IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

ALAMAR RANCH, LLC, an Idaho limited liability company; and YTC, LLC, an Idaho limited liability company, Plaintiffs, vs. COUNTY OF BOISE, a political subdivision of the State of Idaho, Defendant.	Case No. 1:09-CV-00004 **CLOSING ARGUMENTS** **COURT'S INSTRUCTIONS**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge,

sitting with a jury.

DAY 9, December 16, 2010

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1 P R O C E E D I N G S
2 Thursday, December 16, 2010
3 (Jury absent.)
4 JURY INSTRUCTIONS CONFERENCE
5 THE COURT: We're now going to conduct the
6 formal instruction conference somewhat informally.
7 The court has provided counsel with a set of
8 instructions numbered 1 through 20. There were
9 some changes made in the last iteration that you
10 were just given. I assume you've reviewed those.
11 They were very minor, I think.
12 Ms. Huang, do you want to -- is counsel
13 aware of that? I mean, I think we talked about
14 the changes. I think we changed or added an
15 element on the interference claim.
16 LAW CLERK HUANG: 16.
17 THE COURT: Which is 16. We added or
18 changed the language, kind of the causation
19 language on the -- also on the interference claim.
20 And I think that may have been all.
21 LAW CLERK HUANG: I believe there was a
22 minor change to 14.
23 MR. WOODARD: Fourteen.
24 THE COURT: That's right. We changed 14 and
25 the corresponding question 5, I think, on the

1 verdict form.
2 So you're aware of that?
3 MR. HOWELL: Yes.
4 MR. WOODARD: Yes, Your Honor.
5 THE COURT: All right.
6 Now, Counsel, this is your opportunity
7 to state your formal objections to the record. I
8 would remind you -- formal objections to the
9 instructions on the record.
10 I would remind you that all of our
11 other discussions, which have gone on over the
12 last two or three days, was not on the record, so
13 if there is anything that you've stated during
14 those informal sessions that you want to now
15 restate to ensure that it's on the record, you
16 need to restate that at this time.
17 Starting with the plaintiffs, would you
18 state your objections to the court's proposed
19 charge to the jury.
20 MR. WOODARD: Yes, Your Honor. Our only
21 objection is, we object to all the instructions we
22 requested but were not given.
23 THE COURT: All right.
24 MR. WOODARD: We object to the fact that
25 they weren't given.

1 THE COURT: All right. From the defense,
2 what objections do you have?
3 MR. HOWELL: Your Honor, the defense also
4 would object to all instructions that were offered
5 by the defense and not given.
6 We would also object, Judge, to,
7 specifically, Instructions 13, 14, 15, 16, 17, and
8 18, and any corresponding changes that would need
9 to be made on the special verdict form based upon
10 our requested instructions.
11 And I'll just note for the record,
12 Judge, with respect to the interference claim,
13 No. 16, that we believe there should be an added
14 element dealing with -- that the -- that there was
15 a motivation to discriminate, some sort of intent
16 element that we discussed informally.
17 THE COURT: All right. With regard to that,
18 I would note that we discussed that informally.
19 The Ninth Circuit authority suggests that that
20 provision is to be applied broadly and to include
21 all practices which have the effect of interfering
22 with the exercise of rights under the Fair Housing
23 Act, and for that reason I did not include a
24 discriminatory animus element.
25 But I think it, in effect, tracked

1 closely with the statute through the three
2 elements that we set forth there. But I
3 understand the objection. It's certainly an issue
4 which perhaps the Ninth Circuit can clarify
5 through the -- through an appeal in this case if
6 that becomes necessary.
7 Any other specific objections you want
8 to note?
9 MR. HOWELL: On No. 18, Your Honor, with
10 respect to damages, I think that that could
11 promote a double recovery as drafted. But we have
12 again also talked about that informally --
13 THE COURT: All right.
14 MR. HOWELL: And I understand and agree that
15 we have discussed it.
16 THE COURT: All right. The court was
17 concerned in Instruction No. 18 that by including
18 not only past and future lost business
19 opportunities, but also the reasonable costs
20 incurred in developing the project, there is a
21 risk of a double recovery if the jury does not
22 ensure that those reasonable costs incurred in
23 development are not picked up twice in any damages
24 they may award.
25 However, as a factual matter, that's

1 already been developed through the defendant's
2 expert; and in addition the instruction begins its
3 statement of what damages may be considered with
4 this language, simply, "In determining the amount
5 of damages, if any, that should be awarded Alamar,
6 you may consider," and then there is a list. It
7 doesn't say that these should be awarded
8 specifically, but only that these are factors to
9 be considered.
10 I have indicated that if counsel were
11 to argue that a double recovery is appropriate, I
12 would certainly sustain an objection since that
13 would be inconsistent with the law.
14 But I think we have covered it with the
15 instructions, and you can deal with the issue
16 through your arguments.
17 Any other specific objections you want
18 to note for the record?
19 MR. HOWELL: Just the last thing -- well,
20 no. That's it, Your Honor.
21 THE COURT: All right.
22 MR. HOWELL: Thank you.
23 THE COURT: Counsel, we'll charge the jury
24 as we have indicated. I'll overrule any of the
25 objections that have been made.

1 It's a novel area of the law, to some
2 extent, not a lot of assistance, and we have had
3 to extrapolate from Title VII and ADA and other
4 areas of the law.
5 I understand counsel's concerns, and
6 we'll let the Ninth Circuit sort that out if that
7 becomes necessary, if an appeal is filed. All
8 right.
9 Counsel, hopefully we can start by
10 9:30. So we'll try to start at that time. My
11 guess is we'll go from 9:30 until roughly quarter
12 to 11:00 or close to 11:00, with my reading of the
13 instructions, Mr. Banducci's opening, and then
14 we'll take a ten-minute recess, then start with
15 the defendant's closing, plaintiffs' rebuttal, and
16 then my final charge -- which you don't have, but
17 they're all stock Ninth Circuit instructions, just
18 to tell the jury how to get started. All right.
19 (Recess.)
20 (Jury present.)
21 THE CLERK: The court will now hear Civil
22 Case 09-4-S-BLW, Alamar Ranch, LLC, et al., versus
23 County of Boise, for day nine of jury trial.
24 THE COURT: Good morning.
25 Ladies and gentlemen, as I indicated to

1 you in the jury room, it's one of the few times
2 that we actually start exactly when I thought we
3 would.
4 We have met with counsel, conferred
5 about how to charge the jury. Following those
6 conferences, the court has made a final decision
7 as to how you should be charged.
8 At this time, I'll ask Ms. Huang to
9 hand out to you copies of my instructions so that
10 you can follow along.
11 While those are being passed out, let
12 me just offer kind of a disclaimer. It seems like
13 every time I instruct the jury, no matter how many
14 times I've read the instructions or the attorneys
15 have looked at them, there will be typographical
16 errors or grammatical errors that I will check.
17 I'll try to correct them on the fly. Understand,
18 that's my oversight. It's not intentional. It's
19 just the result of human fallibility as we make
20 those kinds of mistakes.
21 Let me go ahead and begin.
22 The other thing I would note is that I
23 sometimes wander, as I guess I am now, from the
24 script. It's because things will occur to me that
25 should hopefully make these more understandable to

1 you beyond the written words. We try very hard to
2 make the instructions as much in plain English as
3 possible, but of course there are legal terms that
4 have to be used, so that's not always possible.
5 So let me go ahead and begin.
6 JURY INSTRUCTIONS READ BY THE COURT
7 THE COURT: Members of the jury, now that
8 you have heard all the evidence, it is my duty to
9 instruct you on the law which applies to this
10 case. A copy of these instructions will be
11 available in the jury room for you to consult if
12 you find it necessary.
13 Actually, you will be able to take your
14 copy in, so you'll each have your own copy.
15 It is your duty to find the facts from
16 all the evidence in the case. To those facts, you
17 will apply the law as I give it to you.
18 You must follow the law as I give it to
19 you whether you agree with it or not. You must
20 not be influenced by any personal likes or
21 dislikes, opinions, prejudices, or sympathy. That
22 means that you must decide this case solely on the
23 evidence before you. You will recall that you
24 took an oath promising to do so at the beginning
25 of the case.

In following my instructions, you must follow all of them and not single out some and ignore others. They are all equally important. And you must not read into these instructions, or into anything the court may have said or done, any suggestion as to what verdict you should return. That is a matter entirely up to you.

I believe that we gave you a preliminary set of instructions, perhaps even hard copies. I'm going to direct Ms. Huang to collect those from you before you begin your deliberations, so there will be no confusion. The court's preliminary instructions are to be put aside now and use these instructions in reaching your verdict.

The evidence from which you are to decide what the facts are consists of: first, the sworn testimony of any witness; second, the exhibits which have been received into evidence; and, third, any facts to which the lawyers have agreed or stipulated.

In reaching your verdict, you may consider only the testimony and exhibits actually received into evidence. Certain things are not evidence, and you may not consider them in

deciding what the facts are. I will list them for you.

First: Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence; but it is not evidence. If the facts as you remember them differ from the way the lawyers have or will state them, your memory of them must control.

Second: Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the Rules of Evidence. You should not be influenced by the objection or by my ruling upon it.

Third: Testimony that has been excluded or stricken or that you have been instructed to disregard is not evidence and must not be considered. In addition, some testimony and exhibits were received only for a limited purpose. When I have given such a limiting instruction, you must follow it.

And, fourth: Anything you may have

seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did.

Circumstantial evidence is proof of one or more facts from which you could find another fact. You might recall that on the first day of trial I provided an example of the difference, using a hypothetical rain storm as an example about the difference between direct evidence -- that is, what you see -- and circumstantial evidence -- that is, what can be proven indirectly by inference from facts that are proven.

The important part of the instruction, though, continues: You should consider both kinds of evidence. And indeed, the law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

In deciding the facts in this case, you may have to decide which testimony to believe and

which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account the following: first, the opportunity and ability of the witness to see or hear or know the things testified to; second, the witness' memory; third, the witness' manner while testifying -- we sometimes refer to that as their demeanor while on the witness stand; fourth, the witness' interest in the outcome of the case, and any bias or prejudice; fifth, whether other evidence contradicted this witness' testimony; sixth, the reasonableness of the witness' testimony in light of all the evidence; and, seventh, any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

As I previously explained to you, a deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions.

Now, the questions and answers are recorded. And you should consider the deposition testimony that was read to you and presented to you in court in lieu of live testimony as much as possible in the same way as if the witness had been present to testify.

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for those opinions. Opinion testimony should be judged just like any other testimony. You may accept it or reject it. And give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all of the other evidence in the case.

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

The plaintiffs in this case are Alamar Ranch, LLC, and YTC, LLC. And throughout these

instructions, the plaintiffs will be referred to collectively as "Alamar."

The defendant is Boise County.

All parties are equal before the law. And a governmental entity, including a county, is entitled to the same fair and conscientious decision by you as any party.

Likewise, I would add that a limited liability corporation, like Alamar Ranch and YTC, are also entitled to the same fair and conscientious consideration by you as any party.

Alamar brings its claims against Boise County under the Fair Housing Act, or FHA. And I'll refer to it as "FHA." In general, the FHA makes it unlawful to discriminate in the sale or rental of housing or to otherwise make unavailable or deny housing because persons intending to reside in that housing are handicapped.

The FHA applies in this case because it involves a development proposed by Alamar that was intended to house one or more handicapped individuals.

Alamar makes the following three claims under the FHA:

First, that Boise County failed to

provide reasonable and necessary accommodations to Alamar to enable housing for the handicapped;

Second, that Boise County's decision regarding Alamar's conditional use permit was motivated by discrimination;

Third, that Boise County interfered with Alamar's effort to provide housing to the handicapped.

I will now instruct you on the elements that Alamar must prove in order to establish discrimination under each of these claims.

But as an initial matter, I previously instructed you regarding public comments by Boise County citizens opposing the proposed residential treatment center. I will remind you that the statements made by citizens of Boise County cannot be attributed to Boise County.

I further instruct you that Boise County could not prevent its citizens from making public statements about the project without violating those citizens' constitutional rights of free speech.

However, the statements in opposition to the project may be considered by you in determining the effect, if any, which such

opposition had upon the county commission in their decision-making.

The Boise County Board of Commissioners may conduct, outside the presence of the public, an executive session to discuss the legal ramifications of, and legal options for, pending litigation or controversies not yet being litigated but imminently likely to be litigated.

Discrimination made unlawful by the FHA includes, quote, "a refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunities to use and enjoy a dwelling," close quote.

To prove their claim that Boise County failed to make a reasonable accommodation, Alamar must prove by a preponderance of the evidence each of the following elements:

First, that Boise County knew, or should reasonably be expected to know, that one or more persons intending to live in the proposed housing development were handicapped;

Second, that an accommodation was necessary to permit the proposed housing development to be constructed;

Third, that Alamar requested an accommodation;

Fourth, that the requested accommodation was reasonable;

And, fifth, that Boise County refused to make the requested accommodation.

In determining whether Alamar requested an accommodation from Boise County, you are instructed that such a request need not be made in any particular form or at any particular time. However, it must have been made under such circumstances that, first, it was clear to Boise County that Alamar was requesting an accommodation and, second, Boise County had an opportunity to meaningfully review the request to determine whether it was reasonable.

Alamar claims that the fact that their intended residents would have been handicapped was a motivating factor in Boise County's decision on Alamar's conditional use permit, or CUP, application.

Boise County denies this.

To prove their claims, Alamar must prove by a preponderance of the evidence: First, that the conditions imposed by Boise County in

Alamar's conditional use permit application prevented the proposed housing development from being built; and, second, that a motivating factor in Boise County's decision to impose those conditions was that the intended residents would have been handicapped.

If Alamar proves these two elements, you will so indicate on the special verdict form. You will then be guided by the special verdict form to then determine whether Boise County's conduct was also motivated by a lawful reason.

If you find that Boise County was also motivated by a lawful reason, you will then be guided by the special verdict form to determine whether Boise County has proved by a preponderance of the evidence that it would have made the same decision even if the handicaps of the intended residents had played no role in its decision.

When used in these instructions, the term "motivating factor" means a factor that played a part in the county's decision.

Alamar's third claim under the FHA is interference with Alamar's efforts to provide housing to the handicapped. The FHA makes it unlawful for Boise County to coerce, intimidate,

threaten or interfere with persons exercising their FHA rights or aiding the FHA rights of another.

Interference is, quote, "the act of meddling in or hampering an activity or process," close quote. It is broadly applied to include all practices which have the effect of interfering with the exercise of rights under the Fair Housing Act.

To prove their claim that Boise County interfered with Alamar in violation of the FHA, Alamar must prove by a preponderance of the evidence: first, that Boise County knew that Alamar was developing housing for the handicapped; two, that actions or conduct by Boise County interfered with Alamar's efforts to develop housing for the handicapped; and, two [sic], that but for Boise County's actions or conduct, Alamar would not [sic] have been able to proceed with their efforts to develop housing for the handicapped.

Under the law, a governmental entity, including a county, is considered to be a person. It can only act through its employees, agents, directors or officers. Therefore, a governmental

entity is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

An agent is a person who performs services for another under an express or implied agreement, and who is subject to the other's control or right to control the manner and means of performing the services. The other is called a principal.

An agent is acting within the scope of authority if the agent is engaged in the performance of duties which were expressly or impliedly assigned to the agent by the principal. Any act or omission of an agent within the scope of authority is the act or omission of the principal.

It is the duty of the court to instruct you about the measure of damages. In instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If you find for Alamar on one or more of its FHA claims, you must determine what damages, if any, have been proved. Alamar has the burden of proving damages by a preponderance of the evidence. Your award must be based upon

1 evidence and not upon speculation, guesswork, or
2 conjecture.
3 "Damages" mean the amount of money that
4 will reasonably and fairly compensate Alamar for
5 any injury you find was caused by Boise County.
6 In determining the amount of damages, if any, that
7 should be awarded Alamar, you may consider:
8 first, the reasonable value of business
9 opportunities lost to the present time; second,
10 the reasonable value of business opportunities
11 which, with reasonable probability, will be lost
12 in the future; and, third, the reasonable costs
13 incurred in developing the project.
14 Although Alamar has brought three
15 separate claims under the FHA, there are no
16 separate damages associated with any one claim, as
17 they each grow out of the same facts. Hence, if
18 you find that one or more of the claims under the
19 FHA are proven, you may make only one damage
20 award.
21 Any award for future economic damages
22 must be for the present cash value of those
23 damages. "Present cash value" means the sum of
24 money needed now which, when invested at a
25 reasonable rate of return, will pay future damages

1 at the times and in the amounts that you find the
2 damages will be incurred.
3 The rate of return to be applied in
4 determining present cash value should be the
5 interest that can reasonably be expected from safe
6 investments that can be made by a person of
7 ordinary prudence who has ordinary financial
8 experience and skill.
9 You should also consider the -- excuse
10 me. You should also consider decreases in the
11 value of money which may be caused by future
12 inflation.
13 A verdict form has been prepared for
14 your convenience. It is attached to the back of
15 these instructions. If you'll turn to the next
16 page, I'll now review with you the special verdict
17 form.
18 Okay. I am going to make some comments
19 beyond those on the verdict form to help you
20 understand this, but I'm going to primarily just
21 read the verdict form for you.
22 It reads as follows:
23 "In the United States District Court
24 for the District of Idaho.
25 "Alamar Ranch, LLC, and YTC, LLC,

1 Plaintiffs, versus County of Boise, Defendant.
2 "Special Verdict Form.
3 "We, the jury, find unanimously as
4 follows:
5 "Question 1. Have Plaintiffs Alamar
6 Ranch, LLC, and YTC, LLC -- who will be referred
7 to collectively throughout this Special Verdict
8 Form as 'Alamar,' -- proved by a preponderance of
9 the evidence that Boise County knew or should
10 reasonably be expected to know that the person(s)
11 intending to live in the proposed housing
12 development were handicapped?"
13 Your answer is "Yes" or "No."
14 Now, the verdict form then instructs
15 you with the italicized directions as follows:
16 "If you answer Question 1 'No,' skip to
17 Question 5. If you answer Question 1 'Yes,'
18 proceed to Question 2."
19 Question 2 reads as follows: "Has
20 Alamar proved by a preponderance of the evidence
21 that an accommodation was necessary to permit the
22 proposed housing development to be constructed?"
23 Answer, "Yes" or "No."
24 And again, the verdict form instructs
25 you that:

1 "If you answer Question 2 'No,' skip to
2 Question 5. If you answer Question 2 'Yes,'
3 proceed to Question 3."
4 Question 3 reads: "Has Alamar proved
5 by a preponderance of the evidence that it
6 requested an accommodation from Boise County that
7 was reasonable?"
8 Answer, "Yes" or "No."
9 "If you answer Question 3 'No,' skip to
10 Question 5. If you answer Question 3 'Yes,'
11 proceed to Question 4."
12 Question 4 asks you: "Has Alamar
13 proved by a preponderance of the evidence that
14 Boise County refused to make the requested
15 accommodation?"
16 Answer, "Yes" or "No."
17 Again, the instructions are: "If you
18 answer Question 4 'Yes,' you will ultimately
19 answer Question 10 to determine the amount of
20 damages, if any, that Alamar suffered because of
21 Boise County's failure to provide a reasonable
22 accommodation as required by the Fair Housing
23 Act."
24 "Regardless of how you answered
25 Question 4, proceed to Question 5."

Question 5 reads: "Has Alamar proved by a preponderance of the evidence that the conditions imposed by Boise County in the Conditional Use Permit prevented the proposed housing development from being built?"

Answer, "Yes" or "No."

And again, the verdict form guides you as follows: "If you answer Question 5 'No,' skip to Question 9. If you answer Question 5 'Yes,' proceed to Question 6."

Question 6 asks you: "Has Alamar proved by a preponderance of the evidence that a motivating factor in Boise County's decision to impose those conditions was that the intended residents were handicapped?"

Answer, "Yes" or "No."

And the verdict form guides you: "If you answer Question 6 'No,' skip to Question 9. If you answer Question 6 'Yes,' proceed to Question 7."

Question 7 asks: "Has Boise County proved by a preponderance of the evidence that its decision to impose the conditions on the Conditional Use Permit was also motivated by a lawful reason?"

And again, your answer must be either "Yes" or "No."

"If you answer Question 7 'Yes,' proceed to Question 8.

"If you answer Question 7 'No,' you will ultimately answer Question 10 to determine the amount of damages, if any, that Alamar suffered because of Boise County's conduct that prevented the proposed development from being built; for now, skip to Question 9."

Question 8 asks you: "Has Boise County proved by a preponderance of the evidence that it would have made the same decision to impose the conditions on the Conditional Use Permit even if the handicaps of the intended residents of Alamar had played no role in the decision of Boise County to impose those conditions?"

Answer, "Yes" or "No."

The verdict form guides you from there: "If you answer Question 8 'No,' you will ultimately answer Question 10 to determine the amount of damages, if any, that Alamar suffered because of Boise County's conduct that prevented the proposed development from being built.

"Regardless of how you answer

Question 8, proceed to Question 9.

"Question 9: Has Alamar proved by a preponderance of the evidence that Boise County interfered with Alamar's exercise of Fair Housing Act rights or with its aiding the exercise of the Fair Housing Act rights of intended residents?"

Answer, "Yes" or "No."

"If you answer Question 9 'Yes,' proceed to Question 10 to determine the amount of damages, if any, that Alamar suffered because of Boise County's interference with Alamar's exercise of rights under the Fair Housing Act."

Now, I've put a note here, because it is important because of the nature of the verdict form, to understand when you will answer Question 10 and when you will not. And as the note indicates:

"You will only answer Question 10 and award damages to Alamar:

"1. If you answered 'Yes' to Question 4, or

"2. If you answered 'No' to Question 7, or

"3. If you answered 'No' to Question 8, or

"4. If you answered 'Yes' to Question 9."

Then Question 10 asks you: "What damages, if any, has Alamar suffered that were the result of conduct by Boise County? Dollar sign, blank."

And then there is a date line and a signature line for the foreperson.

Now, I think at first blush the verdict form undoubtedly seems very difficult and complex. I would therefore suggest that you go through it several times to understand its layout, and I think it will make much more sense once you have studied it a little bit. It will guide you through the very specific questions that you must answer to return a verdict in this case. And if you follow the instructions carefully, I think you will have no difficulty.

Let me go back now to Instruction 21.

You will take this verdict form with you to the jury room, and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the verdict form which sets forth the verdict upon which you agree. You will then return with your

1 verdict to the courtroom.
2 We will now hear the closing arguments
3 of counsel, after which I will give you a few
4 brief closing instructions.
5 Mr. Banducci, you may make your closing
6 argument to the jury.
7 CLOSING ARGUMENT BY THE PLAINTIFFS
8 MR. BANDUCCI: Thank you, Your Honor.
9 If it please the court; counsel.
10 Ladies and gentlemen of the jury, good
11 morning. Merry Christmas. I suspect you didn't
12 know you would be spending your holidays in a
13 courtroom.
14 But first let me thank you for your
15 attention, your focus. You watch us. We watch
16 you. It happens over the two weeks.
17 And I'm sure I speak for Mr. Brassey,
18 as well: We have tried a significant number of
19 cases between the two of us, and this is a very
20 attentive jury, and you should be credited for
21 that.
22 This is not exactly the most exciting
23 case, as compared to some cases. On the other
24 hand, I think it has some very interesting twists
25 and turns. But you paid attention throughout, and

1 that's what we ask for in this process.
2 I could go on about the rule of law,
3 the wonderful, the incredible right to jury trial.
4 No other country really has this process like we
5 do. And juries are scary, quite frankly. As
6 someone who tries lawsuits in front of juries,
7 sometimes I tell the client, "Well, you know, you
8 work, you work, you work, you prepare, and then
9 you spin the cylinder and you hold the gun to your
10 head, because you don't know what the outcome is
11 going to be."
12 But there is also something else I tell
13 clients before we step into a courtroom in front
14 of a jury, and that is, "I know of no better
15 system for ferreting out the truth."
16 And that's what we're here for today.
17 We're here to find the truth. If the truth that
18 you find is that Alamar should go home without any
19 sort of recompense, then that's the truth you have
20 found.
21 We live, fortunately, in a country that
22 abides by the rule of law. There aren't a lot of
23 countries like us. And what -- we wouldn't be a
24 country that abides by the rule of law if we
25 didn't accept the truth that is found by the

1 people sitting in your seats.
2 Now, this is a daunting task that
3 you're about to undertake. You have just been
4 read a stack of instructions. I will tell you
5 that it's -- by comparison, at least it's not a
6 huge stack of instructions. It's a relatively
7 manageable stack of instructions. And I'm going
8 to take you through some of those instructions,
9 and I'm going to talk to you about the facts that
10 I think respond to the questions that are
11 effectively posed by these instructions.
12 This is just my view. It really means
13 very little. It's not evidence. You've all heard
14 the evidence. You've probably heard all the
15 evidence twice or three times. You probably know
16 these exhibits better than I do at this point.
17 And so I'm not going to spend a lot of time taking
18 you through the exhibits, because you know them.
19 I may refer to an exhibit number. You'll have
20 them in the jury room, and you can look at them
21 there.
22 But I want to take you as quickly
23 through this process as I can. I have been in
24 front of you now for hours, and I hate to wear out
25 my welcome, if I haven't already.

1 So let us start with a few
2 preliminaries.
3 Number one, there are three claims in
4 this case: discrimination, interference, and
5 reasonable accommodation. They are three separate
6 claims. You don't need to find that Alamar has
7 prevailed on all three. You can find that Alamar
8 has prevailed on only one of these claims.
9 Now, the evidence that supports these
10 claims is kind of intermeshed, and I'll take you
11 through two of the claims at once, because I think
12 the discrimination -- the evidence that supports
13 the discrimination claim and the evidence that
14 supports the interference claim are virtually the
15 same.
16 Another preliminary matter --
17 And Kathy, if you'll pull up the first
18 instruction.
19 And you've got these in front of you,
20 so if you want to read along, what you have on the
21 board here is what you have on your lap, or on the
22 bar in front of you.
23 This is Instruction No. 14. This is
24 what we call the discrimination or the
25 discriminatory motive or motivating factor claim.

1 You can call it all sorts of things, but that's
2 what it is.
3 And one thing that's important to know
4 from the outset is really implicit in the first
5 line of this instruction, and it's actually
6 implicit in many of the other instructions, if you
7 look at it -- and I sure hope you do. Because
8 what it will tell you is that it is not an issue
9 that the Alamar kids are handicapped as defined in
10 the Fair Housing Act. You don't need to find
11 that. It's already proven. Okay?
12 So that's important. It's an important
13 threshold issue. These kids are handicapped under
14 the Fair Housing Act.
15 Now, let's take a look at 14 very
16 quickly. It says, "Alamar claims that the fact
17 that their intended residents would have been
18 handicapped was a motivating factor in Boise
19 County's decision on Alamar's Conditional use
20 Permit application."
21 In other words, the fact that these
22 kids were recovering from substance abuse, that's
23 a handicap. That's been found. The fact that
24 they were recovering from substance abuse, we say
25 was what was a motivating factor in the decisions

1 that they made relative to our conditional use
2 permit application.
3 "Boise County denies this.
4 "To prove the claim Alamar must prove
5 by a preponderance of the evidence..."
6 Okay. "Preponderance of the evidence,"
7 what's that?
8 That's the standard of proof we have in
9 civil court. It's not beyond a reasonable doubt.
10 You have all watched Law and Order or Criminal
11 Intent or L. A. Law or Perry Mason, and oftentimes
12 you hear, "Well, we have to prove this beyond a
13 reasonable doubt."
14 That is a heavier burden. If you
15 weighed the scales, the burden is here
16 (indicating), if you would have to prove beyond a
17 reasonable doubt.
18 In civil cases, where we're not putting
19 people in jail, we're awarding damages, it is
20 simply a preponderance of the evidence; in other
21 words, more likely than not; in other words,
22 51/49, just that much, just that much.
23 That is all we need to prove, and it's
24 all they need to prove, to win. In other words,
25 if we prove our claim by a preponderance of the

1 evidence, then you must find for Alamar. If they
2 prove by a preponderance of the evidence that
3 Boise County should be absolved of liability, they
4 win.
5 Now, the elements that we must prove by
6 a preponderance of the evidence is [sic]: One,
7 that the conditions imposed by Boise County in
8 Alamar's conditional use permit application
9 prevented the proposed housing development from
10 being built; and, two, that a motivating factor in
11 Boise County's decision to impose those conditions
12 was that the intended residents would have been
13 handicapped.
14 If Alamar proves those two elements,
15 you must indicate on the verdict form. If you
16 find that Boise County's conduct was also
17 motivated by a lawful reason, then you have to go
18 back. It's kind of -- you follow that jury
19 verdict form.
20 But basically, the bottom line in this
21 is that you must determine that, as it says in
22 Exhibit 14 -- or Instruction 14, "whether or not
23 Boise County has proved by a preponderance of the
24 evidence that it would have made the same decision
25 even if the handicaps of the intended residents

1 had played no role in the decision."
2 That's their burden.
3 Now, let's go to the next instruction,
4 motivating factor. It only needs to be "a"
5 motivating factor, not "the" motivating factor.
6 It's just a factor that played in the county's
7 decision.
8 Next.
9 Now this is interference. Interference
10 is just what it sounds like. The Fair Housing Act
11 makes it unlawful for Boise County to coerce,
12 intimidate, threaten or interfere with persons
13 exercising their Fair Housing Act rights or aiding
14 the Fair Housing Act rights of another.
15 That's what we were doing. We were
16 aiding the fair housing rights acts of the
17 residents. We were the developer who was going to
18 develop that facility for the disabled, for the
19 handicapped.
20 And you have heard here that we are --
21 as a developer, we are protected by the Fair
22 Housing Act. If developers weren't protected by
23 the Fair Housing Act, there wouldn't be housing.
24 So the question is this: Did Boise
25 County know that Alamar was developing housing for

1 the handicapped? That's item 1.
2 And "the actions or conduct by Boise
3 County interfered with Alamar's efforts to develop
4 the housing for the handicapped; and, three, that
5 but for Boise County's actions or conduct, Alamar
6 would have been able to proceed with the efforts
7 to develop housing for the handicapped."
8 Kathy, let's go to the next slide.
9 This is the evidence. These are the
10 categories of evidence.
11 Now, I start with --
12 Your Honor, if I could have the ELMO
13 just on for a moment.
14 THE COURT: Yes.
15 Ms. Gearhart, if you would.
16 MR. BANDUCCI: I start with --
17 THE COURT: Except that I think we want to
18 change the polarity.
19 MR. BANDUCCI: Oh, yes.
20 THE COURT: I think that's for x-rays, and I
21 don't think that's an x-ray. I can make the
22 change if I can get to it.
23 It's not the lamps. It's the image
24 that's there. There. Sorry. My apologies. But
25 now you're probably going to have that menu screen

1 there for a moment.
2 MR. BANDUCCI: There we go.
3 Ladies and gentlemen of the jury, I'm
4 going to start right here. Hang on for just a
5 second.
6 This is a Jeri Kirkpatrick email. Can
7 you see it?
8 "Another piece of conversation. At the
9 P & Z administrator's training held a couple of
10 weeks ago for Idaho counties, Idaho's land use
11 attorneys were stating in this training that if a
12 county has a CUP process, they can't really deny,
13 but what they legally can do in Idaho is place
14 enough conditions on the CUP that the project is
15 not profitable and this forces them to move
16 somewhere else.
17 "The comment was made the county may
18 have to approve the CUP, but we don't have to
19 ensure there is a project. Some positive
20 statement made, I haven't talked to anyone who
21 wants Alamar. The commissioners are taking this
22 very seriously, and they are reading everything.
23 "My distinct impression from this
24 conversation is that if the commissioners do
25 approve Alamar's CUP, there will be multiple

1 conditions placed on it. Some comments made about
2 conditions were a significant limit to the number
3 of beds, a security piece such as 24-hour security
4 guards to help alleviate the neighbors' concerns,
5 and others I can't think of right now."
6 Why is this email significant?
7 Well, of course, it's outrageous that
8 this would be communications from the Planning and
9 Zoning administrator to the opponents of Alamar.
10 But it's important for another reason. I think
11 it's much more important for the second reason.
12 And that is, it gives us a glimpse behind the veil
13 of secrecy that was placed on the decision-making
14 process by the commission, and I think it gives us
15 an honest glimpse.
16 Because, you know what? That all came
17 true. If there was something in that email that
18 didn't happen ultimately, I would say, "Well, you
19 know, this was a lot of speculation and talk."
20 But it all came true.
21 I'm going to read you the testimony of
22 Terry Day taken in this trial, his answer in front
23 of you. I asked him toward the very end of his
24 testimony:
25 "[Question:] So then a county could

1 approve something and impose as many conditions as
2 they could dream up, make the project
3 unprofitable, and avoid liability under the
4 Fair Housing Act; correct?"
5 "Answer: Theoretically, I guess they
6 could."
7 That shows motivating factor. What was
8 the motivating factor for these conditions? It
9 was to impose as many conditions as they could
10 dream up, including the reduction of students --
11 Kathy, can we go back one?
12 Your Honor, can we switch?
13 -- to drive Alamar out of Boise County,
14 conditions never before imposed on a subdivision
15 or a CUP. Paved roads, maintained 24/7, 365 a
16 year; nowhere else in Boise County, no
17 subdivision, no CUP.
18 A second bridge. A helipad that had to
19 meet FAA requirements. A fire truck, fire house
20 and trained personnel.
21 Did you hear any testimony that there
22 was any other subdivision or CUP in Boise County
23 that had to meet those conditions? No.
24 Reduced population; a reduced
25 population to 24. We'll talk about that in a

little more detail in a minute.

The fact is, there is no other subdivision or CUP in Boise County that has had to have its residents reduced, its parcels reduced, the number of houses reduced, to conform with the CUP, to conform with the subdivision ordinance.

Now, all of this was imposed on top of 22 conditions we had already agreed to at the P & Z level. And I say this because it makes the imposition of those conditions I just talked about even more outrageous.

We had agreed to a 300,000-gallon water tank. We had already proposed a secondary egress road approved by Wilderness Ranch Fire District. You heard John McCarthy testify that it was compliant with International Fire Code.

Sprinklered housing. Firewise systems, including a buffer. And building the houses with fire retardant materials. Paying for emergency services in excess of a 37-home subdivision.

In other words, we are really going to be lower impact than a 37-house subdivision. Why? Well, we're paying for all the schooling. If we go above the impact on services of a normal 37-house subdivision, we pay for it. We agreed to

that. No problem.

The conditions imposed without basis in the record or authority of law. There is nothing in the Boise County Comprehensive Plan, nothing in the Boise Zoning and Planning Ordinance, that allows you to reduce a population. Terry Day testified to that.

The required paved roads.

They talked about imposing the road on Alamar that was agreed to at the Planning and Zoning hearing. You remember all the testimony that was talked about: "Well, you agreed, didn't you?"

"Didn't JoAnn Butler and didn't Hethe Clark agree to a separate road?"

They didn't agree to a separate road with paving. They didn't agree to a road with paving, that would be more dangerous in the winter, and a whole lot more expensive. There is nothing in the record that requires a paved road.

Unusual conduct engaged in by commissioner and county officials.

They overrode the Fire District. They overrode John McCarthy. Remember, I spent time talking to Terry Day about the reasons that could

be cited to for overriding the decision of a county agency. That was in the separate opinion written by Kane, Evans and Bart in conjunction with the Planning and Zoning decision.

They said there must be a strong burden.

The strong burden that Terry Day talked about was that he knew the ground. He had no expertise in International Fire Code and, frankly, he said he didn't care whether it met code or not.

Required a sheriff impact statement.

You heard Sheriff Roeber say he has never had to provide an impact statement on a residence -- residential area, subdivision, CUP, except Alamar, before or since.

The conditional use permit was considered in executive session.

You know, I have to bring that up right now, because I think, executive session, yes, if you think you're going to be in litigation with someone, fine.

But does that mean you drag the entire use application process into executive session so nobody knows what's going on behind the veil?

Extremely unusual; and Terry Day

testified it hadn't happened in any other context that he was aware of.

Scripted conditions at the deliberation hearing.

They brought a script into the hearing and they read it into the record. You folks go look at the transcript for March 10th, and you get Exhibit 1086, and you'll realize that the first 27 conditions are verbatim of the first 27 conditions that are read into the record.

Now, we can't find the next version of that script. I think there is one. Because condition 28 in the transcript is a very long, wordy condition, and 1086, the script, doesn't even have a condition 28.

We don't know where that went. It was not a part of the record, which is another unusual, odd thing. If they're going to use a document to actually impose conditions on a conditional use, it should be a part of the public record.

Sensitive information on deliberations was leaked to the opposition.

Linda Zimmer testified that that gave an unfair advantage to the opposition.

1 Coaching the opposition to load up
2 conditions at the hearing.
3 Actually, that is Exhibit 1068. I'll
4 let you look at that. But you may remember, this
5 is the one where Jeri Kirkpatrick actually tells
6 the opponents of Alamar that Patti Burke is asking
7 for help in loading up the conditions at the
8 public hearing. And as I pointed out in the
9 examination of Linda Zimmer, lo and behold, what
10 appears in the script are the conditions requested
11 by the opponents.
12 And perhaps the most unusual is that
13 the opponents had an insider. Remember the email
14 that talks about TOTSRU, T-O-T-S-R-U, "the one
15 that shall remain unnamed."
16 I find that to be not the rule of law.
17 This is not the way we run our country, is it?
18 Where somebody is on the inside of a government,
19 handing out information? It sounds like a banana
20 republic law to me.
21 Other evidence of discriminatory
22 intent.
23 Mr. Day's comments. First, he said,
24 "My position is the same as the opponents."
25 Linda Zimmer admitted that, "The

1 opponents are, not in my backyard."
2 The reference to Stalag 17.
3 You know, Mr. Day said that he thought
4 that it was just for levity. It was just -- he
5 felt like he needed to lighten things up.
6 Maybe so. But what he was doing was he
7 was inviting that stereotype. If that was funny,
8 it was funny because the opponents sitting in the
9 hall, listening to it, agreed that that was
10 exactly what these kids were. They were kids that
11 belonged in a prison camp, with light towers and
12 folks with Nazi helmets.
13 That's not funny. But even if it is
14 funny, it's only funny to people who believe in
15 that stereotype, and a commissioner is inviting
16 that stereotype.
17 I'm not going to comment for long about
18 the whole Terry Day comments about, you know,
19 coming in and using excessive force and a taser or
20 chemical spray on a kid, and then having fear that
21 there is going to be a lawsuit.
22 He finishes that statement -- I hope
23 you heard it -- "That's likely to happen."
24 Well, that's a stereotype. That's the
25 type of stereotype he agreed he was to prevent

1 from invading the decision-making process.
2 He compared kids to toxic waste. Take
3 a look at Exhibit 1000, Section 6-6. That is a
4 toxic waste, hazardous substance section of the
5 ordinance. And he was saying -- he was bemoaning
6 the fact that there wasn't an analogous section
7 for kids.
8 A statement made within earshot of Amy
9 Jeppesen, unrebutted. You all heard it. She
10 walked up to shake his hand after the hearing and
11 heard him say, "Well, you know, I guess we showed
12 them. They won't be coming back to Boise County,"
13 or words to that effect.
14 What does that show?
15 Motivating, discriminatory intent, and
16 interference with our rights to a fair process.
17 Ms. Zimmer. You can see it right in
18 the transcript. She was reducing the population
19 to 12 because she thought it wouldn't be, quote,
20 "so devastating on the opponents." She is
21 considering the NIMBY opponents. She has
22 characterized them as NIMBY, and she is appeasing
23 them by dropping the number to 12.
24 I think the biggest thing that
25 indicates discriminatory animus is that the

1 decision doesn't breathe a word of the Fair
2 Housing Act.
3 I started this discussion pointing out
4 the fact that it's just not even an issue for you,
5 to decide that these kids are covered by the Fair
6 Housing Act. These folks issued a decision that
7 doesn't mention the Fair Housing Act.
8 Why not?
9 My view is because if they had to
10 mention the Fair Housing Act, they would have to
11 jump through those hoops. They would have to talk
12 about reasonable accommodation. They would have
13 to talk about why their decision is not
14 discriminatorily motivated. And they just
15 couldn't do it because it was.
16 Public clamor was a motivating factor
17 in the decision-making process.
18 The P & Z Commissioners said they
19 hesitated to issue their statement because they
20 were concerned about how strongly held the
21 opinions and views were of their friends and
22 family, or neighbors. These are -- you know, one
23 of them is a retired Army general. He is still
24 concerned about that fervor.
25 Linda Zimmer's hesitation. I know she

said she didn't get up and say that she thought there should be more than 24. I know she said that she thought Project PATCH was just -- kids were the same as Alamar, and that Project PATCH was a great place, with really no problems; three kids over a ten-year period. She didn't say anything about it.

Well, I think part of that has to be getting up in front of a crowd that is so angry that the people who presented there for Alamar would be afraid for their safety.

Now, let's go to Exhibit 12 or instruction 12.

Very quickly, we're going to talk about reasonable accommodation. This is the reasonable accommodation instruction.

"Discrimination was made unlawful by the Fair Housing Act. It includes a refusal to make a reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

"To prove the claim" -- "must show the following elements: That Boise County knew, or

should reasonably be expected to know, that one or more persons intending to live in the proposed housing development were handicapped."

Of course. That's exactly what we told Mr. McNeese. McDonald told McNeese that; no question about. McNeese, on the stand, called to testify, he had no idea. Of course, not.

"[Question:] Did McNeese talk about accommodation in the hearing?"

"[Answer:] Of course, he did."

Did Mr. Day, when I read him from the brief, read to him from the brief about the definition of "handicapped," I said, "Did you understand that that applied to kids?"

He said, "Yes."

They reasonably understood that these were handicapped kids.

"...an accommodation was necessary to permit the proposed housing development to be constructed; that Alamar requested an accommodation; that the requested accommodation was reasonable; and that Boise County refused to make the requested accommodation."

Let's go to the next slide.

I'll take you through the facts that

show that.

First, an accommodation was requested.

The CUP application requested the county to accommodate a 72-bed facility for disabled students; and, by the way, agreed to 22 conditions that went above and beyond what normal requirements for a CUP or subdivision would require, in order to minimize or eliminate its impact on the county, including, as I said before, reimbursing the county for impacts above and beyond a 37-home subdivision, and would pay the costs of all these other things: the school, fire plan, egress road, Firewise, 300,000-gallon tank. None of the other subdivisions are required to do that. But we agreed to do that so that we could get approval.

We -- Alamar imposed a lesser impact than a 37-house subdivision; and yet there are subdivisions of that size all over Boise County.

So our request for accommodation is reasonable. We were actually asking for a grant of our request that is less impact than a 37-home subdivision.

In order for the proposed use to be constructed, according to the terms of the CUP, it

was necessary for the county to accommodate our request on the basis of the 72-bed facility.

Rather than accommodate, the county piled on. Although the county has accommodated subdivisions of 37 or more with fewer conditions, the county refused to accommodate and instead added costly conditions: a costlier and less safe road, fire truck, fire house, trained personnel, helipad; but most importantly, of course, they reduce Alamar's revenue stream by two-thirds.

At the hearing on January --

Let's go to the next slide.

At the hearing on January 28th, and in its briefing, Alamar reminded the county of its duties under the Fair Housing Act and requested accommodation or a delay in ruling so that the county could engage in an interactive process regarding the requested accommodation.

Instead, the county entered a final order imposing conditions that killed the project. And, ladies and gentlemen, there is no evidence that the county would have reconsidered its final order even if there was a process for reconsideration.

The question that keeps getting put to

you: Well, why didn't you go back and ask?
Why didn't they ask again?
Take a look at that takings analysis, where it basically says: The use approved is 24. If you want to use it for anything else, find another use.
That's not the response of a commission that is inviting an interactive process.
Now, I'm going to move over here -- Your Honor, is this mike live?
THE COURT: I think if you're on -- don't you have the lavaliere mike on?
MR. BANDUCCI: I can. I can.
THE COURT: If you want to leave it on, we can probably deaden the mike at the lectern, so you won't need to worry.
MR. BANDUCCI: Okay.
THE COURT: Put it on your tie, seems to work the best.
MR. BANDUCCI: Thank you.
THE COURT: It's a lovely tie clip.
MR. BANDUCCI: How am I doing?
THE COURT: Very well.
MR. BANDUCCI: All right. Thank you.
You know -- I'm just checking my time.

I started to think about the responses to that evidence, and I'm not sure why this popped into my head, and I hope you don't mind the analogy. But I started to think of a yard sale. And I don't know how many of you people go to yard sales. Obviously, this is not the time for yard sales. It's too cold out.
But in the spring, you know, lots of people, they go down into the basement, they pull out the stuff they can't use, the stuff that has very little value, their junk, and they put it out on their front lawn and they try to sell it to you.
And that's what I feel is happening here in this courtroom with Boise County. I think they're putting on a yard sale. And so, what I've done here is I've kind of -- I would like to take you on a tour of the yard sale.
The first place I would like to have you go with me really has to do with the primary response to a lot of what has been advanced by our side, Alamar, and is a response that is basically, "Gosh, we didn't know." It's a -- you might call it the Sergeant Schultz defense. You might call it the head in the sand defense.

But when you accumulate this many things that they didn't know, and -- it starts to get a little odd. It starts to get a little questionable, and you wonder whether or not they are feigning ignorance.
So here is the list of "I don't knows."
"I didn't know."
"I didn't know 'final' meant 'final.'"
"I didn't know the roads were paved."
You know, I think it's really interesting -- and you can look at this, ladies and gentlemen, and write this down: Conditions -- excuse me -- page 10 of decision 10- -- in 1088, the decision. When we asked Mr. Day about the paved road, he said, "Oh, that's a mistake."
Then we asked Mr. Lawson. "Oh, that's a mistake."
And we showed him the ordinance he had signed, and it said it was paved. He still said it was a mistake.
They both said, "Well, what about dust abatement? You know, you wouldn't have dust abatement if it was going to be paved."
Then I asked Ms. Zimmer, and I showed her the takings analysis where it actually says,

"a collector road that shall be paved," and she says, "Well, it's a mistake. And why would they have dust abatement?"
I'm now going to read to you from the decision they signed, at page 10. It's toward the bottom.
"However, to assure adequate access for emergency vehicles, the bridge and the roads must be constructed as PCU collector roads" -- those are the paved ones -- "to comply with the International Fire Code 2006 standards. Alamar agrees to repair and restore Grimes Creek Road. However, to maintain the public health while the repairs are conducted, dust abatement must be taken at the developer's expense and must comply with state and federal air quality standards."
That was why there is dust abatement in there. It's not to be used to substantiate a mistake.
The roads were dangerous. Terry Day admitted -- and this is his quote in the -- no, this is John McCarthy's quote: "A paved road in the winter for a fire truck is worse than no road at all." That's the one that the county required us to build.

Alamar's road plan exceeded IFC.
"I didn't know that."
"I didn't know that housing for disabled is a Boise County Comprehensive Plan objective."
Remember, I asked Mr. Day to go to the housing section. He took the position that the application should be denied because it was not in compliance with the comprehensive plan. The only thing that was lacking from the comprehensive plan is, you could have put Alamar's name in there, that it was part of the comprehensive plan to build Alamar. It was a private investment for housing for the disabled. That's what Alamar is.
"I didn't know my wife signed that petition."
I didn't know my friends, neighbors, family and supporters were opponents of Alamar."
Please.
"I disagreed with statements in the decision."
This decision, read it. It talks about loss of value in property. All three of those commissioners testified they didn't believe that there was reliable evidence about reduced value

property -- values in property.
It's in the decision. It's the basis for reducing the size of Alamar.
The same thing with, "I don't think there is reliable evidence that the kids will run away and commit crimes." It's a basis for the decision for reducing the size of Alamar.
"I didn't know Alamar asked for a reasonable accommodation."
Look at the briefs. Look at the transcript.
"I didn't know Alamar asked for a provisional ruling."
Look at our rebuttal brief.
"I didn't know 'fire suppression vehicle' meant fire truck."
We spent time with Mr. Day, trying to get him to say, "Well, I really didn't mean anything really expensive; just an old brush truck will do."
Well, there is nothing in the decision and order that says "old brush truck."
"We should have included the script in the record."
"I didn't know we should have included

the script in the record. We're just a public body" -- required to disclose, really, everything.
And it's a public body that Terry Day wants to make transparent? There is nothing transparent about this.
"You could have" -- "I didn't know you could violate the FHA that way."
Well, that's exactly what Terry Day said. "I figured if you could impose" -- "I figured you could impose whatever you want, just as long as you grant the permit. We didn't need to care whether or not you could actually build the project."
If you read those instructions, it will tell you the exact opposite.
But here is the big whopper. This is the big item. I call it the big whopper because if they actually admitted to this, this trial would have lasted a day and we would have all gone home. The big whopper: "I didn't know that it would drive Alamar out of business if we took away two-thirds of its revenue."
Now, set aside the fact that we told Tim McNeese that. Mr. McDonald made it clear that 72 was necessary therapeutically and financially.

Take away the fact that our opponents' lawyers told us that 72 was needed to be profitable. That's Dennis Charney. Take away the fact that the opponents of Alamar knew that 24 would likely kill the project. That's what Jeri Kirkpatrick's testimony was. They didn't have the financials. Dennis Charney didn't have the financials. That's their runaway. "We didn't have the financials. How could we know?"
And yet when I asked Mr. Day, I said, "Just take the tuition times 12, times the 48 beds that you're eliminating."
You can't take $5.76 million out of a business plan and expect that that's going to work fine. That shows discriminatory intent. But that's an, "I don't know." That's the only thing they can say. "We just didn't know. Golly."
Now, let's go to the next stop in our yard sale. This one is, "We were just looking out for the kids' safety."
Now, I put the word "kids'" in quotes here because that is a term that was used by counsel. I have a lot of respect for Andy Brassey. He is a really good lawyer. He is probably the only one who would refer to the

1 Alamar students with that endearing term. That's
2 a term of endearment. They're kids, like our
3 kids.
4 They were not looked at as kids by the
5 opponents of Alamar. They were looked at as a
6 nuisance. They were looked at as potential
7 criminals that should be put in the prison.
8 So this position, "We were just looking
9 out for the kids' safety" is perhaps more
10 transparent than the way they ran their
11 government.
12 I have to ask myself, if they were
13 watching out for the kids' safety at Alamar, what
14 about the kids in the subdivisions?
15 Alamar had a 300,000-gallon tank, fire
16 retardant structures, fire hydrants -- I'm missing
17 a few things -- oh, a secondary egress that was
18 International Fire Code approved.
19 The subdivisions have 10- to 12,000
20 gallon tanks. Some of those secondary egress
21 roads have trees grown up in the middle of them.
22 What about those kids? If this was
23 really about safety, why aren't they taking care
24 of the safety of the children in the subdivisions?
25 That's why the -- this is -- this is a

1 hollow, hollow, piece of yard sale merchandise.
2 "We didn't understand that the
3 Wilderness Ranch Fire District plan" -- they
4 didn't get it. They obviously didn't understand
5 that John McCarthy, who I think was a really
6 pretty impressive witness, had taken into
7 consideration anything and everything that could
8 happen there.
9 He took care of rock slides, took care
10 of the fact that the road went through a low fuel
11 area. He took care of the fact that if there was
12 going to be a fire, the fire in the area of Alamar
13 would just be a low brush fire that would
14 extinguish quickly, and the safest place to be was
15 indoors.
16 What did Boise County want?
17 Boise County wanted a paved road that's
18 dangerous in the winter, going out through the
19 forest, which John McCarthy nixed because then
20 you're driving out -- your egress is out through
21 the place where the fire is.
22 That's not watching out for the safety
23 of the kids.
24 And I talked about a dangerous and
25 expensive alternative.

1 I think that's the end of this. It is.
2 Last but not least, "You didn't ask us
3 to accommodate."
4 Well, let me count the ways. We told
5 McNeese we needed 72.
6 Look at the hearing on January 28th.
7 Dan McDonald requested an accommodation.
8 The briefing requests an accommodation.
9 In the rebuttal brief, we sought delay of a final
10 order.
11 Mr. Lawson testified that a final order
12 could be delayed and a conversation could be had.
13 There could be accommodation.
14 What did we get?
15 We got a final order. The final order
16 could be appealed to the court. The final order
17 could be tested as a taking. We did that.
18 And you know what we got back. We got
19 back: "You can use it for 24 or some other
20 allowed use. If you need to use it for another
21 allowed use, you need to file another conditional
22 use permit."
23 This is also hollow. They haven't put
24 an iota of evidence on that would suggest they
25 would have accommodated us, even if we came back

1 after the final order.
2 Let me put it this way, folks: The
3 decision doesn't even mention the Fair Housing
4 Act. If you're taking the position that the Fair
5 Housing Act doesn't apply, why would you even
6 honor a reasonable accommodation process?
7 The reasonable accommodation process
8 comes up under the Fair Housing Act. I'm sure you
9 all know that by now.
10 Boise County, in their decision and
11 order, was ignoring the Fair Housing Act in its
12 decision. Now, they're coming back and saying,
13 "Oh, well, gee, you should have followed that
14 process."
15 We did. But I think it's, again,
16 duplicitous.
17 Now, I have a little bit of time left.
18 I'm going to let Mr. Brassey have his time with
19 you. But before I sit down, I'm going to ask a
20 question. This is the question that I think needs
21 to be answered by Boise County, and that is: How
22 could they not know? How could they not know that
23 reducing our population by two-thirds, knowing the
24 tuition, how could they not know?
25 THE COURT: Thank you, Mr. Banducci.

As we discussed earlier, we'll take a 10- or 15-minute recess at this time, and then come back and hear the closing arguments from the defense, and a rebuttal argument from the plaintiffs, and then finally my final instructions.

Ladies and gentlemen, again, I'll admonish you not to discuss the case among yourselves or with anyone else, nor should you form or express an opinion about the case until it is submitted to you.

We'll have the jury commissioners up to take a lunch order. The plan would be to have lunch brought in 12:30, 1:00, so you can have that as you begin your deliberations. We'll be in recess for 15 minutes.

(Recess.)

(Jury present.)

THE COURT: I'll note for the record that all jurors are present.

Mr. Brassey, you may make your closing argument to the jury.

CLOSING ARGUMENT BY THE DEFENDANT

MR. BRASSEY: Thank you, Your Honor.

May it please the court, Counsel,

Mr. Oaas, ladies and gentlemen.

We appreciate your time and effort on this jury. In this country, the jury system is a wonderful system. I've been trying jury cases since 1977. It seems like a long time ago, mostly, I guess, because it is.

One thing I've found out about juries, they're all different, and, for the most part, they do the right thing. And I think the reason that is -- I, actually, sat on a jury one time a few years back. And I think the reason is because when you go back in the jury room, you sit with each other, you talk about it. You recall the facts, as you saw or heard them, and my experience is, most of the time, again, you do the right thing.

Counsel mentioned we're near Christmas. I would point out to you it's only the 16th and, by my standards, shopping days haven't really even started yet, so you have plenty of time. And by the way, my wife loves yard sales.

But having said that, it's a big responsibility, not just for me, but for Mr. Banducci. We've known each other a long time. It's a big responsibility for us, on behalf of our

clients, and we take that seriously. One thing I would like to say, if there's anything I've said -- and in a trial this long, usually say something or you go back to your office at night, and I'll say to John, "John, why didn't you tell me not to ask that, tell me not to say that." You always do something that you think, I wonder why I thought that was a good idea at the time.

But if I've done or said something or, more likely, I haven't asked a question or somebody hasn't explained something, don't hold it against the county. So lawyers in situations like this do their best, try to present their case to you, but, hopefully, nothing that I've done you would hold against the county.

We're here -- it seems like a long time. It has been almost two weeks. In my opening statement, I told you we're here because there's a dispute. That's why we're always here. But there's a dispute as to the facts and there's a dispute in this case as to what happened.

So what we tried to do was present the commissioners to you, who are they, they're part-time folks: One who lives in Horseshoe Bend, Linda Zimmer; Terry Day, who lives outside of

Idaho City; Fred Lawson has a place along the highway from Garden Valley to Stanley, just outside of Lowman. They get faced with a lot of issues.

I don't think there's enough money in the world to pay a county commissioner, because half the time half the county thinks you're wonderful, and the rest of the time the other half thinks you're the enemy. So what they do is they look at the facts. They look at the duties with which they're charged, and they do their best.

Now, in this case the plaintiffs, as I indicated in my opening statement, are sophisticated developers, and there's nothing wrong with that, nothing in the world wrong with that. In this case what I told you that we'd prove, and we did, is they did this RTC because they were diversifying a number of companies that they had. Again, there's no rule against that.

They had a company, T.H.E. Fund, an investment fund, and guaranteed their investors 7.5 percent. One of the things they talked to you about was mostly Mr. Laney, Steve Laney, he was the first witness in the case on Monday, December 6th, told you that they have exit

1 strategies. Whenever they look at a project or a
2 piece of property, they always have an exit
3 strategy, and they had an exit strategy in this
4 case.
5 With regard to this RTC in Boise
6 County, Alamar Ranch, there's not another one like
7 it in the county. There's no evidence that
8 Project PATCH went through the CUP project. It's
9 been in Garden Valley for a long time. It's
10 similar to Alamar Ranch, a little different. It's
11 nonprofit oriented. There's no other project like
12 this in the county. This would be the biggest
13 employer, the biggest commercial business in the
14 county, period. The county had never dealt with
15 anything like this before, never had a situation
16 quite like this before.
17 And one thing you need to understand is
18 when these projects are begun, and they have to go
19 through Planning and Zoning, as you heard, they
20 have to go through this conditional use permit
21 process because they're not an allowed use,
22 they're a conditioned use. And that's why.
23 Now, one thing that's interesting, that
24 nobody talked to you a lot about, quite frankly,
25 in this trial was because the Planning and Zoning

1 Commission vote was 3-3, because a commissioner
2 had to recuse herself, it's an effective denial.
3 And what happens is, now it's what's called a
4 hearing de novo. And it's kind of a fancy word
5 for meaning you start over at the Board of County
6 Commissioners.
7 And so what some Planning and Zoning
8 Commissioner may or may not have said -- because
9 if you go look at that opinion, there were three
10 for and there were three against. The Board of
11 County Commissioners has to make their decision
12 based on the evidence, based on the exhibits, the
13 statements from folks who are in front of them.
14 And so what may have been decided or may have been
15 said by the Planning and Zoning Commission, this
16 is a new hearing in front of the Board of County
17 Commissioners.
18 Now, it is important, for example, what
19 was said by various parties at Planning and Zoning
20 and representations that are made at Planning and
21 Zoning because it bears on what occurred in this
22 case.
23 But this is a new process. This is a
24 new hearing. And it's specifically provided for
25 in the ordinance, which is what I talked to Fred

1 Lawson about yesterday in the early afternoon.
2 So, as you all know, what had happened,
3 Alamar started at the Green Ranch with 108 beds.
4 They withdrew it, and they went to the Klam Ranch.
5 And so they had to go through this process. And
6 was there a lot of public hue and outcry? Sure
7 there was. And you heard a lot of it. You saw
8 some petitions with statements from folks that
9 most of us probably wouldn't make.
10 Judge Winmill has instructed you with
11 regard to the county commissioners -- and there's
12 not anything the county commissioners can do about
13 that. Not only is there not anything they can do
14 about it, it's allowed. They can't quash free
15 speech in this country. What they can't do is let
16 them influence their decision and discriminate
17 against somebody. They can't stop people from
18 coming into a public hearing and making a
19 statement. They can't stop people sitting in the
20 Rock Creek bar along Highway 21 and making
21 comments on petitions.
22 What they have to do is make a
23 reasonable, rational decision, which they did in
24 this case.
25 Now, in some preproof instructions --

1 and I don't think you have these back -- I don't
2 believe you'll have them back in the jury room
3 with you, but one of the things that Judge Winmill
4 told you in one of his preproof instructions was,
5 "The purpose of the Fair Housing Act is to enable
6 people to live in the residence of their choosing
7 in the community of their choosing without regard
8 to their protected status." And he's right.
9 That's what it is.
10 And, interestingly enough, what the
11 Fair Housing Act doesn't say is: Well, in
12 considering where somebody wants to live, whether
13 that's in their own home, whether that's in an
14 apartment, or whether it's in a residential
15 treatment center, such as this, the Fair Housing
16 Act doesn't say, well, you have to follow the
17 business plan, and if you don't follow the
18 business plan, and if you don't let us make the
19 profit we want, we're going to sue you. The Fair
20 Housing Act doesn't talk about that.
21 Now, I'm going to show you in just a
22 little bit -- or talk to you, really, more about
23 the ordinance because it's important in this case,
24 because by the ordinance, by law, the
25 commissioners are bound to follow the standards.

They have to take them into account. And it's important that you know that, and that's why their decision speaks to it.

And that's why if you go back and -- and it's not that long. You ought to go back and look at that transcript because it's pretty interesting. We didn't tell you about all the comments of all the commissioners every bit of the way through that transcript. Lawyers tend to point out what they think helps them, and we put it up on the screen and show it to you. You ought to go take a look at it and see what you think, because it's pretty interesting. Because there was a good dialogue going on between the three of the commissioners.

Now, in this process, going into this process, Alamar Ranch knows they're going to be conditions. Mr. Oaas -- well, for that matter, Mr. Laney have been around a long time. Mr. Oaas is involved in South Fork Landing. It's a big planned unit development on the south side of the south fork of the Payette River in Garden Valley. He's dealt a lot with the county commissioners. He's dealt a lot with Planning and Zoning. And when I asked him on the witness stand the other

day whether he knew conditions could be imposed on this project, over and above what Alamar agreed to, he readily agreed. It's right in the ordinance.

Now, in this case, from the get-go, bluntly, there were strong emotions on both sides. The No Alamar people, some of whom are friends and neighbors, not all, hired a lawyer, Dennis Charney. His name has been mentioned a lot in this proceeding.

Alamar had lawyers. You heard the name "Spink Butler." It's a firm in town. JoAnn Butler and Hethe Clark. And they also hired the lawyers out of Salt Lake City. You heard one of them from the witness stand, Dan McDonald. Dan McDonald really wasn't involved in the nuts and bolts of the process for Alamar Ranch. What Dan McDonald was there to do was to talk about the Fair Housing Act.

It was -- the county has a lawyer, and that lawyer in this case -- one of the lawyers, at least, was Tim McNeese. The court has instructed you about executive session and how, under certain circumstances, the Board of County Commissioners can, under the right circumstances, consult their

lawyer in executive session. And not only should they do that, under the right circumstances, the citizens of Boise County deserve it.

Now, does that mean this whole process should be decided in executive session? That's what the plaintiffs would like to have you believe, but there's no proof of it. And I'm going to walk through the conditions here with you in a little bit.

So not only is it right for the Board of County Commissioners to have a lawyer in this case, it's right because there is no doubt somebody was going to end up in court, either the plaintiffs in this case or, if the decision went the other way, with the No Alamar folks.

Now, I want to talk about Patti Burke a little bit, and, unfortunately, you didn't get to see her. She was deposed a couple of times, once when she had her sight. The second time, as Judge Winmill, instructed you, she didn't. She had a medical issue, and so she couldn't be here.

Now, let's talk about that just a little bit. If the statement, as Jeri Kirkpatrick said in those emails, are 100 percent, absolute right down the line, they are outrageous. And

every one of the commissioners said so. What there is no proof of is that any of the commissioners had the foggiest notion that any of that was going on, and there's no proof that any of that affected the commissioners' decision.

Now, Ms. Burke wasn't here, so you didn't get to see her, didn't get to see how she reacted. We read her deposition, which is hard to gauge somebody -- all you're hearing is written words. You're listening to somebody else talk on her behalf. She denied a lot of those things occurred. But if they occurred, ladies and gentlemen, they're right, it is wrong, and it shouldn't occur.

If it did happen, that's outside of her course and scope. People should not be divulging executive session. People should not be using their position to favor one side or the other in a controversy or, in this case, an application that was in front of the Board of County Commissioners. And every one of the commissioners who testified in front of you said the same thing. If it happened, it's wrong.

Now, with regard to calling witnesses, the plaintiffs in this case called Patti Burke.

They deposed her. We read it. Mr. Banducci -- we stood right here -- he read part of it; I read part of what he asked. They called all of the commissioners as a witness. Mr. McNeese was present in the public hearing and made some comments in the public hearing. And if Mr. Banducci wanted to call him as a witness, he could have.

The commissioners made the decision in this case, not Mr. McNeese. I understand Mr. McNeese wrote it. Commissioners don't know how to write a decision, bluntly, and they give it to their lawyers, and lawyers write decisions.

Now, there -- I want to put on the screen, Pat, Exhibit 1086.

This is the document that Terry Day had that he testified he used at the hearing and he wrote on. You can see he circled some numbers. You can see he wrote some comments -- Pat, can we go to the next page.

You can see he circled some here, wrote some comments up above, the comments, all of which I might point out, ended up in the decision in the conditions that were imposed.

Pat, please go to the next page.

Some more comments.

And let's go to the last page.

And this is a page that was discussed quite a bit in the testimony in this case. And the idea being whether the Commission or somebody else made the decision in this case as to the number of residents that were to be allowed prior to the time of the public deliberation. There's no proof they did. The proof in this document is that for Condition 31, Mr. Day wrote down "24 residents," which was the decision made at the time of the hearing.

You also won't find what turned out to be -- and I'm going to show it to you in a minute -- Condition 30, which has to do with the brush truck or the so-called firehouse that Mr. Day talked about when he was here when he last testified and which ended up in the conditions.

And the reason it's not there was because it was deliberated on at the time of the hearing.

Now, what the commissioners asked Mr. McNeese to do was to assist them in conditions that might be appropriate for this type of CUP, and it's a request, ladies and gentlemen, they

should have made. And this is a work document that Mr. Day had and that he used at the time of the hearing.

Pat, let's go to 1085.

We entered into evidence Exhibit 1085, and it's -- Mr. Day testified this was a worksheet that he did on the 10th, same day as the deliberation. And the reason that he did it was because the ordinance requires him, as it requires the other commissioners, to go through the ordinance, to go through the nine standards and to make a decision as to whether this particular project meets the requirements of the Zoning Ordinance and the Comprehensive Plan.

One thing that's kind of interesting about this document, as you look at it, Mr. Day indicates they simply can't meet -- this CUP application simply can't meet parts of the Comprehensive Plan and, therefore, doesn't meet the nine standards. This is discussed, if you look at the transcript, by Mr. Day, and the other commissioners, for that matter. And I've always thought it was interesting that Mr. Day went into this hearing, I think, with every intent to vote against it and was persuaded, after the

deliberation between the three commissioners, to actually vote to approve the CUP. That's why we entered this document, and that's why I thought you ought to see it, and it's Mr. Day's worksheet about his thoughts and comments as he went into this particular hearing.

I want to talk to you about the conditions. And I know you've heard a lot about it. But the plaintiffs' theory of this case is that either the No Alamar folks or certain people with the No Alamar folks or Patti Burke, essentially, made the decision in this case.

Now, I want to talk about the conditions that Alamar Ranch had initially proposed.

Pat, if we can look at Plaintiffs' Exhibit 1039.

And this is a document that you have, that's in evidence, and you'll have back in the jury room that you can look at. And the reason I'm putting it up here is because this is the document that Alamar Ranch proposed at the time of the August 2nd, 2007, Planning and Zoning hearing, which was the first hearing in front of the Commission. There were two, as you remember,

1 August 2nd and August 15th.
2 So right off the bat, Alamar Ranch had
3 22 conditions they were willing to live with with
4 this particular project.
5 One thing that's interesting about the
6 300-gallon -- excuse me -- 300,000-gallon water
7 tank was that wasn't something Alamar Ranch
8 proposed. As you might remember from John
9 McCarthy, that's something that John McCarthy
10 testified he imposed on Alamar Ranch -- and you
11 might remember his words, because his words were,
12 when he first proposed it, "They were appalled."
13 And about two weeks later they came back and said,
14 "Well, okay. We'll do it." Alamar Ranch didn't
15 agree. They eventually agreed to it. But it
16 wasn't their proposal; it was John McCarthy's.
17 Now, I want to look, Pat, at
18 Exhibit 1088, and I want to go to page 25.
19 Now, ladies and gentlemen, when you're
20 back in the jury room, if you look at
21 Exhibit 1088, that's the memorandum decision that
22 was entered in this case. Attached to it are two
23 appendix, this and one before it. This is what
24 people refer to, a lot of lawyers refer to as a
25 "redline copy." I know it's not red. But the

1 reason that you ought to look at this set of
2 conditions is because whatever isn't crossed
3 through or underlined was Alamar's proposal. So
4 you can look at this particular copy of the
5 document and figure out and look at what Alamar
6 proposed. The underlining is what the county
7 added and the cross-through portions are what were
8 taken out.
9 I'm not going to go through all of
10 these, but I'm going to go through a couple of
11 them because they're important.
12 Now, I talked to you about one of
13 these, and that's Condition 3.
14 Pat, if we can blow that up.
15 This was Alamar's proposal: "No change
16 in the terms and conditions of this approval will
17 be valid unless in writing and signed by the
18 applicant or the applicant's authorized
19 representatives," and then you can see their
20 original language, and you can see that the Board
21 of County Commissioners changed it to simply
22 reflect if there were going to be changes, those
23 changes needed to be made in a public setting.
24 From the get-go in this matter --
25 because this was a condition that Alamar Ranch

1 proposed to Planning and Zoning -- from the get-go
2 in this matter, everyone knew there may be changes
3 in the terms and conditions, and it is a standard
4 procedure that both sides have to agree. And
5 because the county is a public entity, that
6 agreement had to be made in open session. And the
7 importance of this is, is aside -- outside of the
8 Fair Housing Act, Alamar Ranch proposed, and the
9 county agreed, to have a system of change for any
10 of these conditions.
11 Let's go to Condition 2. And I could
12 be wrong, but I don't think anybody ever mentioned
13 Condition 2 in this trial. And it's interesting.
14 You ought to go back and read it. But part of
15 what it says is, "The application," meaning Alamar
16 Ranch's detailed application, "and the detailed
17 project descriptions," and it lists sections, "are
18 binding unless amended by further conditions or
19 with approval of Planning and Zoning."
20 This was a proposal that was made by
21 Alamar Ranch and a proposal that was agreed to by
22 the Board of County Commissioners.
23 You may remember, during this trial, I
24 referred to the business plan of Alamar Ranch.
25 And it's the business plan, I think, on the front

1 of it, it's dated April 3rd, 2007. And I might be
2 wrong, but I think it's on page 16. And if you
3 look at it, what they wanted was 72 beds, but they
4 pointed out to the banks they were going to and
5 the potential investors that the property was big
6 enough to add 36 more beds. And this was a
7 condition they approved, that was approved by the
8 Board of County Commissioners, and proposed by
9 Alamar.
10 I'm going to talk about it a little bit
11 more in a little bit about Amy Jeppesen, what I
12 asked her on the witness stand when she was here.
13 Let's go to paragraph 8.
14 This is a condition that Alamar Ranch
15 had proposed. And their initial proposal, as you
16 may remember, was to pay the Basin School District
17 $500 per student if certain conditions came about.
18 Yesterday, toward the end of the day, we entered
19 an exhibit. It's Defendant's Exhibit 2013. And
20 if you go back to the jury room and look at it --
21 it's the exhibits that were entered at the time
22 that this matter was presented in front of the
23 Board of County Commissioners -- and if you look
24 at the very first three pages, and somebody has
25 handwritten, the clerk of the court handwrites the

exhibit number on them. It's Exhibit 1 of Exhibit 2013.

And the reason this was changed, because the Basin School District wrote a letter and said that if the CUP was approved, they would then negotiate with Alamar Ranch; and that's how this came about. Nobody talked to you about it, but if you go back and look at that exhibit, that's how that came about.

Now, I want to talk to you about paragraph 9. Alamar proposed, at its own expense, it would widen or replace the existing bridge. And the existing bridge they're talking about is the bridge across Grimes Creek. When you're driving north on Highway 21 and you turn left on the Grimes Creek cutoff, there's a bridge not too far up there. And what Alamar Ranch said they would do, at their own expense, was replace or widen the bridge.

Now, one of the debates in this -- in this case is, well, all right, should it have been a collector road or a local road. You listened to the commissioners, you saw them testify, you observed them. All three of them said they thought it didn't need to be paved, and they were

surprised that it says "paved" or refers that a collector road is a paved road. There's no question, ladies and gentlemen, it's in there. It's right there. And there's no question in the takings analysis it says "paved." But it wasn't the intent of the county commissioners, and that's one reason you have the right to amend, as we just looked at earlier in this document, because mistakes can be made, and you can go back and amend.

Now, I'm going to get into final decisions here a little bit more in a minute, and I'm going to read you part of Alamar's brief that was supplied to the Board of County Commissioners.

But with regard to -- and I apologize, ladies and gentlemen, I, absolutely, had a brain fade -- but with regard to final decisions, what I was going to tell you was the reason I asked Mr. Oaas about his PUD in South Fork, in Garden Valley, is they've been back to the county commissioners on a number of times with amendments, and he testified to it. They know they can come back and make amendments.

Now, with regard to Condition 15 -- Pat, if we can look at that.

At the start of this trial when some of the folks from Alamar were here, you may remember I quizzed them quite a bit about what was said at Planning and Zoning and what was said about the access road. Now, if you look at, for example, Condition 9, Condition 10, Condition 15, and Condition 27, all of which deal with roads, 27 dealing specifically with the secondary ingress and egress, the only one that required paving was the road into the project, which the county commissioners said was a mistake.

But I guess a person could ask themselves this: Why wouldn't you want the existing access road to be accessible 24 hours a day, 365 days a year? Why wouldn't you want that? How are you going to get those kids -- as I'm going to call them -- off the top of that mountain if those roads aren't accessible?

Fred Lawson made a comment that -- when he was here -- something to the effect of, when he testified -- I think it was the first time -- he's not so worried about costs when you worried about safety. I'm going to show you here in a minute Gordon Ravenscroft's letters, and Gordon Ravenscroft is the emergency manager, and he

didn't testify.

But let's all think back. I'm going to give you an example. Mr. Banducci gave you some examples, so I'm going to give you one. And let's all think back of where we were on September 11th, and we all sat in front of our TVs and watched some people fly not one, but two airplanes into the World Trade Centers. I sat in my office, and I couldn't believe my eyes. We had a TV, and I looked at it. I couldn't believe somebody would do that, first. And I couldn't believe an airplane could knock down the World Trade Center. When that first World Trade Center fell down, you could have knocked me over with a feather.

And here's my point: The reason that you need two ways in and out of this place is because if something happens, whether it's fire, whether the Grimes Creek Bridge gets knocked out because of flood, whether it's snow -- and it snows up there -- whether somebody can't get up there, there is no way these commissioners can have a parent come in front of them and say, "My son died up there because you wouldn't let him get off." And that's why you have two ways in and out of a place like this in Boise County. And it's

1 important.
2 It might never happen, and it might
3 never occur, but these people don't want to have
4 to look somebody in the eye and say, "You know,
5 you're right. Had we had another way out of
6 there, your son would have lived." And it doesn't
7 matter if it's fire. It doesn't matter if he's
8 got appendicitis in the middle of the winter and
9 nobody can get in there. Because it's a safety
10 issue, ladies and gentlemen. And if you look at
11 that transcript, the commissioners took it
12 seriously, and they should take it seriously.
13 I listened to John McCarthy. He's a
14 good fireman, and he approved the road. The
15 county commissioners looked at the recommendation
16 that the emergency manager for the county made, of
17 two ways in and out, and they thought that was
18 appropriate.
19 Now, I want to talk about Gordon
20 Ravenscroft here for just a minute. You know,
21 every time I do this I've got a thousand notes.
22 I'm kind of old-fashioned. Some people have
23 iPads. Some still use IBM sticky notes. Old
24 habits die hard, I guess.
25 But I want to talk about Gordon

1 Ravenscroft because I think it's important. And I
2 want to look at Exhibit 2026. And this is a
3 letter Mr. Ravenscroft wrote on July 24, 2007.
4 And if you look at the letter, it talks about
5 because of this project -- Pat, I think it's the
6 third bullet point down -- he wanted a second way
7 in and out because of the use of this particular
8 project.
9 You know, there has been a lot of
10 discussion in this case about what is required and
11 not required of subdivisions. It's a whole
12 different thing when you have families in their
13 homes, and they all have responsibility for
14 themselves and their families. You also have
15 responsibility, I think, sometimes for your
16 neighbors, under circumstances. It's a whole
17 different beast when you have a residential
18 treatment center with kids you're responsible for
19 and employees you're responsible for. And Gordon
20 Ravenscroft recommended to the commissioners, and
21 they agreed, that there be two ways in and out.
22 Kind of a minor point, but he also
23 talks about, in this letter, the dry wash -- and
24 I'm going to show you that condition here in a
25 minute -- that he was concerned about, which was

1 next to the Alamar Ranch, where they were
2 proposing the buildings.
3 He also proposed a helipad, which I'm
4 going to talk to you in a minute.
5 Let's go, Pat, to Exhibit 24. And I
6 think it's on the second page at the top.
7 And this is Mr. Ravenscroft's letter in
8 response. The first letter was written at the
9 time of Planning and Zoning. And remember at the
10 time of Planning and Zoning, the Alamar
11 representatives agreed they would have two ways in
12 and out.
13 What Mr. Ravenscroft is responding to
14 is the plan of John McCarthy, Wilderness Fire
15 District, and Alamar Ranch that they have the
16 so-called loop road. Mr. Ravenscroft says, "The
17 new ingress/egress route actually splits off the
18 original single point of entry that already has a
19 limited capacity bridge, thus still leaving Alamar
20 with only one looping route of ingress and
21 egress."
22 And I probably talked, ladies and
23 gentlemen, about this more than I should, but the
24 fact of the matter is the Board of County
25 Commissioners thought it was important that there

1 be two ways in and out of this project.
2 Now, Pat, let's go back to the appendix
3 on 1088.
4 Because I want to talk to you about
5 some other conditions. And I want to look at
6 Condition 23.
7 I'm sorry, Pat. 21.
8 Alamar Ranch agreed that they were
9 going to have an area available and work with
10 Saint Alphonsus and St. Luke's Regional Medical
11 Center with regard to Life Flight. What they
12 objected to was the language -- or what they do
13 object to was the language that the commissioners
14 added that you can see up there. That's why we
15 asked Mr. Patterson, who is going to Afghanistan,
16 but testified the other day -- I read his
17 deposition from the stand -- about what it would
18 take to meet these requirements.
19 And nobody from Alamar got on the
20 witness stand and told you how much that would
21 cost. For that matter, the beds aside, they
22 didn't tell you about what any of the other costs
23 were. But nobody got on the witness stand and
24 told you this was prohibitively expensive. And
25 you heard Mr. Patterson testify about what was

1 required. All it required was a grassy area set
2 aside with a wind sock, some lights, and some
3 sandbags.
4 Now, let's look at Condition 23, 24,
5 and 25. These really weren't discussed with you,
6 except that part of 23 where there was a
7 requirement that Alamar Ranch be JCAHO approved,
8 which is what they represented in their
9 application. Now, they're complaint was, well,
10 with less beds it's too expensive. But if you
11 look at these three conditions that were added to
12 this decision -- these are right out of the
13 application -- they're, essentially, word for word
14 what Alamar Ranch said they would do when they
15 filed their application.
16 There has been no complaint about 28.
17 Let's take a look at that, Pat.
18 Mr. Oaas testified -- and it's in their
19 application -- that they actually have, and should
20 have had, a runaway program. Nobody talked to you
21 about No. 29 in any objection or any cost related
22 to 29.
23 Now, I want to go back to paragraph 21,
24 Pat -- because I forgot to talk to you about
25 something.

1 And I don't know if you remember,
2 but -- well, I'm sure you'll remember him -- Chris
3 Tverdy is a big, tall redheaded guy, testified for
4 Alamar for quite a bit of time. I'm going to read
5 you something. I asked him about this, because
6 Alamar's first proposal was that the applicant, in
7 consultation with Saint Alphonsus and St. Luke's
8 Life Flight, they would consult with St. Luke's
9 and Saint Al's about what was required for a
10 helicopter.
11 And I asked him this: "Would it be
12 fair, Mr. Tverdy, to tell the jury that one of the
13 reasons Alamar Ranch proposed this particular
14 condition because in land use projects, such as
15 the project of Alamar Ranch, changes need to be
16 made as time goes by, and this gives the ability
17 to go to the county and obtain that change?"
18 And he said, "Yes."
19 And, actually, ladies and gentlemen --
20 Pat, go to No. 3.
21 That was my question to Mr. Tverdy with
22 regard to 23.
23 Let's go back to 21. I'm going to tell
24 you why this is important. With regard to 21, I
25 asked this question: "What Alamar Ranch proposed

1 was the applicant will designate, in consultation
2 with Saint Alphonsus and St. Luke's Life Flight, a
3 life-flight landing zone on the Alamar Ranch
4 property. Do you see that?"
5 "Answer: Yes.
6 "Now, if you're reading this and you're
7 trying to figure out what that means and what it's
8 going to look like, you can't tell from that
9 condition, can you?"
10 He answered: "Well, I guess not. It's
11 pretty clear to me, but, yeah, there's not a
12 construction drawing with it, if that's what you
13 mean.
14 "Question: Well, what it says is
15 you'll consult with Saint Al's and St. Luke's in
16 terms of what's needed on the site, but you can't
17 read this and tell what that means by reading that
18 condition.
19 "Answer: Correct. But that's quite
20 common in these types of land-use situations,
21 because we later go back to the county and ask for
22 building permits. That's when these types of
23 details are reviewed. The county still has the
24 approval opportunity at that point.
25 "Question: So what you're telling the

1 jury is that when conditions are put on the
2 project, such as this, they aren't always final,
3 because in a condition like that you have to go
4 back and work out the details in a land-use
5 project such as this? Is that what's actually
6 going to occur?
7 "Answer: We have to go back and create
8 construction drawings, and there's a very detailed
9 process we go through, yes."
10 All right. Now, ladies and gentlemen,
11 there is not a doubt, from the evidence in this
12 case, because Oaas Laney has been through it
13 before, that with regard to conditions that
14 perhaps they don't like, there is always the
15 opportunity to go back to the county, and that's
16 why they put the conditions that they did,
17 Condition 3, in this particular project.
18 Now, I didn't mean to get quite so
19 bogged down in the conditions. But let me just
20 talk to you about this:
21 Alamar Ranch proposed 22. The county
22 ended up with 31. Condition 24, 25, and 23 are
23 out of their application. So now we're up to 25.
24 The county added the number of beds. The county
25 added the fire-suppression vehicle. But there has

been no complaint other than ingress and egress, of any of the other conditions. No one from Alamar got on the witness stand and told you what it would cost and what their other complaints are about these particular conditions.

And that's important because Alamar's contention in this case is all these conditions came from, maybe, Patti Burke or, maybe, from the No Alamar folks, but when you look at them and you analyze where the conditions came from, that's not right.

The conditions, ladies and gentlemen, they're complaining about are the fire suppression vehicle, the helipad, the number of beds, and the secondary ingress and egress, none of which came from No Alamar. The secondary ingress and egress came from Gordon Ravenscroft. The helipad came from Alamar and Gordon Ravenscroft. The beds came from the commissioners, and the fire suppression issue was what Terry Day testified from the witness stand.

And you need to go look at that, and you need to look at Condition 30, which says, "acquire, maintain on site a fire suppression vehicle with an appropriate storage facility."

And Terry Day explained it.

I'm going to tell you one other thing, then I'm going to get away from these conditions. But Alamar Ranch proposed, at Osprey, that they were going to contribute money to Wilderness Ranch to build an actual firehouse on site. Mr. Oaas, when I called him as a witness in our case in chief, agreed they would make that donation for a site at Alamar Ranch.

So when you look at these conditions, ladies and gentlemen, and you analyze them, the conditions were reasonable, they came from the Commission or they came from people in the county who made recommendations, such as Gordon Ravenscroft.

Now, I want to talk a little bit about what the plaintiffs did in this case and their position in this case. And I want to look at Defendant's Exhibit 2068. And this is a document you might remember that I asked Mr. Oaas about when he was on the witness stand, and at first he couldn't remember what it was. And it's dated -- I think it says, "November 6th, 2007," before there ever was a Board of County Commissioners hearing. The first hearing in front of the Board

of County Commissioners was in January of 2008.

This was a proposal by Oaas Laney, who was a part owner of Alamar, to build a small subdivision along the rim of the Alamar Ranch property. They were looking into this proposal, and if you look through the document, they had to do some testing.

Pat, I want to look at Defendant's Exhibit 2025.

If you look at this document -- and it's hard to see -- down at the bottom in the footer, but this is a draft confidentiality agreement. And what that footer shows is -- and Mr. Tverdy agreed -- that Oaas Laney received this document on January 15th, 2008. And the reason that's important is this: This document, this confidentiality document, with regard to the potential sale of the Alamar Ranch property was done 13 days before the first public hearing in front of the Board of County Commissioners.

And you may remember it, when I asked Mr. Tverdy on the first day of the hearings, on January 28th, Alamar's lawyer called a guy named -- called a gentleman named Paul Buker who owned some land next to Alamar Ranch and wanted to

enter into negotiations to sell the property. Paul Buker was actually the individual who sold -- who bought the property after Alamar Ranch made a decision not to go forward with this project.

So you've got to ask yourself: Why is it, prior to the time the Board of County Commissioners has even looked at this, that Alamar Ranch is calling one of its neighbors to negotiate the sale of the project property that they contend the Commission, by its decision and conditions, essentially, prohibited them from developing? And that's a question that ought to be asked, because it's Paul Buker who ended up buying this property.

Now, in this case, ladies and gentlemen, when the appeal was made to the Board of County Commissioners, there were a number of briefs filed. The Commission determined that Alamar Ranch would have an ability to file briefs and also the opponents to Alamar Ranch would have the ability to file briefs.

I'm going to read part of them to you because they're interesting. Let's take a look at Exhibit 1053, page -- I think in parens, Pat, it's 37, down under paragraph 8, let's highlight about the lower two-thirds of it.

Now, you may remember, ladies and gentlemen, that Alamar's position is that the county made this decision final to, essentially, cut off any further discussion between the county and Alamar Ranch, which left Alamar Ranch and YTC no alternative but to file suit under the FHA.

I'm going to read you something. It says, "If Boise County genuinely believes that Alamar Ranch is not allowed, by its conditional use regulations, then Alamar Ranch will request reasonable accommodation from Boise County, if and when Boise County identifies what rules or policies otherwise prohibit the project.

"Additionally, Alamar Ranch will not hesitate to hold Boise County responsible for any failure to make a reasonable accommodation under the FHA, any interference with the exercise of its FHA rights, and any disparate impact, discrimination, or any other unlawful disparate treatment."

Pat, let's look at Exhibit 1076, page 21. It should be the hearing on January 28th.

This is Mr. McDonald, the lawyer from Utah who came and testified in front of you:

"Federal law is very clear in the Ninth

Circuit. In federal courts, ladies and gentlemen, there are circuits, Idaho happens to be in the Ninth Circuit, which governs this state, that there has to be some sort of interactive process, that courts don't want people just running off to court and suing people. They want the people in the local setting to talk and communicate and examine ways to make this work."

Pat, let's go to Plaintiffs' Exhibit 1195.

Ladies and gentlemen, you've heard a lot about these briefs. And so I'm going to read part of this to you. The way the briefing process went, Alamar filed its brief, the No Alamar folks responded. And this is Alamar's rebuttal brief.

And I want to go to page 27. And I want to go down, Pat, under paragraph G, down about 8 lines where it says, "Counsel for the applicant."

And I'm going to read you something:

"Counsel for the applicant" -- meaning counsel for Alamar Ranch -- "was trying to help the board and its legal counsel correctly navigate a very complex and evolving area of federal law that creates many liability land mines for local

governments. Counsel for the applicant has advised local government on FHA issues on more than -- on more occasions than it has advised developers on these same issues and, therefore, is well acquainted with the risks the FHA imposes to local government. Thus, the applicant is well aware of the potential that a decision by the board could violate the FHA and is trying to help the Board avoid that result and make the right decision."

And then here's the key in terms of what occurred later: "Indeed, the applicant" -- meaning Alamar Ranch -- "cannot, and will not, know whether Boise County violated the FHA and, if so, on what basis, unless and until the Board makes a final decision. An FHA claim, absent a final decision by Boise County, simply would not be ripe for adjudication at this stage."

Now, let's think back of what happened in this case. What did Alamar Ranch or its lawyers do after the decision was entered by the Board of County Commissioners with regard to talking to the county, talking to the county lawyers about the decision?

And the answer, ladies and gentlemen,

is they did nothing. They didn't pick up the telephone and say, "Tim McNeese, we have some issues with this decision, and we need relief." They did nothing. They asked for a regulatory taking. They filed a petition for judicial review to have a court look at the decision. They made a decision not to pursue, not to find out whether a court would determine that there were errors in the Boise County Commissioners' decision, and they filed this FHA lawsuit. They did nothing else.

JoAnn Butler and Hethe Clark didn't come in here and testify, Dan McDonald didn't come in and testify, that after this decision Alamar did anything which is contrary to what they represented to the Board they would do in their briefs.

Now, I've talked longer, ladies and gentlemen, than I thought I would, and I'm about to close, but I want to talk to you about the burdens in this case and what you need to decide. And I've talked a little bit longer than I thought I would about the conditions.

But what you have to decide in this case is whether you think, for example, Linda Zimmer had discriminatory intent when she made her

1 decision in this case. Did Linda Zimmer, whose
2 husband is a disabled vet, who was a juvenile
3 probation officer, who was in community services
4 in Horseshoe Bend, who has done community service
5 for a fair amount of her life, just looked at
6 these kids and said, you know, I just don't like
7 what I see, and I'm going to enter this decision
8 based on discrimination. Because that's what the
9 plaintiffs claim is in this case.
10 The plaintiff, with regard to
11 discrimination and with regard to accommodation,
12 has the burden of proof. Mr. Banducci read you
13 some instructions and talked to you about certain
14 causes of action in this case, and I'm going to
15 talk to you about it. And that is, it is the
16 burden of Alamar Ranch to prove to you that they
17 sought an accommodation, that the accommodation
18 requested was reasonable, and that the county
19 refused to make the accommodation.
20 And what you ought to ask yourself is:
21 When this decision was made, what accommodation
22 did they request? And the answer to that
23 decision -- the answer to that question is none.
24 They did nothing. There is not one shred of proof
25 that Alamar Ranch did anything with the county in

1 terms of seeking an accommodation.
2 They have a claim, and Mr. Banducci
3 talked about it in terms of disparate treatment or
4 interference with property. And I want to talk to
5 you a little bit about it. It's Instruction 14.
6 Pat, you don't need to put it up.
7 But the motivating factor of the
8 county, in order for Alamar Ranch to prevail on
9 that particular cause of action, there has to be
10 some intent by the Commission when they made their
11 decision that it was based on the basis that these
12 kids were handicapped and they simply didn't want
13 them in their county. And there's no proof of
14 that, ladies and gentlemen.
15 I understand some of the neighbors
16 didn't want this project, but the county
17 commissioners can't do anything about that. And
18 there's no proof in this case that the decision
19 was made with a discriminatory intent on behalf of
20 the commissioners. You've heard them all testify.
21 You need to think back about what they said, their
22 demeanor.
23 Is the decision perfect? No. But the
24 question in this case, ladies and gentlemen,
25 isn't: Is this the best decision that could have

1 been made? Could a different decision have been
2 made? That's not the question. The question is
3 whether the county commissioners violated the Fair
4 Housing Act.
5 Now, I wanted to talk to you about one
6 more thing, and that's the 24 beds. And I'm about
7 to run out of time, and I apologize. But you may
8 have remembered that when Amy Jeppesen testified,
9 she came here from Utah and had worked at four
10 separate facilities, all that were small
11 facilities. And when I asked her about the Alamar
12 Ranch project, one of the things she said was, she
13 has been involved in situations where -- when you
14 start out with a certain number of beds, you see
15 how it works, and then you go back and you add
16 beds. Amy Jeppesen's experience was with small
17 facilities, and there's nothing wrong with that.
18 But that was her background. And when I asked
19 her, what she said was, "You start small, in
20 certain circumstances, and grow larger."
21 The Commission made a decision in this
22 case that they thought was right, based on the
23 ordinance, based on the facts, based on the
24 location, that 24 beds was an appropriate start.
25 I know they can add and subtract, ladies and

1 gentlemen. I know you can multiply 48 times
2 $10,000 a month times 12. But the Commission, in
3 their heart, felt this was a good start, a good
4 way to begin this project with Alamar Ranch, with
5 the ability to come back and ask for additional
6 relief or beds if they required it, and Alamar
7 Ranch did nothing.
8 Now, we talked a little bit about
9 damages in this case, not because we think you
10 ought to award damages against the county, but one
11 of the calculations that Mr. Wilhoite made was a
12 calculation that they ought to receive profits,
13 and also the amount of money that it costs to
14 start up this project. And we presented
15 Mr. Butler simply to indicate to you the idea of
16 you can't get profit and also the cost of the
17 project to start.
18 Now, let me just close by telling you a
19 couple of things. In this case, Alamar Ranch
20 talked through various of their witnesses,
21 Mr. Laney, Mr. Oaas, Mr. Tverdy, that they had
22 exit strategies, as they always do in these sorts
23 of projects. And their exit strategy in this case
24 is this lawsuit.
25 At the time -- at the time the project

was -- the decision was made by the county commissioners, we saw the -- you looked at an email that Amy Jeppesen wrote, because what had happened was the RTC business wasn't great --

MR. BANDUCCI: Your Honor, there's no evidence that this was an exit strategy, that the lawsuit was an exit strategy. Nobody testified to that. I've never interrupted a closing argument in my career, but I have to now.

THE COURT: Ladies and gentlemen, the arguments of counsel must be based upon evidence in the record. I think what Mr. Brassey is making is not an argument from the evidence, itself, but rather inference that he thinks can be drawn from the evidence. I think whether you can draw that inference is for you to determine for yourself.

But I would just caution counsel to restrict arguments just to the record and to make clear -- when the argument is really one of argument and not fact, that it be made clear to the jury.

So with that, go ahead Mr. Brassey.

MR. BRASSEY: I apologize, Judge, if the court thought I was out of bounds.

In this case, ladies and gentlemen, you

need to ask yourself: Why would Alamar Ranch offer to sell this property to someone before the county commissioners made their decision?

They filed a petition for judicial review with the state court to look at this decision of the county commissioners and didn't pursue it.

This case isn't so much about kids as it is about money. And there's no rule, ladies and gentlemen, about making money, and there's no rule about coming into court and requesting money. But what Alamar Ranch has indicated in this lawsuit is, is that the three commissioners, all of whom you heard from, one of whom is sitting at counsel table with us in this case, discriminated against these kids when they made the decision they thought was right, including the 24 beds, and all the conditions that were imposed that they had discriminatory intent with regard to the kids that were going to be located on this project. And that's simply wrong. It wasn't their intent. They did what they thought was right. And you shouldn't find against the county on the issues that are involved in this case. And your verdict ought to be for Boise County.

When you're three part-time commissioners, you do your best. And it's not an excuse. And it's not a reason to do something wrong, but, ladies and gentlemen, they did the best they could. They made the decision they thought was right. And the verdict ought to be in favor of the county.

I appreciate your time. I apologize if I've rambled a little bit today because I think I have. But it's an important case for both sides, obviously. It's important to Boise County and the county commissioners.

I know the commissioners appreciate your time, your listening to us in this case. I appreciate it, and I appreciate your consideration.

Thank you.

THE COURT: Thank you, Mr. Brassey.

Mr. Banducci, your rebuttal.

REBUTTAL ARGUMENT BY THE PLAINTIFFS

MR. BANDUCCI: Thank you, Your Honor.

The suggestion that Alamar is sue-happy is stunning. The exhibits that you saw, just moments ago in the brief, would suggest that Alamar was attempting to do everything it could to

tell the county exactly what they needed to do to avoid the problem that they had created with their decision.

The testimony of Mr. McDonald that was shown to the jury by Mr. Brassey said, "Look, we've got to engage in a process so, you know, we don't have litigation." You saw it. It was right there. It was on the screen. It was shown by counsel for the county.

Now, let's go to 1195, page 32, Kathy, please.

This is the rebuttal brief that was shown to you, but we're going to go to the end of the same section that was being read.

Yeah, the bottom half. Thank you, Kathy.

Well, actually, I think you need to go one more paragraph -- don't we, Wade?

MR. WOODARD: Page 33.

MR. BANDUCCI: No, I want -- well, all right, let's just go to 33. 33 is the end of the section.

It says, "Accordingly, if the County determines that one of the CUP provisions or policies does not allow Alamar Ranch to move

1 forward, then both sides must participate in
2 good-faith exploration of possible accommodations.
3 It is necessary" -- "if necessary. This does
4 not" -- "this does not have to be done informally,
5 as Mr. Charney seems to suggests; rather, Section
6 3-5(d) of the Boise County Zoning Ordinance can be
7 utilized."
8 Remember Mr. McDonald testified that he
9 was really pleased to find Section 3-5(d) because
10 it allowed the Commission to not enter a final
11 order. So he says, "rather, Section 3-5(d) of the
12 Boise County Zoning Ordinance can be utilized,
13 although, that section gives the Planning
14 Commission power to delay a decision" -- which, of
15 course, Mr. Lawson testified to, I think
16 yesterday -- "for further study of hearing. It
17 would seem implicit in Boise County's ordinance
18 that the Board has the same power. Consequently,
19 if the Board finds that Alamar Ranch does not
20 satisfy one or more of the nine criterion, it
21 could issue a provisional decision subject to
22 further study or hearing on the issue of whether a
23 reasonable accommodation can or ought to be made
24 to those specific criterion."
25 That's not what they did. They entered

1 a final order. They entered a final order.
2 If they've read what we asked them to
3 read -- and they're certainly reading a lot of our
4 brief to you -- if they read the full brief, they
5 would have done what we asked them to do, and that
6 is meet with us and engage in an interactive
7 process.
8 Now, everybody got that read? And
9 we'll pull it down. I don't want to pull it down
10 before you have a chance to read it.
11 Now, it's fascinating to me that the
12 entire -- I think we can pull it down, Kathy.
13 It's interesting that most of
14 Mr. Brassey's argument this afternoon or this --
15 well, it's now this afternoon -- was spent on
16 reasonable accommodation, asking the question:
17 Did we make a reasonable accommodation? I go back
18 to my comments I made at the very beginning of my
19 closing argument, and that is, that's one claim.
20 I am absolutely certain that we demanded
21 reasonable accommodation as required.
22 But reasonable accommodation demand is
23 not required in interference nor is it required in
24 the claim of discrimination.
25 So all of this argument about did you

1 demand a reasonable accommodation must be
2 considered only in light of that one of the three
3 claims. I bring that up simply because I think
4 the inference was left in the arguments made by
5 Mr. Brassey, that we must make a demand for
6 accommodation under an interference claim. That's
7 not a requirement if you read the elements. Or we
8 must make a demand for accommodation on the
9 discrimination claim. We don't need to. That's
10 not one of the elements.
11 And so I want to keep that clear for
12 you in terms of what you must do in terms of your
13 reading of the instructions and the interpretation
14 of facts.
15 I left Mr. Brassey with a question:
16 The question was: How did they not know -- how
17 did they not know that they were going to drive
18 Alamar out of business by dropping to 24? And he
19 didn't answer that question, did he? He didn't
20 answer the question.
21 And I call that the "big whopper"
22 because if the commissioners were honest and said,
23 "Yes, we pretty well knew; we didn't have to know
24 precisely, but we pretty well knew we probably
25 would drive them out of business," then you'd hear

1 that evidence, and you would, effectively, be
2 required to find a claim, our claim -- on our
3 claims.
4 There was no answer to that question.
5 In fact, there were a lot of questions that were
6 raised during the course of this case that were
7 not answered, and I'm left, again, with the
8 question -- and I don't mean to be trite about it,
9 but it reminds me of the Wendy's commercial -- I'm
10 dating myself -- but maybe you remember the
11 "Where's the beef?"
12 And so I'm going to take you real
13 quickly through all the questions that were not
14 answered by the testimony, by the evidence that
15 was put on by the county.
16 There was no commissioner that
17 testified in defense of the decision and order.
18 Stunning. It is their decision and order. No
19 commissioner was handed the decision and asked to
20 interpret it. They ran -- instead, they ran away
21 from their decision and order. But this is what
22 this case is about. It's about their decision and
23 order. And yet they didn't interpret it for you.
24 They didn't read it for you and explain it. The
25 only thing they did with that order was say that

there were terms in it that they didn't intend to impose, like the road, like findings of decrease in property value, et cetera.

It's true that the commissioners did not even understand what was in the decision and order. They had not read the evidence cited in the order. The testimony in P & Z that is cited in the order they had not even read. It was written by a lawyer. The author of the decision and order, Tim McNeese, was not called to testify. So they didn't even call the lawyer to testify in explanation to help you understand how this order complies with the Fair Housing Act.

That's not executive session. That's not -- shouldn't be cloistered in the secrecy of some sort of privileged information. Mr. McNeese could get on that stand and say, "Oh, well, you know, when I was writing this decision, I thought about these issues, and here's why I put it together the way I did, because I knew the Fair Housing Act applied."

McNeese did not explain the basis for any of the conditions of the order.

Next slide, Kathy.

No commissioner explained why the FHA

is not mentioned in the order. Isn't -- I mean, that's the elephant in the room, folks. The FHA is -- is the law that applies to this -- and that's what the court has found. The FHA applies, and yet it's not mentioned in the order. Ignorance is not an excuse in the law.

No commissioner explained why Alamar's request for reasonable accommodation was not mentioned in the order. We asked for an interactive process. It's not mentioned.

No commissioner explained why they did not delay their ruling to allow a discussion of what accommodations were needed.

Next.

No commissioner testified that an accommodation would have been made had Alamar made another request after the final decision. I think that's interesting.

Mr. Brassey said, at the end of his argument, "They never asked, they never asked, they never asked." Yes, we did. We asked for an interactive process, but how compelling can that be given that what would have to happen. You'd have to go back into a room filled with angry No Alamar folks. Those commissioners wanted to do

that about as much as rubbing sand in their eyes.

Do you think their views would have changed? I don't. No commissioner provided a nondiscriminatory reason for reducing the number of students to 24.

What you heard in closing was they did the best they could. Well, the record, the record says that they reduced the number based on the opponents' brief. And I think -- I forgot to mention this, but, you know what, Mr. Day wanted to vote against that application. He testified he never changed his mind. The only time he changed his mind -- and he testified to this, as did Ms. Zimmer -- he changed his mind when they went down to 24. Well, why was that? Because he knew that at 24, the project is dead anyway. So why not vote for it. Why would someone so opposed, so convinced that the project was in violation of the Comprehensive Plan, who stated his position repeatedly at this hearing, abruptly change his position and vote in favor of it, unless he thought he's going to get the same result. And that's what he testified to.

He said, "Yeah, you know, I guess I realized I wouldn't be violating the Fair Housing

Act if we imposed all these conditions on it and it drove the" -- "drove Alamar out of business, but so long as we approved it, we would avoid FHA liability." That's what he testified to.

McNeese was not called to explain how the order complies with the FHA.

McNeese was not called to explain why the FHA is not mentioned in the order.

McNeese was not called to rebut the statements from the emails.

McNeese was not called to explain the mistake with the road. He wrote the opinion. You would think they would call him and ask him to explain the mistake. They didn't.

McNeese was not called to explain why no mention of Alamar's request for reasonable accommodations was made in the order, even though he told commissioners at the hearing that they needed to make accommodations. Remember that? He asked -- he told the commissioners twice. Take a look -- I think it's pages 43 and 44 of the March 10th transcript -- twice he tells them to make an accommodation.

McNeese was not called to explain how the conditions in the script complied with the

1 FHA.
2 McNeese was not called to rebut the
3 conversation with McDonald regarding the financial
4 and therapeutic need for 72 students. That's
5 huge.
6 Communication to Mr. McNeese is
7 communication to the county. The county can't say
8 it didn't know that 72 was therapeutically and
9 financially necessary. Unless they put him on the
10 stand and he said, "I didn't get that message when
11 I met with Mr. McDonald." They didn't even put
12 him on the stand for that. That's not privileged.
13 That's not executive session. That's a meeting
14 with Alamar. They could have put him on the stand
15 to deny that that was what McDonald -- that
16 McDonald was telling the truth. They didn't.
17 They didn't bring Kane, Evans, or Bart
18 to explain the conditions discussed at P & Z or
19 their separate opinion to the decision.
20 I think that's important. The reason,
21 simply because the commissioners agreed with the
22 principles stated in that separate opinion. The
23 commissioners agreed, Terry Day agreed, that all
24 of those county departments, like at the P & Z
25 level, also supported or did not oppose Alamar at

1 both Planning and Zoning and at Commission.
2 Ravenscroft was not called as a
3 witness. We saw two letters written by
4 Ravenscroft, as interpreted by counsel. Why
5 didn't they call Ravenscroft? You didn't see
6 anything in that letter from Ravenscroft that said
7 that the loop road was unsafe. You didn't hear
8 anything about Ravenscroft's capabilities as an
9 International Fire Code expert. You didn't hear
10 anything about Ravenscroft's beliefs regarding
11 that entire fire plan and the conditions imposed
12 in connection with it. They didn't call him. Why
13 not? He's a Boise County employee.
14 Next slide.
15 Day did not rebut what Jeppesen
16 overheard him say; we talked about that. And
17 Roeber was never asked by counsel, when Jeppesen
18 talked to him, she said it would be political
19 suicide. He told her -- I don't think I just said
20 that right -- he told her, Roeber told Jeppesen it
21 would be political suicide to support Alamar.
22 They could have asked that question of Roeber, but
23 they didn't.
24 Next slide.
25 Damages. Then we have Peter Butler.

1 No values in his analysis. Let's talk about
2 damages very quickly. And let's compare what you
3 heard from these two experts.
4 Wilhoite had substantial experience in
5 valuing residential care centers. He valued
6 several -- I don't recall, frankly, if he gave a
7 number -- assisted living care centers, which are
8 likened to residential treatment centers, both by
9 Mr. Laney and by Mr. Tverdy. They are residential
10 centers caring for people with Alzheimer's or
11 other disabilities.
12 Mr. Wilhoite performed a damage
13 analysis that conformed to standards of the
14 profession. You remember, I went through that,
15 USPAP and the other standards that apply to
16 certified appraisers and certified accountants.
17 He used a methodology, the discounted cash flow
18 method, that is commonly used by appraisers. And
19 Mr. Butler had to give that to me. He had to
20 agree with that. He conformed to the Code of
21 Ethics for appraisers. Mr. Butler agreed with me
22 on that.
23 And, most importantly, he showed his
24 work. I hate to harken back to high school, but
25 I'm going to. Do you remember getting knocked

1 down on your paper because you gave an answer, but
2 you didn't show your work? Why? Because it shows
3 the process. It shows the thought that goes into
4 the answer. You need to show your work.
5 Did Mr. Butler show his work? No. But
6 Mr. Wilhoite did. Here you're seeing the
7 discounted cash flow analysis. He ran one.
8 Butler didn't. He's showing you here, on this
9 exhibit, how he came up with the discount. Now,
10 Mr. Butler testified that there was -- he didn't
11 give you a discount number. He gave you a range
12 that was somewhere between 30 and 65 -- I'll
13 address that in a minute -- but that's not a
14 number that you can work with.
15 Why didn't he do that? Why didn't he
16 set up a calculation and say, I'll give you
17 3 percent for this, 5 percent for this, and build
18 it up to 23 G13.
19 Or some other number. The reason,
20 because if he showed his work, he would be subject
21 to criticism. Right? Because then we know what
22 he's doing. We know why he's adding 3 percent.
23 We know why he's adding different increments of
24 percents to build up that discount factor. He
25 didn't do that. He pulled it out of the air, and

he gave himself a swing factor of 100 percent between -- well, not 100, probably 85 percent between 35 and 60.

Next.

He looked at the information in the projections. He used the information in the projections. He adjusted the information in the projections and gave you reasons why he used those projections. Those projections turned out to be okay. Amy Jeppesen, Lon Woodbury, this is a healthy industry. So why do you put an outrageous startup discount factor on something that is in an industry where there are a lot of very well-run, successful RTCs that would be like Alamar and that Alamar would be like. Remember, Mr. Jones, himself, their expert, said he looked at the plan and Alamar was going to be an excellent program.

Next.

He was familiar with the projections of Alamar. I've covered that. Let's go to the next.

This is the -- these are the, again, the financial projections that were initiated or used in the discounted cash flow analysis.

Let's go to the next one.

Finally, he used a conservative rate,

even though testimony of Jeppesen and Woodbury suggests strong demand for services. We went into this conservatively, folks. Actually, quite frankly, we anticipated that the expert on the other side would actually do an analysis, and when you do that, you want to be conservative. You don't want to go out on a limb and use a high discount -- or a low discount factor and then have your expert, have Mr. Wilhoite, you know, put to the hot fork. No. We didn't do that. We came in with a conservative number. Twenty-three is a very conservative number.

Next.

What did Butler do? He had no experience in valuing residential care centers. He did not perform a damages analysis. None of his work conformed to standards of the profession. He did not use any methodology to come up with his opinions. He did not provide a precise discount factor, only a broad range. He did not apply the factor to a discounted cash flow analysis. And he provided no value for Alamar or a damage figure to the jury.

I don't know what you do with that. I'm talking to you folks. I mean, if you really

believed Mr. Butler, he didn't give you a number to work with. It is the classic back seat driver. I can drive the car better than Wilhoite, but I'm not going to.

Let's go to the next slide.

He didn't show any of his work. We can't tell what goes into that 30 percent discount factor. He was unfamiliar with Alamar's projections and how they were developed, and since he never committed to a discount rate, he didn't have to take strong demand for RTCs into account. That was fascinating.

I said, "So, Mr. Butler, you" -- I had to remind him that he had reviewed the Lon Woodbury report. He had to recall that, indeed, Mr. Woodbury had checked into the credentials and reputation of Amy Jeppesen, which is very important in developing a start-up RTC. And once I said, "Did you take that into account," he said, "Oh, yeah, but it's still a really high number."

"Do I get a percentage point or two off your ephemeral number?"

"I don't know."

That's what happens. I don't think that's appropriate. I think that if you're going

to call yourself an appraiser, then, ethically, you deserve a number.

Let me give you a little example. You have to get your house refinanced. Mr. Butler shows up. He's going to appraise your house. You need an appraisal of $200,000 for your house, and he looks at you, and he goes, "Well, I'm going to appraise your house somewhere between 100 and 300." Does that help? No.

Double counting. Let's go to the next.

For the life of me, I don't really understand what Mr. Butler was saying there, but I could barely get him to admit that he had not calculated a discount, which he had testified to, so I wasn't going to engage him in this. But let me explain something to you here, folks: What he was basically saying is you either get your lost profits or you get your out-of-pockets.

Now, in the out-of-pockets is the land value. We sold the land at a loss. We lost $500,000 on the land. Now, let's use that as an example. On the one hand, property is purchased, the CUP is effectively denied, and the property is now of no value to us because we can't use it for the purpose that we intended it.

What Mr. Butler is trying to tell you is that if you award lost profits for a company that we never got a chance to start, that we don't get the loss we sustained on the real estate? Those are two different things. Lost profits or lost opportunity and lost investment on your real estate? That's not a double recovery. And it's the same thing with respect to all of the other investments that were lost out of pocket by this company. Those investments, if you will, were rendered valueless.

Let me give you one example. You buy a house for the purpose of renting it. And you rent it, and you get profits or rents while you're renting that house. Now, you may have spent $200,000 on that house. You get rent back. You're making your profits. You don't get the $200,000 back until you sell the house. That's different. One is return of capital when you sell the house; the other is return on capital, and that's when you're making your profit. It is not a double recovery.

Next. Let's go up from there.

I wanted to give you -- let's go to the next, Kathy.

These are the final damages. I talked about this earlier. I'm hoping you took notes on the various categories of loss. We also took off these -- this 81,300-and-some -- 400 dollars for a calculation error. I wanted to make sure that you had that.

Take that down.

Now, I'm going to finish. We talked about damage and, you know, what I -- what I have to say here is really very different than what Boise County has to say, and that is, really, what a shame, you know. This was a high-quality business. They wanted to come to Boise County. They would have brought business to Boise County. I don't care whether Mr. Crabb's numbers are high, low, or otherwise. They would have brought business. They would have hired 140 staff. They would have taken care of lots of kids.

Nobody has suggested that Alamar wouldn't have done a fabulous job for kids. And what a shame. There aren't a lot of really high-quality places like Alamar was going to be.

And what happened? Well, ignorance and fear. You know, it's Christmastime, and if you remember Dickens' Christmas tale, I think it's

ignorance and fear that are the two children that are shown in that story. It's what we have here. Ignorance and fear took over. It took over the adjoining landowners who were, by the way, outside the area of impact that were well beyond 600 feet from the boundary line.

And it overtook the commissioners. The commissioners abdicated their responsibilities here. I'm not saying they're bad people. I'm really -- I'm not. I think Linda Zimmer is a great lady. I enjoyed meeting her. I enjoyed talking with her in deposition. But, you know what, at some point in the process, you have to step up. If you're going to be a commissioner, you have to remember that the greatest responsibility here is to enforce the law. It's not about getting reelected. It's not about appeasing a guy like Terry Day. It's not about taking the easy way out when you've got people who are angry. That comes with the territory. If you're going to take the job, that's the heat in the kitchen.

But that's what happened here.

So I want to leave you with two thoughts. One is that -- there's an old saying

that half justice is no justice at all. We're not here in front of you because we feel like, oh, gosh, you know, we want half of what we had asked for here. And you're not here to say, well, gosh, you know, we're not sure why, but we think that's a lot of money. Justice is about the truth. Justice is about the whole truth.

And so I would ask you to go in there, into that jury room, and do your best. Whatever you decide, Erik Oaas and Steve Laney will accept and appreciate your effort. If you come back and say no, they will understand.

I want to -- there was a lady that testified at the hearing, and her name, oddly enough, was Cathy Wise, and she gave a very short statement to the Commission, and said -- oh, shoot, I've got the wrong -- bear with me, folks. There we go.

"Hi. My name is Cathy Wise, and I live at 4303 Kingswood Drive. I've owned property in Boise County for 17 years. I have a definite invested interest in what happens in Boise County. But what I want to -- but I want to make a comment here that I hope has some bearing on what's happening today. Youth are our legacy, and I

1 believe this and have supported this belief by
2 opening my home to foreign exchange students and
3 foster care. Regardless of where these children's
4 parents live, I open my home. I believe that
5 Boise County will have missed an opportunity to
6 substantially contribute to the community and
7 beyond if they don't take advantage of this
8 opportunity. How can we close our doors to
9 children in need?
10 "When my teenage granddaughter was here
11 at the last meeting, she said to me, they are
12 discriminating against teenagers. And I,
13 honestly, have to question if that is not the
14 case. Would this same opposition be prevalent if
15 it was a retirement home? Would these same
16 conversations be taking place? I don't think so.
17 That being said, we cannot discriminate against
18 our youth, our legacy. I implore you to
19 reconsider and grant this conditional use permit
20 and lead Boise County with a positive legacy, one
21 that we can all be proud of."
22 If you answer the question that Cathy
23 Wise has asked and find that if this was a
24 retirement home, it wouldn't have happened the way
25 it did, you must find for Alamar.

1 Thank you so much for your patience,
2 your energy. I wish you a Merry Christmas or a
3 Happy Holiday, whatever it is. And do your best.
4 Thank you.
5 THE COURT: Thank you, Mr. Banducci.
6 CLOSING INSTRUCTIONS TO THE JURY
7 THE COURT: Ladies and gentlemen, I have
8 some closing instructions I want to read to you,
9 but I'm going to do something -- and I guess
10 Mr. Banducci indicated that he had never made an
11 objection during a closing argument before. And
12 I'm going to do something, I guess, equally
13 extraordinary, and that is to apologize to
14 Mr. Brassey, because I think, on reflection -- and
15 I'm going to take a moment just to explain to you
16 what I've tried to explain, perhaps not very
17 artfully, before.
18 Counsel, in making closing arguments,
19 are restricted to the evidence, but they are free
20 to argue as to what inference you can draw from
21 that evidence, and that really is their job, is to
22 suggest to you what conclusions you should draw
23 from the evidence presented.
24 And I think when Mr. Brassey made the
25 statement, something to the effect that the

1 plaintiffs' exit strategy was a lawsuit, probably
2 what struck me was that he made the statement as
3 more of an assertion, but I think he intended it
4 as an argument or inference that you could draw
5 from the evidence. If it had been stated slightly
6 differently, it would be completely appropriate,
7 and I think I probably should have given him a
8 little more of a pass instead of making the
9 comment that I did.
10 But I think it's important that you
11 understand the role of the attorneys here, and, in
12 fact, it's my very first closing instruction, I'm
13 going to give to you now, is to remind you that
14 the arguments and the statements by lawyers are
15 not evidence. The lawyers are not witnesses.
16 What they have said in their opening statements,
17 closing arguments, and at other times was intended
18 to help you interpret the evidence, but it is not
19 evidence.
20 And I think that's very much the
21 distinction I'm making in my apology to
22 Mr. Brassey. I think he was, in fact, trying to
23 help you interpret the evidence, but the statement
24 came out in a way that almost sounded as if there
25 was evidence that, in fact, that's what -- the

1 plaintiffs actually had as an exit strategy, when,
2 in fact, to my memory, there was no such evidence;
3 and, instead, it was just his argument as to what
4 inference you can draw from the evidence.
5 Now, if the facts as you remember them
6 differ from the way the lawyers have stated them,
7 your memory must control.
8 When you retire, you should elect one
9 member of the jury as your foreperson. That
10 person will preside over the deliberations and
11 speak for you here in court. You will then
12 discuss the case with your fellow jurors to reach
13 agreement, if you can do so, but your verdict must
14 be unanimous.
15 Each of you must decide the case for
16 yourself, but you should do so only after you have
17 considered all the evidence, discussed it fully
18 with the other jurors and listened to the views of
19 your fellow jurors. Do not be afraid to change
20 your opinion if the discussion persuades you that
21 you should, but do not come to a decision simply
22 because other jurors think it is right.
23 It is important that you attempt to
24 reach a unanimous verdict, but, of course, only if
25 each of you can do so after having made your own

conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done was intended to suggest what your verdict should be. That is entirely for you to decide.

Now, some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, Ms. Huang, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing or

orally here in open court.

If you send out a question, I will need to consult with the parties before answering it, and that may take some time. Therefore, you should continue your deliberations while you're waiting for a response to any inquiry that you send out to the court.

Remember that you are not to tell anyone, and including myself, as to how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged by the court.

You will now be allowed to retire to the jury room, and your first duty will be to select your foreperson. You may then start your deliberations. The bailiff will shortly bring in the original exhibits admitted into evidence. You may now go to begin your deliberations.

Actually, I'm going to need to swear the bailiff, Ms. Huang, before you actually leave the courtroom.

At this time, Ms. Gearhart, if you'll administer the oath to the bailiff.

(Bailiff sworn.)

THE COURT: All right. At this time, ladies

and gentlemen, you will be allowed to retire to the jury room and begin your deliberations.

The exhibits will be brought in shortly. One of counsel's final obligations is to review all trial exhibits, make sure they're in proper form and that all redactions that were agreed upon have been made, so that may take just a little while before the exhibits are actually, physically, brought in to you, but you can begin your deliberations as soon as you have retired to the jury room.

At this time, ladies and gentlemen, you may retire to the jury room and begin your deliberations.

(Jury excused to commence deliberations at 12:51 p.m.)

THE COURT: Counsel, just a couple of housekeeping matters. One, as I noted, I do want counsel to review the exhibits to make absolutely sure that we have not made any mistakes. I had a trial years ago in which, I think it was defense counsel, inadvertently, allowed some medical records to go into evidence that were just full of references to insurance. And then they later came back and complained that it was somehow my fault

that I didn't go through and proofread all the exhibits. And ever since I've said, "Counsel, it's your job, not mine. You've got to review the exhibits to make sure that they are exactly as you understood them to be." So I'm going to ask you to do that.

Secondly, the way I handle questions from the jury is to handle them in writing rather than bring the jury back into the courtroom. And the process will be that once the question is brought to me, I will take the question. If I think it's fairly clear-cut, I'll simply prepare a proposed response, circulate it to you. If you're here in the building, we'll gather here in the courtroom, informally, and put on record your objections, if any. If you're not here in the building, we'll have you on the phone so you can go back to your office. But I will not send a response back in until you've had a chance to comment and offer any objections you may have to my proposed response.

Likewise, if the jury wants a readback, of course, probably that won't happen, but we'll deal with that. It's the same thing. That will happen in the courtroom with counsel present, and

after an opportunity to review the request.
Is there any objection to that process?
I think the rule can be read to, technically,
require that the jury be in the courtroom when
responses are made and when -- similar to the way
we instruct the jury, but I think that's just too
formalistic.
MR. BRASSEY: No objection.
MR. BANDUCCI: No, Your Honor.
THE COURT: The last item is please stay
within 15-minute driving distance of the
courtroom, and that would include any clients that
you want present during the reading of the
verdict, because I don't want the jury to have to
wait. Once they've reached a verdict, I want to
be able to promise them that within 15 minutes
we'll be able to take the verdict and be done. So
if you have clients -- I know Boise County is a
ways down the road, but if you have clients who
want to be here, they need to remain here within a
15-minute drive of the courthouse.
MR. BRASSEY: We'll do that, Your Honor.
THE COURT: All right. Counsel, other than
that, I want to thank you. This has been -- I
must say when -- and I'm not sure why I thought

this. I, honestly, thought this was going to be
one of the more painful trials that I've had in
many years, and I don't know. And it, actually,
was not that way at all. Counsel, your conduct
was superb, absolutely a credit to the profession.
And I have to, I guess, engage in some
self-flagellation as to why I ever thought that
this would be anything but a pleasant experience,
because indeed it was.
We'll be in recess.
(Recess.)
(Jury absent.)
(Conference via telephone commenced at
4:21 p.m.)
THE COURT: Counsel, do we have everyone on
the phone?
MR. BANDUCCI: Yes, Your Honor. This is Tom
Banducci, and I have Wade Woodard with me.
MR. HOWELL: Your Honor, this is John
Howell. I've got to grab Andy.
THE COURT: Well, Counsel, this is pretty
minor.
MR. HOWELL: Oh, okay.
THE COURT: Let me just see if we can handle
this very quickly. I think that you were advised

that the defendant did not want the second
sentence indicating that we would send a
definition in, and there was no objection just
sending the first line in, as I understand it, but
I wanted to put that on the record.
Mr. Banducci, or Mr. Woodard, is that
correct?
MR. BANDUCCI: Yes, Your Honor. This is Tom
Banducci. It is.
THE COURT: All right. Mr. Howell, did I
correctly state your position?
MR. HOWELL: Yes, Your Honor.
THE COURT: All right. We'll go ahead and
send this in.
The other issue that's just come up:
The jury has indicated they want to go home at
4:30 and come back tomorrow morning. What I would
like to do is just go in -- I will, of course,
discharge them with an admonition not to discuss
the case or not to continue any deliberations or
conduct any outside inquiry or conduct any
investigation, but I prefer to do so without
waiting for you to come down to the courthouse if
you're in agreement. I, of course, will give the
standard admonition to them. Are you in agreement

with that?
MR. BANDUCCI: This is Tom Banducci. Yes,
we are.
MR. BRASSEY: Your Honor, Andy Brassey. I'm
fine with that.
Do we need to be there in the morning
when they come back?
THE COURT: No. I think we follow -- I
don't even need to be there. The bailiff,
Ms. Huang, will have to be there to let them in
and get them started, but, of course, they will be
told they can't start their deliberations until
everyone is present. I will be here, of course,
but I see no need to have you all here unless you
want to be. But we don't bring them into the
courtroom or anything. Is that agreeable?
MR. BRASSEY: That's fine. I just wanted to
make sure we didn't need to be there.
THE COURT: Mr. Banducci, are you okay with
that?
MR. BANDUCCI: I am. Thank you.
THE COURT: All right. Counsel, we'll go
ahead and bring the jury into the courtroom here
and send them home. We'll keep you advised
tomorrow as to any further developments.

MR. BANDUCCI: All right. Very good.
THE COURT: Thank you.
MR. HOWELL: Thank you.
(Recess.)
(Jury present at 5:32 p.m.)
THE COURT: For the record, we have reconvened court in Alamar Ranch versus Boise County. The court has been advised that the jury has reached a verdict.
Mr. K., I understand you're the jury foreperson; is that correct?
JURY FOREPERSON: Correct.
THE COURT: Has the jury reached a unanimous verdict?
JURY FOREPERSON: We have.
THE COURT: All right. Would you hand the verdict form to Ms. Huang so I can examine it.
I think you apparently used your verdict form from the overall instructions; correct? The form that was signed and filled out by the jury is part of your -- we should have given you a separate copy. I'm just going to pull off this portion from the other instructions.
JURY FOREPERSON: Yeah.
THE COURT: I was trying to figure out why

we were folded into the middle, but we weren't. All right. Okay.
Ladies and gentlemen of the jury, I'm going to have Ms. Gearhart read the verdict here in open court, publish it here in open court.
I'm going to ask you to listen very carefully as the verdict form is read so that we can -- because you may be polled to determine whether this is your individual verdict in all respects. So listen carefully to how the verdict is read because I will come back and ask you to confirm as a group, and then the attorneys may ask that you be polled individually as to whether this is your individual verdict.
Ms. Gearhart.
JURY VERDICT PUBLISHED
THE CLERK: "In the United States District Court for the District of Idaho, Alamar Ranch, LLC, and YTC, LLC, versus County of Boise, Case No. 1:09CV004-BLW, we, the jury, find unanimously as follows:
"Question 1. Have Plaintiffs Alamar Ranch, LLC, and YTC, LLC -- who will be referred to collectively throughout this Special Verdict Form as 'Alamar,' -- proved by a preponderance of

the evidence that Boise County knew or should reasonably be expected to know that the person(s) intending to live in the proposed housing development were handicapped?
"Yes.
"Question 2. Has Alamar proved by a preponderance of the evidence that an accommodation was necessary to permit the proposed housing development to be constructed?
"Yes.
"Question 3. Has Alamar proved by a preponderance of the evidence that it requested an accommodation from Boise County that was reasonable?
"Yes.
"Question 4. Has Alamar proved by a preponderance of the evidence that Boise County refused to make the requested accommodation?
"Yes.
"Question 5. Has Alamar proved by a preponderance of the evidence that the conditions imposed by Boise County in the Conditional Use Permit prevented the proposed housing development from being built?
"Yes.

"Question 6. Has Alamar proved by a preponderance of the evidence that a motivating factor in Boise County's decision to impose those conditions was that the intended residents were handicapped?
"Yes.
"Question 7. Has Boise County proved by a preponderance of the evidence that its decision to impose the conditions on the Conditional Use Permit was also motivated by a lawful reason?
"No."
THE COURT: I believe that Question 8 is not answered; is that correct?
THE CLERK: Correct.
THE COURT: All right. Skip over Question 8.
THE CLERK: "Question 9. Has Alamar proved by a preponderance of the evidence that Boise County interfered with Alamar's exercise of Fair Housing Act rights or with its aiding the exercise of the Fair Housing Act rights of intended residents?
"Yes.
"Question 10. What damages, if any,

has Alamar suffered that were the result of conduct by Boise County?

"$4 million.

"Dated December 16th, 2010," signed by the foreperson.

THE COURT: Ladies and gentlemen of the jury, is this your verdict, so say you one, so say you all?

(Jury affirms.)

THE COURT: Counsel, do you wish to have the jury polled?

MR. BRASSEY: No.

MR. BANDUCCI: No, Your Honor.

THE COURT: Ladies and gentlemen, I'll direct, first, that Ms. Gearhart file and record the verdict reflecting your decision in this matter.

EXIT INSTRUCTION TO THE JURY

THE COURT: I want to, at this time, instruct you about your conduct going forward from this point.

First of all, you are discharged with the sincere thanks of the court. I, unfortunately, was not here for jury selection, but I always talk to the jurors about what a truly

rewarding but often challenging experience it is to be on a jury, and I hope you found the experience to be just that.

At this point, you're free to discuss the case with others, if you wish to. The attorneys may well contact you to ask about factors that affected your verdict. You are now free to respond to such inquiries, if you wish. But if you would prefer not to discuss the matter with the attorneys, you're free to say, "I would simply prefer not to," and I know that they will honor that request. If, by some odd chance, they do not, please contact me and I will, of course, take appropriate action.

That would apply to anyone who may call you or contact you about your service on the jury or be critical of your decision in any respect. Please feel free to contact my chambers if that's a problem. I'm sure it will not be, but I always warn jurors of that and the fact that they can contact me.

At this time, then, Counsel, if there is nothing else to take before the court -- is there anything else, Counsel?

MR. BANDUCCI: No, Your Honor.

MR. BRASSEY: No, Your Honor.

THE COURT: All right. There being nothing else, we will be adjourned.

I will take a few minutes to visit with the jury in the jury room to answer any procedural questions you may have had and to thank you personally for your service on the jury.

If there is nothing else, we will be adjourned.

(Proceedings concluded at 5:39 p.m.)

R E P O R T E R' S C E R T I F I C A T E

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

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

That the foregoing transcript, pages 1840 to 1990, contains a full, true, and accurate record of the proceedings had in the above and foregoing cause.

IN WITNESS WHEREOF, I have hereunto set my hand December 17, 2010.

-s-

Tamara I. Hohenleitner
Official Court Reporter
CSR No. 619

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