 to continue to do that. That is why we stepped up
19 the phases so that we could get to the point where
20 we could get to the break even.**

21 **Q.** It was not that the 24 were not getting
22 the benefit of your program, it was because the
23 model, the business model, that you needed more
24 kids because of what the business model was and
25 the goal from the income side of this project;

1 isn't that true?

2 **A. No, that is not true. Because I think**
3 **what you are saying, if I understand what you are**
4 **saying to me, you are saying that it is the**
5 **business model. And what I am saying is that in**
6 **order for the business to be viable, which is**
7 **break even, be able to support itself and meet its**
8 **costs, we had to have 72 kids. We were willing to**
9 **not break even to be able to build the business**
10 **out. But it would have to build out in order for**
11 **it to be viable and remain in place.**

12 **Q.** But that is because of the way the
13 project was designed, correct?

14 **A. No, that is because of the therapeutic**
15 **components.**

16 **Q.** So the first -- no. Strike that.

17 A little bit ago, Ms. Jeppesen, you
18 were shown a document, and I think it was
19 Defendant's 2028.

20 MR. BRASSEY: I'm not sure, Pat, if that has
21 been in, or if that is in.

22 THE COURT: 2028 has not been admitted. Is
23 this an admitted exhibit?

24 MR. BRASSEY: Judge, it is from the
25 Plaintiffs' side. Let me get the number of the

1 Plaintiffs'. Give me just a second, Your Honor.

2 Let's look at, I think it is Plaintiffs' 1022. I

3 believe there is page 2.

4 BY MR. BRASSEY:

5 **Q.** Ms. Jeppesen, this was a letter that
6 you wrote to John McCarthy of Wilderness Ranch
7 Fire District and you discussed --

8 MR. BRASSEY: I believe it is the fourth
9 bullet point down, Pat. It is one more down, Pat.

10 BY MR. BRASSEY:

11 **Q.** I believe this was the section of this
12 letter you discussed. Do you remember that? Can
13 you see it?

14 **A. Yes.**

15 **Q.** Let's go back to right under the
16 salutation where it says: "Pursuant to our
17 meeting."

18 MR. BRASSEY: Can you highlight that for me,
19 the first part of the letter. Thank you.

20 BY MR. BRASSEY:

21 **Q.** Ms. Jeppesen, what this is is a letter
22 to John McCarthy dated February 19, 2007, where
23 you are memorializing the discussion you had with
24 Mr. McCarthy about a number of facets of this
25 program; isn't that right?

1 **A. Yeah. I was trying to itemize the**
2 **discussions that we had been having. We had been**
3 **meeting with them to make sure we were compliant**
4 **with all of the fire codes and different things**
5 **like that.**

6 **Q.** What you are saying is you had a
7 meeting with him at the Oaas Laney offices on
8 February 16, 2007, and you wanted to document the
9 discussions and commitment made in regard to the
10 Alamar Ranch development plan, correct?

11 **A. Yes.**

12 **Q.** Let's look at the first bullet point.

13 Ms. Jeppesen, isn't it true that at the
14 meeting with John McCarthy on February 16, 2007,
15 Alamar Ranch represented to Mr. McCarthy that the
16 project would maintain the primary access
17 according to Boise County road ordinances and
18 ensure a separate secondary emergency access is
19 available year around; isn't that correct?

20 **A. We had been talking about lots of**
21 **different options. So the secondary emergency**
22 **access was kind of being looked at as a lot of**
23 **different options. But yes, that is something**
24 **that we talked about.**

25 **Q.** Well, isn't it true that this letter

1 indicates the discussion that you had and the
2 commitment that Alamar Ranch made to Wilderness
3 Ranch Fire District, including maintaining a
4 secondary access that is available year around,
5 meaning in all types of weather?

6 **A. Is your question did we commit to**
7 **maintain the roads in all types of weather?**

8 **Q.** Isn't this letter indicating to us that
9 Alamar Ranch made that commitment to John
10 McCarthy?

11 **A. Yes. We committed to work with them to**
12 **come up with that secondary emergency access and**
13 **maintain it.**

14 **Q.** That would be available year-round?

15 **A. Yep -- yes. Sorry.**

16 **Q.** Thank you.

17 One of the things you discussed was the
18 fact that two of the people, was it Mike Crowley
19 and Loren Carlson met with emergency services
20 director for the County, Gordon Ravenscroft, about
21 various aspects of the project?

22 **A. Correct.**

23 **Q.** In July of 2007, prior to the time of
24 the first Planning and Zoning Commission hearing,
25 Mr. Ravenscroft wrote a letter indicating that in

1 his opinion, because of what the project was, you
2 needed a separate secondary ingress and egress
3 from the property?

4 **A. Can you put the letter up and let's
5 take a look at that.**

6 **Q.** Yes.

7 MR. BRASSEY: It is the July 24, 2007,
8 letter and it was admitted, our exhibit. I think
9 it is 2026. Pat, let's make sure.

10 THE COURT: It is admitted.

11 MR. BRASSEY: Can you blow up the third
12 bullet point.

13 THE WITNESS: What was your question again?

14 BY MR. BRASSEY:

15 **Q.** My question was, that in
16 Mr. Ravenscroft's letter of July 24, 2007, that
17 was filed with Planning and Zoning, he recommended
18 because of the nature of the project that was
19 going to be developed, that there be a secondary
20 exit route for emergency use and that should be
21 required; isn't that true?

22 **A. I was thinking in the first one you
23 said that he was requesting a separate secondary
24 egress. And from my reading of this, I don't see
25 he is requesting a second. I see that he is**

1 meeting, which is after your letter to John
2 McCarthy in February of 2007 about the secondary
3 access, and after Gordon Ravenscroft's letter to
4 Planning and Zoning Commission in July about
5 secondary access, isn't it correct that Alamar
6 committed to not use the same existing bridge
7 across Grimes Creek for their secondary access?

8 **A. That wasn't my recollection of that
9 meeting. In the testimony I gave in that meeting,
10 I believe I talked about how we were working with
11 Wilderness Ranch -- sorry, those Rs are killing me
12 today -- Wilderness Ranch Fire Department to
13 figure out what the best secondary exit would be.
14 And that is -- what I read in the Planning and
15 Zoning minutes of the meeting, that was my
16 understanding of their recollection of that as
17 well.**

18 MR. BRASSEY: Your Honor, if we could
19 have -- or Pat, I think it is either Plaintiffs'
20 1044 that is in or our 2007 that is in, which is
21 the transcript of the August 15, 2007, Planning
22 and Zoning hearing. I apologize, Judge, I just
23 don't remember if we entered both or just one.

24 THE COURT: As long as we keep straight and
25 only use one of the exhibits, I don't care how it

1 saying we need a secondary access/exit route, but
2 I don't see him requesting for a second egress.

3 **Q.** Is it your understanding that Gordon
4 Ravenscroft was okay with an emergency exit that
5 utilized the same road and the same existing
6 bridge that was going to be improved across Grimes
7 Creek?

8 **A. My understanding is that he was on
9 board with what we were working with on the
10 Wilderness Fire Ranch District, which is that we
11 knew we needed some kind of secondary exit. But
12 what that was was yet to be determined. I don't
13 really see any specifics in his letter about that
14 either. Just recommending it is there. That is
15 the same thing that the Wilderness Ranch Fire
16 Department was recommending, and that is what we
17 were working out, trying to figure out the best
18 way to do that.**

19 **Q.** You were at the second Planning and
20 Zoning meeting on August 15, 2007, weren't you?

21 **A.** I was.

22 **Q.** I think you presented some statements
23 to the Commission. Do you remember that?

24 **A.** I did.

25 **Q.** Isn't it true that at the time of that

1 is numbered.

2 MR. BRASSEY: If 1044 is in, Your Honor,
3 that is fine.

4 THE COURT: All right.

5 MR. BRASSEY: Pat, if you could go to page
6 49 of 69. Actually, I'm sorry, Pat. Can you go
7 to the very first where it identifies people. And
8 I am looking for JB 2.

9 BY MR. BRASSEY:

10 **Q.** Ms. Jeppesen, as you can see, JB 2 is
11 JoAnn Butler, correct?

12 **A.** Yes.

13 **Q.** JoAnn Butler was one of the attorneys
14 at Spink Butler representing Alamar Ranch at the
15 hearing, correct?

16 **A.** That is correct.

17 **Q.** Let's go to page 49 of the transcript,
18 and I am going to read you something.

19 MR. BRASSEY: I want to highlight, Pat --
20 well, I am going to read something and then I am
21 going to tell you where to highlight.

22 BY MR. BRASSEY:

23 **Q.** Ms. Jeppesen, this appears to be JoAnn
24 Butler speaking. Would you agree with that?

25 **A.** Yes, it appears. Are you going to read

1 that paragraph? Because there is chair, DD 2,
2 chair. Are you doing the JB 2?

3 **Q.** Correct.

4 **A.** Okay. Yes.

5 **Q.** JoAnn Butler: "A couple of quick
6 points just to address some of the things raised
7 by the commissioners and folks in the audience.
8 The road, first of all, we just ask you to
9 recognize all of the hard work and the many
10 meetings that we have had with all of the
11 agencies, Wilderness Fire District, state
12 agencies. We have worked very hard with each and
13 every one of them to craft the conditions of
14 approval before you and we appreciate some of the
15 comments of the" condition -- "of the Commission
16 on tweaks to those conditions of approval that we
17 certainly accept and those conditions of approval
18 would have to be met prior to occupancy.

19 "With regard to the road, the secondary
20 access, we will comply as Wilderness Ranch has
21 asked us, the Wilderness Ranch Fire District, we
22 will comply with their requirements as this County
23 has entrusted to them by forming as a district.
24 We will not be crossing the same bridge, that we
25 can tell you. Yes, we have yet to work out

1 alignments and so on, but we can tell you that we
2 will not be crossing that same bridge."

3 Did I read that right?

4 **A.** I am kind of having trouble following
5 you because it is so small.

6 THE COURT: If we could zoom in, that would
7 have helped.

8 MR. BRASSEY: Pat, can we zoom in where it
9 starts "We will comply as Wilderness Ranch has
10 asked."

11 BY MR. BRASSEY:

12 **Q.** Let me read it to you again. "We will
13 comply as Wilderness Ranch has asked us, the
14 Wilderness Ranch Fire District, we will comply
15 with their requirements as this County has
16 entrusted to them by forming as a district. We
17 will not be crossing the same bridge, that we can
18 tell you. Yes, we have yet to work out alignments
19 and so on, but we can tell you that we will not be
20 crossing that same bridge."

21 Now, isn't it true at the time of the
22 Planning and Zoning hearing what was represented
23 to Planning and Zoning was that original bridge
24 over Grimes Creek would not be the bridge that you
25 would use for the secondary access?

1 **A.** Actually, what we were looking at was
2 putting down two single-lane bridges right next to
3 each other at that time. And then what eventually
4 happened is we were denied in this Planning and
5 Zoning due to the tie. So then we continued to
6 work with Wilderness Ranch to come up with a
7 solution that was acceptable to them and the fire
8 code. So at that time we were looking at doing a
9 couple single-lane bridges next to each other.

10 At that time I would say that was
11 probably accurate of where we were. And then
12 eventually, like I said, we continued to meet with
13 Wilderness Ranch and worked out an acceptable
14 solution that the fire department said was
15 acceptable to them.

16 MR. BRASSEY: Pat, let's go back to
17 Plaintiffs' Exhibit 1035 and the first bullet
18 point at the bottom of the page where it says
19 "Alamar Ranch."

20 BY MR. BRASSEY:

21 **Q.** Ms. Jeppesen, this is the letter you
22 wrote to Planning and Zoning after Gordon
23 Ravenscroft wrote his letter asking for a
24 secondary ingress and egress, correct?

25 **A.** So this was prior to the Planning and

1 Zoning hearing; is that correct?

2 **Q.** Correct.

3 **A.** Yes.

4 **Q.** What you indicated was "Alamar Ranch
5 plans to widen or replace the existing single-lane
6 bridge that crosses Grimes Creek in order to
7 accommodate traffic."

8 Isn't it true that at the time you
9 wrote this letter the plan was to either
10 completely replace or refurbish that bridge so it
11 would be more than a single-lane bridge?

12 **A.** Like I said, we were looking at a lot
13 of different options. So that was one of the
14 options that was on the table. One of the options
15 was putting two single-lane bridges side by side
16 next to each other so that if one bridge got
17 closed, the other bridge would always be open. So
18 there were a lot of options on the table. So yes,
19 that is one of the things we were looking at.

20 MR. BRASSEY: Let's look at Plaintiffs'
21 Exhibit 1025, page 24. And I want to zoom in on
22 "site development, bridge replacement."

23 BY MR. BRASSEY:

24 **Q.** Ms. Jeppesen, I will represent to you
25 that Mr. Tverdy was here yesterday and talked a

1 little bit about the projected cost for this
2 project. As you can see, one of the costs was for
3 bridge replacement, \$200,000. Do you know where
4 that bridge was going to be?

5 **A. Again, we were looking at the bridge
6 that was existing and either replacing it or
7 putting two bridges side by side.**

8 **Can you tell me where this document is
9 out of, which exhibit it is?**

10 **Q. It is out of the business plan.**

11 **A. The business plan, okay.**

12 **Yeah. So that would probably -- we
13 were looking at that, that particular, the
14 single-lane bridge that currently existed at the
15 bottom of the property there.**

16 **Q. This would indicate to us that at
17 considerable cost to Alamar the bridge was going
18 to be replaced.**

19 **A. Well, replacement can be -- again, we
20 had looked at lots of different options. So
21 replacing it with two single-lane bridges,
22 replacing it with a bigger, wider lane bridge,
23 replacing it with -- so there were lots of
24 different options we were looking at at that time.**

25 **The most important thing is that we**

1 **were really working closely with the Wilderness
2 Ranch Fire Department to make sure that whatever
3 we decided to do met their approval, because they
4 were ultimately the people that needed to sign off
5 on that.**

6 **Q. Ms. Jeppesen, with regard to the e-mail
7 we discussed a little bit ago with -- that you
8 discussed, the e-mail you wrote to Mr. Tverdy in
9 February of 2009.**

10 **MR. BRASSEY: And I believe this has been
11 admitted, Your Honor.**

12 **THE COURT: What is the exhibit?**

13 **MR. BRASSEY: I apologize, we both marked
14 it. It was moved and admitted today by
15 Mr. Woodard.**

16 **THE COURT: Mr. Woodard, do you know the
17 exhibit number?**

18 **MR. WOODARD: I'm not even sure what e-mail
19 he is talking about.**

20 **THE COURT: I think it is critical we not
21 admit multiple copies of the same exhibit just to
22 avoid confusion with the record and the jury.**

23 **MR. BRASSEY: That is what I am trying to
24 avoid, Your Honor.**

25 **THE COURT: I understand that.**

1 **MR. BANDUCCI: You had already offered it
2 through Tverdy.**

3 **THE COURT: 2037 was offered but not
4 admitted. Or at least referenced but not
5 admitted.**

6 **MR. BRASSEY: I think the document that was
7 admitted today, Judge, it's the same document, but
8 I think it was a Plaintiffs' exhibit.**

9 **MR. WOODARD: Just a second.**

10 **MR. BRASSEY: I apologize, Judge, I just did
11 not write that number down.**

12 **MR. WOODARD: It is 1108.**

13 **THE COURT: Yes, it was admitted.**

14 **BY MR. BRASSEY:**

15 **Q. Ms. Jeppesen, this is an e-mail you
16 wrote to Mr. Tverdy that you described to the
17 jury. A fair reading of this e-mail is that
18 around the time that Alamar Ranch project was
19 going to go in, the bottom essentially fell out of
20 the economy and that affected the RTC industry,
21 didn't it?**

22 **A. Yes.**

23 **Q. It affected the RTC industry in that
24 because of the economy, consultants weren't --
25 that you were familiar with and had worked with**

1 for a long time, weren't sending students to
2 high-end projects over \$9,000 because of the cost?

3 **A. No, that is not exactly accurate. What
4 they were doing is requesting that high-end
5 facilities reduce their costs to \$9,000 to help
6 families. So if they were over 9,000 and people
7 would not reduce them, they would not send them,
8 but they were also requesting that people reduce.**

9 **I guess what I heard you say is they
10 were not sending them to high-end facilities and I
11 would say that is not accurate.**

12 **Q. Well, your e-mail says: "Consultants
13 are now saying they won't refer to a program that
14 costs more than \$9,000." And then you indicate
15 "programs have dropped their prices," right?**

16 **A. Correct.**

17 **Q. Were you aware -- were you at the
18 January 28, 2008, Board of County Commissioners
19 hearing?**

20 **A. Yes.**

21 **Q. It was the first commissioner hearing.**

22 **A. For the Alamar Ranch project?**

23 **Q. For the Alamar Ranch. Not Planning and
24 Zoning, the County Commissioners hearing.**

25 **A. Yes.**

1 **Q.** You presented there and I think you
2 talked to us about that.

3 **A.** Yes.

4 **Q.** Prior to that hearing, were you aware
5 that attorneys for Alamar Ranch were negotiating
6 for a potential sale of the Klam Ranch property?

7 **A.** That is privileged information. That
8 was information that I cannot really discuss. It
9 was discussed in an attorney-privileged
10 conversation.

11 MR. BRASSEY: Your Honor, it has been
12 discussed in this trial.

13 BY MR. BRASSEY:

14 **Q.** Ms. Jeppesen, I'm not asking you
15 questions about what you learned from lawyers in a
16 conference, so I don't want you to tell me about
17 lawyer conversations.

18 My question simply is: Prior to the
19 January 28, 2008, hearing, were you aware that
20 discussions were underway for the potential sale
21 of the Klam Ranch property?

22 **A.** Again, my answer to that is it was
23 privileged information.

24 MR. BRASSEY: Your Honor, I think the
25 witness can answer "yes" or "no." Mr. Tverdy has

1 already discussed it.

2 THE COURT: The question, I think, is just
3 whether you were aware the negotiations were
4 underway, without regard to whether an attorney
5 was involved or how they were involved. I don't
6 think that would call for you to disclose
7 attorney-client --

8 MR. WOODARD: Your Honor --

9 THE COURT: Unless Counsel wants to be heard
10 on the matter. I just don't know.

11 MR. WOODARD: I think maybe if he asks a
12 foundational question of if anything she knows
13 about that came from someplace other than from an
14 attorney.

15 THE COURT: Even when an attorney advises an
16 individual, it is not necessarily privileged. It
17 is a question whether it is a communication in the
18 context of the attorney-client relationship,
19 obtaining advice.

20 At this point, I do not see how that
21 would have occurred. Now, perhaps there is
22 something about the arrangement --

23 MR. WOODARD: That is all I am asking is
24 some foundation be laid to make sure that is not
25 the case.

1 THE COURT: Okay.

2 MR. BRASSEY: Your Honor, I think the
3 witness can answer "yes" or "no" whether she knew
4 about it.

5 THE COURT: I am going to instruct the
6 witness -- and Mr. Woodard, you may want to weigh
7 in on this when I get done telling the witness
8 what I am now going to tell her -- what you knew,
9 even if what you obtained, even if the information
10 you obtained was from an attorney, it is not
11 necessarily privileged unless it was part and
12 parcel of a communication in which you were
13 obtaining legal counsel and they were providing
14 you with legal advice. So simply knowing
15 something from an attorney is not by itself
16 privileged. Now, we may get into something that
17 is privileged. I assume Mr. Woodard would be
18 quick on his feet and interpose the objection if
19 necessary at that time.

20 But I think this question is probably
21 not privileged or does not call for you to reveal
22 privileged information. I appreciate your concern
23 and you are acting appropriately and being very
24 careful not to disclose privileged communications,
25 but simply knowing that there was a discussion or

1 a negotiation underway would not, in my mind,
2 invade that privilege. So I am going to direct
3 you to answer.

4 Mr. Woodard, if you feel --

5 MR. BRASSEY: Judge, I'm not trying to --

6 THE COURT: I know you are not.

7 I think you can answer the question
8 "yes" or "no," did you know that?

9 THE WITNESS: Did I know that they -- I'm
10 sorry, can you just ask me the question one more
11 time.

12 BY MR. BRASSEY:

13 **Q.** Sure.

14 Again, Ms. Jeppesen, I'm not trying to
15 get into privileged data. But my question is:
16 Were you aware that either prior to or on the day
17 of the first County Commissioner hearing,
18 January 28, 2008, that discussions had been held
19 between individuals with regard to the potential
20 sale of the Klam Ranch property?

21 **A.** I was aware there were discussions
22 about should the property be sold or not.

23 **Q.** Thank you.

24 Ms. Jeppesen, would it be fair, in your
25 work with RTCs, you deal with some adolescents and

1 kids that are disabled for a variety of reasons,
2 correct?
3 **A. Yes.**
4 **Q.** Would it be fair to say that your
5 knowledge base and understanding of the Fair
6 Housing Act is just a general understanding of the
7 act?

8 **A. Are you asking if I know it kind of in
9 the legal terms, is that what you are asking me?**

10 **Q.** Correct.

11 **A. I would say that --**

12 MR. WOODARD: Your Honor, I did not ask her
13 about the Fair Housing Act. It seems outside the
14 scope. I don't have a problem with that if we are
15 going to release her when we are done. But I
16 didn't talk to her at all about the Fair Housing
17 Act.

18 THE COURT: Do you intend to recall? If you
19 are going to go beyond the direct examination or
20 the scope of the direct examination, I generally
21 allow that for the convenience of the witness, but
22 only with the understanding you will not recall
23 her.

24 MR. BRASSEY: I will withdraw the question,
25 Your Honor. She now lives in Boise and bluntly, I

1 thought she was still in Utah until this morning.
2 I will withdraw the question.

3 THE COURT: Okay.

4 BY MR. BRASSEY:

5 **Q.** Do you know when the Green Ranch
6 application was withdrawn?

7 **A. I don't remember the exact date that we
8 withdrew it. I don't remember the exact date, no.**

9 **Q.** Ms. Jeppesen, with regard to the
10 personnel that were going to be on-site, you
11 mentioned there would be people available who had
12 first aid and some emergency response training; is
13 that right?

14 **A. That is correct.**

15 **Q.** When you say "some emergency response
16 training," what does that mean?

17 **A. One of the things we wanted to do,
18 again, was to give something back to the
19 community. One of the concerns we heard over and
20 over and over is that the ambulance up there works
21 a lot with volunteers or primarily by volunteers.
22 So we were going to do some incentives for our
23 employees to become EMT certified so that they
24 could not only provide those services if needed at
25 Alamar Ranch, but could also provide some help**

1 **with the ambulance and the local ambulance
2 facility there.**

3 **As far as requirements, they would be
4 required to have basic CPR and first aid. We
5 would also have a nurse on staff as well so that
6 we could handle kind of minor emergencies, medical
7 emergencies.**

8 **Q.** So it was one of your goals and one of
9 the things you indicated to the community with
10 regard to people you had on-site, you wanted to
11 have some people who were essentially trained as
12 EMTs?

13 **A. Yes. We wanted to, and again, that was
14 so we could work with the community. Our
15 requirement would be that they were first aid/CPR
16 certified, but we wanted to also incentivize them
17 to be EMTs as well, although we were not going to
18 require that of them.**

19 **Q.** When you say "incentivize," is that by
20 more money?

21 **A. That would be we would pay for the
22 course.**

23 **Q.** Right. A lot of employers, if an
24 employee will better himself or herself, some
25 places, employers in Boise, pay for kids to go to

1 Boise State, right?

2 **A. I don't know. But we were willing to
3 pay for the course.**

4 **Q.** With regard to Life Flight, one of the
5 things that Alamar was willing to do was to
6 provide a site for Life Flight and medical
7 emergencies, for Life Flight from St. Luke's and
8 Saint Al's, correct?

9 **A. Yes. We agreed we would provide a spot
10 for them to land.**

11 **Q.** So whatever requirements they had for
12 that landing spot, I assume Alamar Ranch would
13 have been willing to do.

14 **A. Well, my understanding of our agreement
15 is, my understanding of the talks we had with
16 Wilderness Ranch Fire Department, all we needed to
17 provide was just a basic spot for them to land.
18 It was not the FAA, Chicago Air for a landing
19 strip on Klam Ranch; it was just simply to provide
20 a cleared area where they could land.**

21 **Q.** Well, you agreed to provide a landing
22 zone that was suitable to Life Flight for
23 St. Luke's and Saint Al's?

24 **A. Right. And you are asking me what my
25 understanding of that was, which was that we**

1 provided just a spot for them to land that was
2 cleared that would be safe.

3 **Q.** No, I did not ask you that.

4 I just want to make sure it is clear to
5 the jury that what Alamar Ranch agreed to do was
6 provide a site that was suitable and met the needs
7 of Life Flight of St. Luke's and Saint Al's.

8 **A.** As per our understanding of what that
9 need was, yes.

10 **Q.** Ms. Jeppesen, with regard to the letter
11 that you sent to Planning and Zoning in response
12 to Gordon Ravenscroft's correspondence, that was
13 sent to Planning and Zoning, but as near as I can
14 tell from the letter, it wasn't provided to Gordon
15 Ravenscroft. Do you know if it was?

16 **A.** I don't know. We sent all of -- most
17 of our correspondence through the Planning and
18 Zoning. So I don't know if it was given to him or
19 not given to him. I would assume that it was
20 given to him, but I don't know for sure.

21 **Q.** When you met with Sheriff Roeber, was
22 that literally the day he was sworn in?

23 **A.** I don't remember, to be -- I don't
24 remember what day it was. It was fairly
25 shortly -- it might have been the day he was sworn

1 in. It was fairly close to that time period.

2 **Q.** If it was, it would be fair to say he
3 was fairly new on the job; would that be a fair
4 statement?

5 **A.** Yes, that would be a fair statement.

6 **Q.** Okay.

7 MR. BRASSEY: Your Honor, give me a minute.
8 I think I am done.

9 Your Honor, that is all I have. Thank
10 you, Ms. Jeppesen.

11 THE COURT: Redirect.

12 MR. WOODARD: No, Your Honor.

13 THE COURT: You have none?

14 You may step down.

15 THE WITNESS: Do I give this back to you?

16 THE COURT: Just leave it there. Perhaps,
17 Ms. Huang, if you could give that to Ms. Gearhart.
18 Call your next witness.

19 MR. BANDUCCI: Call Terry Day.

20 THE COURT: Mr. Day, if you would please
21 step forward here around counsel table and step in
22 front of Ms. Gearhart, she will place you under
23 oath and direct you from there.

24 TERRY DAY,
25 having been first duly sworn to tell the truth,

1 was examined and testified as follows:

2 THE CLERK: Please take a seat in the
3 witness stand.

4 Please state your complete name and
5 spell your last name for the record.

6 THE WITNESS: Terry Charles Day, D-A-Y.

7 THE COURT: You may inquire of the witness.

8 MR. BANDUCCI: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. BANDUCCI:

11 **Q.** Good afternoon, Mr. Day. We have met
12 before. My name is Tom Banducci and I represent
13 Plaintiffs in this action.

14 Are you currently a commissioner, sir?

15 **A.** Yes, I am.

16 **Q.** How long have you been a commissioner?

17 **A.** Four years next month.

18 **Q.** So that means you were elected in 2006
19 or to serve as of January 2006?

20 **A.** I believe elected November 2006 and
21 sworn in 2007, I believe.

22 **Q.** All right. Are there districts in
23 Boise County?

24 **A.** Yes; we have three districts.

25 **Q.** Which district are you in?

1 **A.** District 1 is the Idaho City-Mores
2 Creek area.

3 **Q.** Your district includes Osprey
4 Subdivision?

5 **A.** Yes, it does.

6 **Q.** You live in Clear Creek Subdivision;
7 isn't that true?

8 **A.** That is correct.

9 **Q.** Now, your election committee for 2006,
10 that included a certain lady by the name of
11 Lynette Robich, correct?

12 **A.** That is correct.

13 **Q.** She was your treasurer?

14 **A.** That is correct, sir.

15 **Q.** Another person on your election
16 committee was a certain man named John McCain,
17 correct?

18 **A.** That is correct.

19 **Q.** Now, within the first year in office is
20 it true you made an effort to clean up some of the
21 backroom politics that had been going on in Boise
22 County?

23 MR. BRASSEY: Your Honor, I object. I think
24 it is irrelevant.

25 THE COURT: I don't know if it is or not. I

1 am going to give Mr. Banducci some leeway, but
2 let's tie it in or else move on.

3 MR. BANDUCCI: Certainly, Your Honor.

4 BY MR. BANDUCCI:

5 **Q.** Is it true, sir, that shortly after you
6 arrived as a commissioner that you accused your
7 two fellow commissioners, Lawson and Zimmer, of
8 cutting a behind-closed-doors deal relative to the
9 new sheriff?

10 MR. BRASSEY: Your Honor, I am going to make
11 the same objection.

12 THE COURT: I am trying to avoid sidebars.
13 I think this was a subject of a motion in limine.

14 MR. BANDUCCI: I don't believe it was, Your
15 Honor.

16 THE COURT: I know about the issue and I'm
17 not sure how. I assumed it was in a motion in
18 limine.

19 It needs to be tied in to something
20 relevant to this proceeding. At first blush, it
21 does not -- I am going to give Counsel some
22 leeway, but if it doesn't tie in, I will instruct
23 the jury to disregard the testimony.

24 Mr. Banducci.

25 MR. BANDUCCI: Thank you, Your Honor.

1 BY MR. BANDUCCI:

2 **Q.** Well, Mr. Day, is it your view of Boise
3 County politics that Boise County government
4 should be transparent?

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

6 **Q.** In other words, the decision-making
7 process that occurs at the Boise County
8 Commissioner level should not be hidden from the
9 constituency, true?

10 **A.** That is correct.

11 **Q.** That was your major concern when
12 Ms. Zimmer and Mr. Lawson, in your view, cut a
13 backdoor deal relative to the appointment of a
14 sheriff, correct?

15 MR. BRASSEY: Your Honor, I would make the
16 same objection.

17 THE COURT: Continue, but it is subject to
18 the same caution.

19 MR. BANDUCCI: Thank you, Your Honor.

20 THE WITNESS: No, sir; that is not entirely
21 a true statement.

22 BY MR. BANDUCCI:

23 **Q.** Well, weren't you concerned that what
24 was going on between Lawson and Zimmer relative to
25 this new sheriff was not being done in accordance

1 with the rules that apply to Boise County
2 Commissioners?

3 **A.** No, sir. Ms. Zimmer had nothing to do
4 with that.

5 **Q.** Just Mr. Lawson?

6 **A.** Yes, sir.

7 **Q.** Did you file a complaint against
8 Mr. Lawson with the Idaho Attorney General?

9 **A.** Yes, I did.

10 **Q.** The reason you did that was because you
11 believed that Mr. Lawson was behaving
12 inappropriately in that deals were getting cut
13 behind closed doors and, therefore, Boise County
14 Commissioner business was not being transparent to
15 the people of Boise County --

16 MR. BRASSEY: Judge.

17 BY MR. BANDUCCI:

18 **Q.** -- correct?

19 MR. BRASSEY: Excuse me.

20 I am going to object to any
21 continuation. I think Counsel has made his point.
22 So I am going to object. I think it is irrelevant
23 to this proceeding.

24 THE COURT: Let's proceed. I don't want to
25 discuss this. I think this is an area that

1 clearly needs to be discussed at sidebar.

2 MR. BANDUCCI: I will come back to it
3 tomorrow if you wish to argue --

4 THE COURT: Let's move on. Perhaps we can
5 meet tomorrow morning at 8:15 and discuss the
6 issue further and see how it all ties together.

7 MR. BRASSEY: Thank you, Judge.

8 MR. BANDUCCI: That's fine, Your Honor.
9 Thank you.

10 BY MR. BANDUCCI:

11 **Q.** Now, when did you first become aware of
12 Alamar?

13 **A.** I would have to -- I would guess in
14 2007, maybe late 2006.

15 **Q.** How did you become aware of the Alamar
16 project?

17 **A.** Probably talk on the street or public
18 notice in the newspaper for hearings.

19 **Q.** Were there discussions in your
20 neighborhood out in the Clear Creek Subdivision
21 about Alamar?

22 **A.** No, sir.

23 **Q.** None?

24 **A.** I had no discussions. I don't know
25 whether there was discussions or not.

1 **Q.** Were you aware of the sentiment that
2 existed among your neighbors relative to the
3 Alamar project?

4 **A.** I was aware of a lot of sentiment in
5 both aspects of Alamar.

6 **Q.** My question was specific to the
7 neighbors in Clear Creek. Were you aware of the
8 sentiment of your neighbors in the Clear Creek
9 Subdivision?

10 **A.** No, I wasn't.

11 **Q.** You had no idea what position they had
12 on the Alamar project?

13 **A.** Individually I had like one person
14 would say, "Hey, I hope that goes through. We
15 need the jobs." Individually another one might
16 say, "I hope that doesn't go through. We don't
17 need the development." Not as a discussion matter
18 with the population in Clear Creek.

19 **Q.** You had some discussions beforehand
20 with Clear Creek people?

21 **A.** No, sir.

22 **Q.** Somebody would walk by and say that to
23 you?

24 **A.** It happens all the time, Mr. Banducci.

25 **Q.** Did you have conversations, say, with

1 your wife about her view of the Alamar Ranch
2 project?

3 **A.** No, sir; I don't bring business home.

4 **Q.** So, did you know her position?

5 **A.** We never discussed it.

6 **Q.** Did you discuss it before it became
7 your business?

8 **A.** I'm sorry, sir, I don't understand.

9 **Q.** Did you discuss Alamar Ranch with your
10 wife before it became your business as a
11 commissioner?

12 **A.** No, sir.

13 **Q.** Did you ever come to learn of your
14 wife's position on Alamar Ranch?

15 **A.** I believe it was yesterday with the
16 slide up here.

17 **Q.** That was the first time you understood
18 your wife's view of the Alamar Ranch project; is
19 that what you are telling this jury?

20 **A.** She never expressed any view to me.

21 The first -- I guess what I am trying to say is
22 when I seen her name on the board, that surprised
23 me.

24 **Q.** But that is not my question. I'm not
25 asking whether you were surprised to see your

1 wife's name on the board. My question to you is:
2 Are you telling this jury that the first time you
3 learned your wife was opposed to the Alamar
4 project was yesterday?

5 **A.** She has never -- yes.

6 MR. BRASSEY: Your Honor, if I might. I
7 think he is talking about opening statements. He
8 wasn't in the courtroom yesterday.

9 MR. BANDUCCI: I will stipulate to that.

10 THE COURT: All right.

11 BY MR. BANDUCCI:

12 **Q.** So what was your first official
13 involvement in the Alamar project?

14 **A.** I would assume you would be talking
15 about the board of county commissioners were
16 notified that an appeal had been filed due to the
17 P & Z Commission's action previous in summer of
18 2007.

19 MR. BANDUCCI: Can the witness be supplied
20 with Exhibit 1048. That is already in evidence,
21 Your Honor.

22 THE COURT: I'm sorry. The number again?

23 MR. BANDUCCI: 1048.

24 BY MR. BANDUCCI:

25 **Q.** Now, what is before you, sir, is the

1 decision and order of the Planning and Zoning
2 Commission relative to Alamar. You read that
3 decision, did you not?

4 **A.** Yes, sir.

5 MR. BANDUCCI: Can we go to page 10.

6 Actually, let's go towards the front. One page at
7 a time. Keep going. I want to get to the last
8 page of the main decision, Kathy. There we go.

9 BY MR. BANDUCCI:

10 **Q.** Now, would you agree with me, Mr. Day,
11 that this decision and order does not contain
12 reasons for denying the Alamar CUP application?

13 **A.** Well, number one, I can hardly read it
14 because of the size. I don't know that for a
15 fact. I know it was a denial based on a tie with
16 the P & Z Commission.

17 **Q.** If you need time to read this again, I
18 will certainly afford you the opportunity.

19 MR. BANDUCCI: Can we publish the deposition
20 of Terry Day. This is deposition No. 1.

21 THE COURT: Thank you. If you would provide
22 that to Ms. Gearhart, I will ask Ms. Gearhart to
23 publish the deposition of Mr. Day.

24 THE CLERK: The videotaped deposition of
25 Terry Day, taken July 17, 2009, is published.

1 THE WITNESS: Thank you.
 2 BY MR. BANDUCCI:
 3 **Q.** Now, Mr. Day, what I am going to do is
 4 I'm going to ask you to open this deposition.
 5 Well, before we do that, do you recall me deposing
 6 you on July 17, 2009?

7 **A.** Yes, sir.

8 **Q.** When you were deposed, before you
 9 answered the questions I asked you, you took an
 10 oath, correct?

11 **A.** That is correct, sir.

12 **Q.** It is the same oath, indeed, you took
 13 just before you took this stand, correct?

14 **A.** I believe it was the same oath.

15 **Q.** Now, let's go to page 72. And at the
 16 bottom of page 72 -- let me know when you get
 17 there.

18 **A.** I am at page 72.

19 **Q.** At the bottom of page 72 --
 20 MR. BANDUCCI: Kathy, is that even visible?

21 MR. BRASSEY: Your Honor, I'm sorry, I
 22 object. Is it the Court's custom to put
 23 depositions --

24 THE COURT: I permit that, but I would ask
 25 Counsel to have a chance to look at it. You run

1 into the same problem, it has to be true
 2 impeachment. It really needs to be determined and
 3 be clear before we start and before I allow it to
 4 be published. I did permit that as a way just to
 5 inform the jury as to what is being read. But it
 6 needs to be limited only to that portion that is
 7 being used for impeachment.

8 MR. BANDUCCI: Thank you, Your Honor.

9 THE COURT: Again, Mr. Brassey, I will give
 10 you the same opportunity.

11 BY MR. BANDUCCI:

12 **Q.** At the bottom of page 72, line 24 --

13 THE COURT: If it is not readable to the
 14 jury, it is not going to make a lot of difference
 15 anyway.

16 BY MR. BANDUCCI:

17 **Q.** Line 24. "Can you take a look at this
 18 document" -- you know what, let's back up to line
 19 17 so we can find out what "this document" is.

20 THE COURT: And in virtue or consistent with
 21 the doctrine of completeness, Mr. Brassey, if
 22 there is some additional portion that you feel
 23 needs to be read to the jury as well, you will be
 24 allowed to publish that to the jury as well.

25 MR. BRASSEY: Thank you, Your Honor.

1 BY MR. BANDUCCI:

2 **Q.** Starting at line 17: "You testified a
 3 minute ago that this vote by the Planning and
 4 Zoning Commission ended in a tie. Do you recall
 5 that?" You answered: "Yes."

6 "Okay. And do you recall that as a
 7 result of the tie, the application was denied?"
 8 You answered: "Yes."

9 "Okay. Now, can you take a look at
 10 this document and identify for me the conclusions
 11 reached by the Planning and Zoning Commission for
 12 the denial -- in support of the denial," and then
 13 there was some colloquy between counsel.

14 MR. BRASSEY: Judge, there were some
 15 objections made.

16 THE COURT: I think the objection was -- I'm
 17 not sure it was an objection, just a question of
 18 whether he wanted to read the entire document. If
 19 there is an objection, we will need to address
 20 that, Mr. Banducci.

21 MR. BANDUCCI: Well, then let's continue
 22 through this. If the colloquy --

23 MR. BRASSEY: Your Honor, I will waive the
 24 objection.

25 BY MR. BANDUCCI:

1 **Q.** Let's at least read the first two lines
 2 of the colloquy. Mr. Brassey says: "You want him
 3 to read the whole document?" And I say: "Well,
 4 if he has to he can, but I think he can probably
 5 get to it pretty quickly."

6 The answer to my question is at line 24
 7 and you say: "It's not in this document."

8 I say at line 25: "It's not in that
 9 document?" Your answer is: "Not as far as I
 10 know."

11 Was that your testimony when I took
 12 your deposition?

13 **A.** Yes. I guess I'd have to go back to
 14 your original question. The problem is I cannot
 15 read the document on this screen, Mr. Banducci.

16 THE COURT: Counsel, just so we do not waste
 17 time going back and forth --

18 THE WITNESS: It's a blur and so I can't
 19 answer.

20 THE COURT: Just a moment, Mr. Day.

21 THE WITNESS: I'm sorry, sir.

22 THE COURT: If there is an issue, we are
 23 very close to the end of the day, Mr. Day can
 24 review the document and then on cross we can cover
 25 this in more detail. But it is clear that the

1 witness at that time, similar to today, is not
2 intimately familiar with the document to the point
3 where he can immediately answer the question. So
4 I think we can just move on.

5 BY MR. BANDUCCI:

6 **Q.** To finish with this question, Mr. Day,
7 when I asked you that question and gave you the
8 opportunity to read the Planning and Zoning
9 decision and order, you could not find reasons to
10 support the decision for the denial, correct?

11 **A.** That's correct.

12 **Q.** Thank you.

13 MR. BANDUCCI: Now, if the witness could be
14 directed to page 10 of Exhibit 1048.

15 BY MR. BANDUCCI:

16 **Q.** Mr. Day, I can relate to small print.
17 So if you would like a copy, a hard copy, for
18 going forward in examination, I am sure we can
19 provide you one.

20 THE COURT: Ms. Huang, I think, can get a
21 copy of it unless Ms. Gearhart has it.

22 MR. BANDUCCI: I think that might be easier,
23 Your Honor.

24 THE COURT: Sometimes I think electronics
25 helps us, but sometimes in the courtroom it can

1 get in the way of kind of orderly presentation.
2 Documents with small print it is particularly
3 problematic.

4 THE CLERK: Was that Exhibit 1048?

5 MR. BANDUCCI: Yes, it is. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: But again, to help the jury out,
8 if there is particular portions of the document
9 you are going to refer to, I think we should bring
10 those up on the screen and large enough so the
11 jury can read them.

12 MR. BANDUCCI: We will, Your Honor.

13 BY MR. BANDUCCI:

14 **Q.** Now, I am going to direct you to page
15 10. So that you are reading the same copy or the
16 same page I am, it should be entitled "Summary by
17 Planning and Zoning Commissioners who voted to
18 approve the Alamar application." Are you there?

19 **A.** This is on page 10 or the document
20 itself?

21 **Q.** Well, it is actually --

22 **A.** This is a decision and order.

23 **Q.** I think it is page 11 of the document
24 you had. At the top it should say "Statement by
25 Planning and Zoning Commissioners."

1 **A.** Yes.

2 **Q.** Found that? Okay, good.

3 Now, there are three commissioners
4 identified at the top of that as the authors of
5 this statement: Jonathan Bart, Clint Evans, and
6 Jack Kane. Do you consider all three of those
7 commissioners both experienced and competent
8 Planning and Zoning administrators, correct?

9 **A.** Yes, I do.

10 **Q.** Did your understanding after reading
11 this document that these three experienced and
12 competent Planning and Zoning Commissioners
13 believed that the Planning and Zoning Commission,
14 who voted against the Alamar application, were not
15 supported by the law or by the record?

16 **A.** There again, sir, I know they was in
17 disagreement. I don't know if it was in support
18 of the law or not without reading the summary.

19 **Q.** Let's go ahead then and let's take a
20 look at the part of the first page that is
21 entitled "Summary." And it says: "Three P & Z
22 Commissioners who voted against the Alamar
23 application on the basis that the County
24 infrastructure cannot support Alamar, that
25 conditions could not be enforced, and that the

1 specific site was unsuitable. The third concern
2 could be addressed by suggesting another site and
3 thus cannot be used as a basis for denying the
4 application."

5 That last statement, "The third concern
6 could be addressed" by identifying another
7 location is a statement that you agree with, true?

8 **A.** I agree with it as much as I respect
9 their opinion and I can see it is there. I can
10 read it now.

11 **Q.** Well, don't you believe that it is
12 P & Z's responsibility, if they perceive the site
13 to be unsuitable, that they should address that
14 right up front when the application is initially
15 filed?

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

17 **Q.** You do? You agree with that?

18 **A.** I believe that is usually taken care of
19 when the application is originally filed.

20 **Q.** So your agreement with that statement
21 isn't just because what they say, you agree with
22 that because that is what you understand, too?

23 **A.** I understand that is the normal
24 procedure.

25 **Q.** All right. Let's keep going. "We

1 analyzed the first two concerns and find that
2 there is no support for them in the public record.
3 On the contrary, none of the heads of Boise County
4 government opposed the application. These people
5 are in a better position to judge the impact on
6 their programs than are P & Z Commissioners."

7 You agree with that statement, don't
8 you?

9 **A. Not entirely.**

10 MR. BANDUCCI: Can the witness be presented
11 with his deposition.

12 THE COURT: Is it the same volume?

13 MR. BANDUCCI: It is the same volume.

14 Rather than spend the time on that, I
15 am going to continue and then I will have a copy,
16 Your Honor.

17 THE COURT: So we will take that up tomorrow
18 morning. Go ahead.

19 BY MR. BANDUCCI:

20 **Q.** Let's continue with that paragraph:
21 "We should accept their judgment unless strong
22 evidence is presented, showing that they are
23 wrong. No such evidence was presented in this
24 case. Furthermore, the applicants have shown
25 themselves willing to accept any reasonable

1 condition and examination of the suggested
2 conditions shows that they can be monitored to
3 ensure compliance. The lack of objections from
4 County government, the willingness of the
5 applicant to work with the County to ensure that
6 adverse effects are avoided, and the lack of
7 factual evidence from any other source showing
8 that Alamar would cause adverse effects all
9 indicate that the Alamar application should be
10 approved."

11 Now, when you read this summary, did
12 you conclude -- or after you read the entire
13 statement, did you conclude that P & Z had failed
14 in its responsibilities to base its decision on
15 the record because if it had, it would have
16 granted the CUP application?

17 **A. I did not consider that because it was
18 already deemed to be a denial, so there was no
19 reason for me to analyze both sides of it. I know
20 the three commissioners we just discussed put out
21 a very good case and positive aspects for the
22 ranch.**

23 **Q.** This was appealed to the commission,
24 correct?

25 **A. This was an appeal that was forthcoming**

1 **months down the road and this was part of the
2 record of that appeal.**

3 **Q.** This was an appeal to the commission.
4 And the decision of Planning and Zoning would be
5 the first place you would look to see whether or
6 not Planning and Zoning's decision was properly
7 made, correct?

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

9 **Q.** So after looking at this statement, did
10 you conclude that, indeed, the Planning and Zoning
11 Commission had, number one, failed to articulate
12 reasons for denying the CUP as required by Boise
13 County zoning ordinance; is that true?

14 **A. No, sir. I -- the denial was based on
15 a tie vote. It was nothing --**

16 **Q.** I am talking about the rationale,
17 Mr. Day. We just read your deposition where you
18 testified under oath that when you, at least at
19 the deposition, that upon review of the Planning
20 and Zoning Commission's decision, you did not find
21 the rationale for that decision. Do you remember
22 that? Do you remember us reading that?

23 **A. Yes.**

24 **Q.** So did you conclude after reading this
25 statement that the Planning and Zoning committee

1 had failed in its responsibilities to decide the
2 Alamar application based on the law and the
3 record?

4 **A. I would have to say yes.**

5 **Q.** Thank you.

6 MR. BANDUCCI: Now, let's go down to the
7 second paragraph and we are going to highlight the
8 last third -- actually, Ms. Savell, seven lines
9 up.

10 BY MR. BANDUCCI:

11 **Q.** Now, Mr. Day, behind you you will see
12 where I am looking so you can tie that to the
13 document.

14 **A. I have it here, too.**

15 **Q.** Okay. About seven lines up from the
16 bottom there is a sentence that starts out, it
17 says, "We present these." Do you see that?

18 **A. Yes, sir.**

19 **Q.** You got that?

20 **A. Yes.**

21 **Q.** It says: "We present these arguments
22 with some hesitation, knowing how strongly many of
23 our friends and neighbors oppose about the Alamar
24 application."

25 Do you see that?

1 **A. Yes, I do.**
 2 **Q.** Did you ever have any conversations
 3 with Mr. Kane or Mr. Bart or Mr. Evans as to why
 4 they actually hesitated to make this statement
 5 because of the strong feelings among their
 6 neighbors?

7 **A. No, sir.**
 8 **Q.** Did you have neighbors with really
 9 strong feelings against Alamar?

10 **A. I couldn't identify one.**
 11 MR. BANDUCCI: Your Honor, we are actually
 12 at a pretty good breaking point right now.

13 THE COURT: Your timing is perfect, since it
 14 appears to be 2:30 on the dot.

15 Ladies and gentlemen, we will take the
 16 evening recess and reconvene again tomorrow
 17 morning at 8:30.

18 I will again admonish you to follow the
 19 Court's admonition I gave to you on the first day
 20 of the trial. You are not to discuss the case
 21 among yourselves or with anyone else. And in
 22 addition, you are not to visit any location
 23 mentioned in the testimony. Do not listen to any
 24 radio, television or news accounts or newspaper
 25 accounts of the matter. Do not consult any

1 reference materials, do not visit any Websites
 2 that may relate to this case. Simply put the
 3 matter out of your mind, do not even think about
 4 it until tomorrow morning. We will pick it up
 5 again at 8:30 tomorrow morning.

6 Counsel, I will be here at 8:15. If
 7 there is an issue we need to address, we will take
 8 it up at that time.

9 We will be in recess until 8:30
 10 tomorrow morning.

11 (Court recessed at 2:32 p.m.)

1 REPORTER'S CERTIFICATE

2
 3
 4
 5 I, Lisa K. Yant, Official Court
 6 Reporter, County of Ada, State of Idaho, hereby
 7 certify:

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

13 That the foregoing transcript, pages 585
 14 to 670, contains a full, true, and accurate record
 15 of the proceedings had in the above and foregoing
 16 cause, which was heard at Boise, Idaho.

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

19
 20
 21 _____
 22 -s-
 23 Lisa K. Yant
 24 Official Court Reporter
 25 CSR No. 279

1 REPORTER'S CERTIFICATE

2
 3 I, Tamara I. Hohenleitner, Official
 4 Court Reporter, State of Idaho, does hereby
 5 certify:

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

11 That the foregoing transcript, pages 393
 12 to 584, contains a full, true, and accurate record
 13 of the proceedings had in the above and foregoing
 14 cause.

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

17
 18
 19
 20 _____
 21 -s-
 22 Tamara I. Hohenleitner
 23 Official Court Reporter
 24 CSR No. 619
 25

<p style="text-align: center;">\$</p> <p>\$12,000 [1] - 613:9 \$200,000 [1] - 633:3 \$7,500 [1] - 616:9 \$9,000 [4] - 543:8, 636:2, 636:5, 636:14</p>	<p>416:25, 417:3, 417:4, 418:22, 500:20, 524:8, 527:22 1040 [3] - 416:17, 416:22, 417:5 1042 [1] - 398:6 1044 [2] - 627:20, 628:2 1048 [6] - 413:2, 413:3, 655:20, 655:23, 661:14, 662:4 1053 [7] - 391:18, 443:3, 443:8, 443:16, 443:18, 471:25, 472:5 1058 [1] - 398:7 1067 [1] - 398:6 1068 [1] - 398:6 1072 [7] - 391:19, 582:8, 582:10, 583:2, 585:5, 585:9, 604:3 1076 [1] - 461:17 108 [3] - 607:23, 608:3, 608:8 1084 [3] - 435:2, 435:7, 435:10 1091 [1] - 398:5 1096 [1] - 398:6 10th [1] - 436:13 11 [5] - 416:20, 481:5, 519:25, 521:24, 662:23 11-5 [4] - 542:12, 542:15, 543:15, 543:21 1104 [1] - 398:6 1108 [5] - 391:20, 534:2, 534:12, 534:14, 635:12 1176 [1] - 398:6 1178 [1] - 398:6 1179 [1] - 398:6 1181 [1] - 414:25 1184 [1] - 562:15 1195 [4] - 391:20, 455:15, 455:17, 456:7 12 [12] - 414:25, 415:2, 436:8, 512:21, 521:23, 522:6, 522:13, 523:1, 523:13, 542:12, 600:7, 601:4 12,000 [2] - 543:16 125 [3] - 615:22, 616:1, 616:5 1253 [1] - 480:23 13 [1] - 414:25 14 [1] - 606:3 15 [13] - 414:11, 493:15, 521:8, 584:12, 584:18, 599:14, 599:19, 599:23, 599:25, 601:4, 618:2, 626:20, 627:21</p>	<p>15-minute [2] - 584:7, 584:9 150 [1] - 436:8 16 [9] - 474:3, 485:10, 485:11, 600:9, 601:4, 615:13, 623:8, 623:14 16-bed [1] - 485:13 160 [1] - 436:8 17 [4] - 656:25, 657:6, 658:19, 659:2 17th [4] - 424:22, 425:15, 441:2, 570:16 18 [1] - 616:5 1871 [1] - 437:4 18th [2] - 458:2, 460:23 19 [2] - 559:8, 622:22 1983 [4] - 437:3, 437:19, 438:7, 439:16 1:09-CV-00004 [1] - 389:3</p>	<p>543:3, 612:4, 615:13, 634:9, 656:25, 657:6 201 [1] - 473:22 2010 [5] - 389:18, 393:2, 545:24, 671:18, 672:15 2015 [5] - 392:5, 473:22, 473:23, 474:3, 474:6 2016 [4] - 392:5, 473:23, 474:6 2019 [6] - 391:21, 513:6, 513:7, 513:14, 513:16, 604:17 2025 [5] - 392:6, 407:18, 408:14, 408:17, 408:19 2026 [3] - 562:22, 562:25, 625:9 2028 [2] - 621:19, 621:22 203 [1] - 390:18 2037 [2] - 534:4, 635:3 2058 [6] - 392:6, 568:25, 569:14, 569:15, 572:6, 572:9 208-342-4411 [1] - 390:11 208-342-4455 [1] - 390:11 208-344-7077 [1] - 390:20 208-344-7300 [1] - 390:20 21 [1] - 464:6 21/88 [1] - 464:4 215 [2] - 462:5, 462:10 22 [1] - 477:3 22nd [2] - 535:17, 541:15 230 [1] - 392:14 24 [22] - 434:3, 562:18, 611:23, 612:1, 612:2, 612:11, 612:14, 612:17, 612:20, 614:9, 617:24, 618:11, 619:7, 619:19, 620:11, 620:21, 625:7, 625:16, 632:21, 658:12, 658:17, 660:6 24/7 [4] - 485:19, 495:20, 503:1, 523:21 24th [1] - 457:18 25 [1] - 660:8 26 [1] - 468:17 27 [1] - 611:6 271 [1] - 392:15 279 [1] - 671:23 28 [4] - 446:13, 636:18, 637:19,</p>	<p>640:18 28th [7] - 409:24, 435:3, 460:21, 460:24, 461:20, 471:18, 475:24 29 [1] - 448:9 2:30 [1] - 669:14 2:32 [1] - 670:11</p>
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