

**MINUTES OF THE
HOLLADAY CITY COUNCIL MEETING**

**Thursday, October 29, 2015
Council Chambers
4580 South 2300 East
Holladay, UT 84117**

Council Meeting 6:00 p.m.

ATTENDANCE:

Mayor Rob Dahle
Lynn Pace
Patricia Pignanelli
J. James Palmer, Jr.
Steven Gunn
Sabrina Petersen

City Staff:
Randy Fitts, City Manager
Todd Godfrey, City Attorney
Paul Allred, Community Development Director
Other:
Jody Burnett, Attorney (Williams & Hunt)

I. *Welcome* – Mayor Dahle.

Mayor Dahle conducted and called the meeting to order at 6:05 p.m. and explained that this is not a normal Council Meeting but a hearing of an appeal.

II. *Pledge of Allegiance.*

Council Member Gunn lead the audience in the Pledge.

III. *Appeal of Reasonable Accommodations Request for Property Located at 6196 South Holladay Boulevard.*

(18:05:50) Mayor Dahle explained that this is an Appeal of a Reasonable Accommodations Request for property located at 6196 South Holladay Boulevard. Let me start by saying that we do understand that this has been a contentious issue in the area surrounding this location. I do want to remind you that this is not a public hearing, but a hearing of an appeal. We will only be calling on representatives of parties involved; Mr. LeSueur will be speaking for the appellants. Mr. Jackson for the applicant, our City Council, Mr. Godfrey for the City and we have retained independent representation, Mr. Jody Burnett is representing the City Council. The City of Holladay received an application for the operation of a residential recovery facility for Pinnacle Recovery Center, LLC, on May 28 of 2015. The application requested a reasonable accommodation from the City's ordinance that restricts occupancy in the zone to six residents. Federal Statute requires that group homes treating disabled persons be allowed as a permitted use in any location where single family homes are allowed, and that the City must grant reasonable accommodation from its ordinance for the use. It is the responsibility of our City Manager, Mr. Randy Fitts, to review and approve a reasonable accommodation application. On September 14, an agreement between the City of Holladay and Pinnacle Recovery, LLC, was executed. The agreement allows Pinnacle Recovery to operate a single treatment facility with up to 16 residents. Pinnacle Recovery agreed to restrict the use to one residence, though they own two non-conforming lots. Mr. Jackson will be speaking for the applicant.

The City Council is the City Appeal Authority in this matter. We will hear from the appellant, then the applicant and finally the City. The appellant and the applicant are allotted 30 minutes of

cumulative time and the City five minutes. You are welcome to bank time to readdress issues at the end of the hearing. In other words, if, make your presentation, if you don't use your full 30 minutes, once the City is completed their address to the Council, if you would want to come back up and use the balance of your time you're welcome to do that. However, the appellant has the right to have the last word in the appeal process. We will try to give you three minute and one minute warnings when you're approaching your 30 minute time limit. I remind our Council that we are gathering facts from both parties that will allow us to properly deliberate the accommodation that was granted and deliver a decision. Please let the individuals complete their presentation before we open it up for questions, clarifying questions, from the Council. We will then stop time and allow the Council to address the presenters. This is not a trial; please make sure questions are directed to clarification of the facts being presented.

When each of the parties has completed their presentation and the Council is satisfied, I will ask for a motion to adjourn to closed session, where we will deliberate regarding the appeal. So, after we have heard from the applicants and the appellants and the City and the Council as indicated that they are clear on the facts. We hope to be in a position to make a decision as part of the agenda next Thursday, November 5th. Our decision has to be announced in a public format. That will be followed by the preparation and adoption of a written decision by the Council. The appeal process is not final until the writ decision is adopted by this Council. Any questions or input from the Council before we open up the proceedings?

(18:12:33) Carl LeSueur: Ladies and gentlemen of the City Council, my name is Carl LeSueuer. I reside at 6190 Holladay Boulevard. I live at the property immediately north to the applicant's sober living facility. We are appealing today the grant of 16 beds and accommodation extending the number of beds allowed in the facility from six to 16. For three primary reasons. First, is because nobody demonstrated that 16 beds were necessary for any purpose to sustain a profit for medical purposes in order for this home to be here. Second, the City and the developer in reaching, the developer in reaching its arguments and the City in reaching its decision on the accommodation, relied upon faulty information. First they relied upon a grossly exaggerated and inaccurate statement of operating expenses, submitted by an inexperienced operator. Second, they relied upon the threat from the operator that they would open two homes next door to each other, and seek, which is something that's already not allowed by Holladay zoning code unless they get an accommodation. And, it is undisputed that there's no need, for financial or other reasons, for them to get that kind of accommodation. Before I get into the specifics of those arguments, I do want to acknowledge that there, and set forth the framework that there are Holladay zoning laws and Federal laws that apply here. Where there is a conflict between the two, the Federal law would apply, but as we'll see shortly they're actually harmonious.

Holladay zoning code, in this particular area, it's an R-1 zone. Most of the homes are one acre lots for single families. On average, the census says that Holladay has about three people per household. For non-disabled people, the definition of family for single family homes, allows for up to four unrelated people. For disabled people it allows for up to six unrelated people, plus it allows for accommodations upon a finding that it is necessary and reasonable. Federal law imposes the same requirements. Again, the necessity and reasonable. And it is important to acknowledge that under Federal law you're not required to give an accommodation, simply because somebody wants one and they're building a home for the disabled. They have a burden of showing that the accommodation is necessary and reasonable, and then the City can come back and evaluate those showings and make its own determination.

When an applicant is applying for an increase in size, what the Federal Courts applying the Federal law say is there are really two ways to establish necessity. The first is by showing medical necessity, that a group of a certain size is necessary. Here, for sober living homes, group therapy is one of the activities they pursue and so a group is, having such a group is beneficial to them; but there's really no authority, there's been none submitted, that a group larger than 10 provides benefits that are not available for a group smaller than 10. And in fact, all of the literature and authority in substance abuse counseling suggest that groups of five to 10 are ideal. I understand the applicant has submitted something showing that, an article showing that some groups are defined as having eight to 15 people, but that article doesn't say anything about what the ideal size is. The articles I've submitted do show that the ideal size is between five and 10.

So there's really no debate here about that the 16 is unnecessary. The primary debate here is about what is financially necessary, and this means, what is necessary to sustain a profit. Not to maximize profits and not for this particular operator to sustain a profit, but what is necessary for a business of this kind in this neighborhood to sustain a profit. It's not, again, you can't build the Taj Mahal and say I need 50 people in order to pay for these, cover the expenses of the Taj Mahal. That's not what the law requires. The Federal law requires that to cover the expenses of an ordinary operator in this neighborhood and in this location. And I'm now on slide 10, if you're following along my Power Point presentation.

The developer here submitted an operating expenses, that, and it's, I believe it's also page 10 of the notes, submitted a budget that provided for salaries that are extraordinarily large. Now, I understand the City hired a consultant and the consultant said that they couldn't verify whether or not any of these salaries was normal; but, if you actually go to the Bureau of Labor Statistics they gather data on salaries and wages for people employed in substance abuse residential centers. And, for instance, Pinnacle's budgeted CEO salary is \$264,000. The National average for a group home is \$148,000. Utah wages are generally about 8 percent below the National average, and that would bring that to a \$136,000. In other words, Pinnacle is budgeting almost double, 93 percent higher, salary than is necessary for a home of this kind, for a home to operate here. Other salaries, the CFO they've budgeted \$150,000, which is 60 – 67, almost \$68,000 higher than the Utah Adjusted National Average. The Clinical Director, \$106,000, which is \$30,000 or almost 40 percent higher than the Utah Adjusted National Average. And, the Substance Abuse Counselors they've budgeted approximately \$66,000 each, which is about for all three of them comes out to about \$94,000 of excess operating costs above the Utah Adjusted National Average. All this adds up to overstating just on examining the salaries here in adjusting them to what a normal operator would do here, and reduces the expenses by about \$320,000.

These salaries should be viewed with particular scrutiny because I believe that the owners are actually drawing salaries as these officers. And so, you know you can inflate your salary and then decrease your net income and you're playing the numbers in order to get a larger departure from the zoning scheme, and you really need to make money. And it may be that there are some operations out there that pay higher salaries than a lot of these, a lot of these facilities are closely held corporations and the owners are paying themselves salaries. But the question here is what is necessary for an operator, in general, to operate here and make an income. And if you turn to the next slide, using the analysis of the City's consultant, you see a 87½ percent occupancy at 11 beds. The net income of the City's consultant would be, assume would be a loss of \$161,000. But if you take into account the exorbitant salaries that are being paid here, a normal operator would be gaining \$158,000 of income per year, which is a significant return on investment. Now, they haven't told us what their investment is and if they want the City to take into account what that,

what their return in, of on investment is, it's their burden to provide that information. And the City doesn't have to guess. But whatever their investment is, \$158,000 is a sustaining profit.

On the next slide, are a few other adjustments for a few other categories of expenses that are exaggerated. We all pay mortgage bills and we all understand that part of our mortgage bill is paying interest to the bank and part of it is repaying our debt. The repayment of that debt is not an expense. That is changing one form of assets – cash – to another format of assets – real estate. It's not an expense. But that's been included in the developer's budget. Also, they included the entire size of the home as a fixed cost, when logic dictates that a home for four or five people doesn't need to be as big as a home for 16 people, and so there should be a variable cost in the cost of building a home. So, I've corrected for that here. I've also corrected for, you know, cleaning, just for the bedroom and bathroom portion, not for the common area maintenance, but just for the bedrooms and bathrooms. It should be variable. The City's consultant didn't catch that.

I allowed for a number of therapists that's sufficient for 12, even though I'm projecting here nine people. So, there's, there would be a higher staff to resident ratio, which should improve their experience. And, I've corrected the salaries. And you can see here that they make a profit, albeit a small one, at nine beds. And with that profit they are employing a CEO, a CFO, a Clinical Director, a Case Manager, a House Manager, in addition to all of the support staff. You have to wonder whether you need five management positions for a home of nine people. If you can consolidate the responsibilities of a couple of those positions, you save another couple hundred thousand dollars and you can operate with eight people, which is much more in line in keeping with zoning scheme of Holladay and these low density single family neighborhoods. And so, which raises the question, why the City is, has simply assumed that the developer's operating costs are valid without going to publicly available sources, without any verification that they're correct, and without asking the developer whose burden it is to show that these expenses are necessary, to substantiate those expenses themselves. The developer, in fact the developer on July 10 wrote a letter and said our expenses are \$7 million a year. \$7 million a year for 16 person home. That's crazy! The City came back and sa–, Mr. Allred wrote back and said I think I need to see more details on that. So they sent back a pro forma and all of a sudden, \$4 million of expenses gone. We can operate with \$3 million at 16 people. These people are shooting from the hip. And the City needs to have better comfort before it grants an accommodation that the parts from the normal zoning scheme, before it gives a –, departs to this extent. And it all points to the, you know, the consultant was hire –, but didn't really verify any of the information, said they couldn't verify any of the information, and it gives the appearance that the City was intimidated by this developer who had threatened to sue and was trying to give them all that they wanted, without putting them through the paces and trying to cover it by hiring a consultant and giving it of an ear of legitimacy. But that's really not a proper way to do this. We need to ask the right questions. We need to get, and get the answers before we set aside the zoning code.

(18:24:37) The next question is whether or not it's reasonable. And I've provided you pictures of this intersection here, which everybody coming into this home, like everybody coming up from the rest of Holladay comes off 215 and curbs around right from 6200 South onto Holladay Boulevard. Unlike the rest of Holladay, this home has a driveway that's directly north of, by about 15 feet of that, of the island in that intersection. And if you turn to the next photograph I've got a picture here from Tuesday at 3:15, you'll see that it happens multiple times a day that the cars line up all the way back in that left turn lane. And the City did not perform a traffic study to inquire, or a safety study to figure out *what* is the impact of having 16, 32, 48 more people coming – in and out of this property a day, than have been happening so far. I know that it's a problem, it's difficult for me to

get into my driveway and I'm 20 feet north, and I often have to go into my next driveway because I don't feel safe stopping there.

I would also like to point out that the accommodation agreement really imposes no conditions other than that they can't build another home on the second lot, which is already, which is already against Holladay code, unless there's a reason to give an accommodation. And because they can be profitable with the one home, and in fact they've incorporated as part of showing what they need to be profitable the cost of the second lot. The second lot is already part of why we're giving this departure, if any, on the first home. You can't use it to justify a departure on the first home and then go build a second home. That doesn't, it doesn't work that way. And, in conclusion, I just want to, just want to remind, and I'm glad we're hearing from the City Council and elected body who I trust will give this the appropriate scrutiny and ask the right questions, that we shouldn't be departing from zoning codes, except to the extent necessary. But we certainly shouldn't be doing it simply to give somebody more profit, and lo-give a private interest a profits. It doesn't serve the interests of any of the City's residents, disabled or non-disabled, who are interested in the tranquility and stability of a single family zone. We'll reserve the remainder of my time for a response. Thank you.

(18:27:17) Mayor: Thank you, Mr. LeSueur. If you'd remain at the podium. We have 15 in the bank and at this point I'm going to turn the time over to Council for clarifying questions for Mr. LeSueur.

Council Member Gunn indicated he has a lot of questions. Mr. LeSueur I'm puzzled about the evidence that is before us, because I could foresee a subsequent appeal through a court of law, and I want to make sure that the record is complete. So, what is the evidence in your mind that is before us right now?

LeSueur: Well, we have the reports of the City's consultant, who says that they weren't able to verify any of the budget data.

Gunn: Do you agree to the admission of the Lewis Young report?

LeSueur: Yes, I agree to the admission of everything which is next to my appeal, and I'm happy to go through that for the sake of the record, which includes my letter appeal and all the items.

Gunn: That's important for me to know, and I'm assuming that you will concede the same thing, Mr. Jackson, is that right?

Gunn: Now, with regard to the Lewis Young report, if I understand it correctly it says that the breakeven point is 13 beds. Let's just say at 13 beds, there is very little profit so you have to go to 14 beds under their analysis in order to make a profit. Do you agree?

LeSueur: Yes, their analysis is that at 13 beds you make very little profit. With 14 beds you make a ten percent profit.

Gunn: Your analysis is that it's the breakeven point is eight or nine beds.

LeSueur: That's correct.

Gunn: Why do you disagree with the Lewis Young report?

LeSueur: Because there is publicly available information, which I completely thought to also be my application, my submission yesterday or early this morning, should also be considered part of the record. And I refer to that publicly available information from the Bureau of Labor Statistics concerning the usual and ordinary expenses or and salaries and wages for operations of this kind and I compared specifically to the information that was provided by the developer and used by Lewis Young to provide this report, to prepare this report. And if you turn to, and if you take into account what's a normal salary.

Gunn: So is that the big difference between your analysis and theirs, the salaries?

LeSueur: The salaries are probably the largest difference. There are also significant differences because of the inclusion of principal repayment on the mortgage, and that is, you know, you borrow \$500,000 from the bank on a 25 year mortgage and you pay \$1,800 a month or \$2,000 a month, or whatever it is. And \$200 of that payment makes your equity basis in that property bigger. It's not an expense to you. It's paying back money that you owe. That's not an expense. The interest portion is an expense, so I also excluded the principal repayment.

(18:31:24) Councilmember Palmer: I have a follow-up question on the salary. My reading of those BLS numbers show that that's a salary as received by the employee. When putting together a budget, you normally include salary plus benefits, such as healthcare, retirement, etc., which is about a third more. Do you have an opinion as to whether that's included or not? In your model or there's?

LeSueur: It's included in both. My model just includes the salary portion; they have a separate line item in their budget for benefits and taxes, payroll taxes and Federal taxes.

Mayor: As a point of clarification based on the spreadsheet that I'm reading on the pro forma, they have a monthly line item of benefits, insurance and tax of \$10,929, \$181,000 per year.

Gunn: Well, I'm troubled by the ROI, the return on investment figure. Why is that relevant?

LeSueur: I don't know that it is, to the extent that it is and the City needs to take that into under advisement, its incumbent upon the applicant to provide that information. It's my understanding that it was requested of them, information so that they can make that determination. It's my understanding that the City and its consultants requested information concerning the amount of the equity investment, whether it was \$1,000 or \$500,000 or whatever, and they declined to provide that information. And it is Federal law that if the City has requested information to enable it to make a reasonable accommodation determination and the applicant fails to provide it, the City is well within its rights to deny it until the information is provided.

Mayor: Well, I think I might be able to help clarify that as well because on the report in the first paragraph, or the first pages of the report at the very bottom, the amount of beds is relevant because it's specifically relates to the ROI. That the facility is requir– expects to get a certain return on their investment, and the amount of beds they receive directly impacts that, and if I could read the bottom quote it says as you can see, the expenses are substantial in order for this to be a successful in addressing the disability to individuals who find themselves needing this kind of support. There has to be a substantial amount of overhead, including staff, to make this work. Without at least 16

individuals in a building, the financial model becomes nearly impossible. So, that is what we're talking about here is what provides them with a reasonable return.

Gunn: I'm sorry, I still don't understand that. Let's assume that the breakeven point is your nine bed figure. There would be no incentive for a facility to apply for permission to build such a facility if all we allowed was nine beds, right?

LeSueur: There would be little incentive other than if they want to do a, if they want to do a good thing.

Gunn: So assuming that there is some profit motive involved, if nine is the baseline or 13 according to the other report, what is an excessive ROI?

LeSueur: Well, if you're making a profit at nine of \$8,000 and if the City Council determines that that's not enough, each incremental person adds net income of about \$189,000. So you go up one person to 10 and you're now at about \$208,000, and that's taking into account the incremental cost of building.

Gunn: What is the ROI under your analysis for 10 beds?

LeSueur: Well, we don't know because they didn't provide the information about what their equity basis is, and in order to figure out what their rate of return on their investment is, you got to know what the investment is.

Gunn: Well, let's just assume figures. Let's say that at ten beds under your analysis it's a 10 percent ROI. Is that enough?

LeSueur: Yes. That's more than enough.

Gunn: What about go up one bed and we go to say 15 percent, is that too much?

LeSueur: That's too much, yes.

Gunn: How do you decide that dividing line?

LeSueur: I think the City has an important interest in adhering as closely as possible to its zoning regulations. But frankly, it's much more than 15 percent if you go up by one.

Gunn: Whatever it is; 10 is okay but 20 is not?

LeSueur: 20 is crazy, they make \$189,000 per bed. If you up by two beds you're adding \$399 – \$396,000 of net income on what the City's consultants have assumed to be a 700 and something thousand dollar investment. That is a 50 percent return on investment each year over year.

Gunn: You understand my question is how do we decide what an acceptable ROI is?

LeSueur: It needs to be just enough to incentivize someone to build a home, but not anymore.

Gunn: So profit in excess of 20 percent or an excess of 15 percent should disqualify a facility like this from asking for enough beds to get to that figure.

LeSueur: That's right. They can ask for a smaller figure sufficient to reach ten percent, which, you know from most real estate investors that's a pretty good return on investment.

(18:37:37): Mr. Mayor, may I just interject on that point before we move on? I think, if I understand this right, the standard we're dealing with is what is necessary to provide a reasonable economic return. And so it's not a question of what is too much. The question is once you have reached a reasonable rate of return and anything beyond that, is no longer necessary, is beyond what is necessary.

Gunn: You know there is an agreement between the City and the developer concerning the second lot? In return for the developer agreeing not seek permission to build on the second lot, the City agreed to the builders building a 16 bed facility on the first lot. Does that agreement have anything to do with our discussion tonight? Does that kind of an agreement figure into the computation of a reasonable accommodation or not?

LeSueur: Well, I think it does in this way. They've already figured the cost of that second lot into what is necessary to make this center profitable. In other words, if they build on, it's entirely unnecessary for them to build the second home on that second lot. And so there's no reason to give them an accommodation from the existing zoning code to allow them to build on the second lot.

Gunn: It sounds like you say there was no consideration for our agreement to let them build 16.

LeSueur: I think it was an illusory concession. I think it was a bargaining chip that they put in there.

Gunn: The agreement and the concession obtained by the City should not be factored into our determination as to whether there's a reasonable accommodation.

LeSueur. That's correct. That's my position.

Councilmember Pace: Yes, just a few question. I'm assuming from your discussion that you don't disagree with the claim that there are individuals involved here who are disabled under the Federal Fair Housing Act.

LeSueur: I don't disagree with that. I do think that it needs to be carefully circumscribed to people who are in recovery as opposed to people who are in relapse or actually are currently abusing.

Pace: I'm curious, it sounded to me at one point from your argument that you were suggesting that land costs were not included. And then another part I heard you say that they hadn't disclosed them but they were using the land cost as a basis for a the return on investment. Can you just clarify that for me?

LeSueur: So, they disclosed the amount of the mortgage which was about \$2.5 million. They did not—but that's just the borrowed portion. They did not disclose the amount of equity that they're investing, so we don't know whether the total cost of acquiring and developing this property, if

they're putting in \$100,000 of equity or \$700,000, the City's consultant assumed 700 and something thousand dollars, assuming that it was a 75 percent debt to equity originally.

Pace: Setting aside what was or wasn't disclosed, is it your contention that land costs are or are not a relevant factor in this necessary evaluation? What I'm getting at is this. You made a comment earlier that someone couldn't go, I think you said go purchase the Taj Mahal or build the Taj Mahal and then use that as a justification for requesting a large number of residents. Are you, were you making that statement relative to the land costs in this case?

LeSueur: Well the land costs I don't whether, there wasn't any analysis as to whether the land costs were market value or typical of the market around here. I do know that you can buy 7,000 square foot homes with four or five or even seven bedrooms in the area for less than \$2 million. So the cost—where this developer wants to spend what the City's consultant assumed to \$3.3 million on building a home of this size, it certainly seems to be beyond what's necessary to have this kind of facility.

Pace: I will ask the same question to the applicant. I am troubled by what seems to be a scenario that would allow you to inflate your own costs and create your own necessity. Obviously, you know, I haven't done any market studies, but I think we all recognize that this is high price real estate. And so I'm troubled by using that selection of this site as the basis for the claim necessity. But it sounds like you agree on that point.

LeSueur: Yes. Although I do think there is, and they'll be happy to hear this from me I suppose, but I do think because land in Holladay in general has a high price, you have to take the cost of land in the neighborhood in general into account. You don't have to take into account that once they get on that land they want to build, you know, something with marble floors and stained glass windows, but the land costs on their own are something that can be taken into account whether or not the need for a second lot to be a part of this should be considered, to justify departure from the zoning code. I don't think that's really necessary.

Pace: Your disagreement as to the number of residents is really based on one salary numbers that you think, you disagree with their salary numbers and second it sounds like you also disagree with their carrying costs on the property.

LeSueur: That's right. There are a few other smaller expenses, but they don't move the needle enough to—those are the primary considerations.

Gunn: I want everybody to know that Mr. LeSueuer's brief that he submitted to us was really outstanding, just a magnificent work, and I appreciate your preparation, it was well done.

Palmer: I do have one clarifying question for you before you leave, Mr. LeSueuer. On the slide 21, there's a bullet that says you're requesting provisions of the staff, not the presently addicted and abusing substances.

LeSueur: That's correct.

Palmer: Now that's already in criminal code. You think that also needs to be reiterated?

LeSueur: I think it should be part of the agreement. You can, if it's in the City code, for those items that are actually in the City code, I would simply incorporate by reference into the agreement. That makes it a contractual matter as well as a zoning matter and it's just belt and suspenders and I think it's the wise thing to do.

Palmer: Okay. And you were referring to staff not the patients?

LeSueur: That's right. The staff, you know, I do, you know, I think that it would be their policy, although we don't what their policies and procedures would be. But I think it should be a required policy that their residents also not be currently abusing because that takes them out of the category of disabled people, and you don't want to set a precedent where you've allowed people to have homes for the disabled and all of sudden you have in their housing non-disabled people in the home and collecting rents from non-disabled people in a home that was built on the justification that it was for disabled people.

(18:45:47) Mayor: We will ask the applicant, Mr. Jackson, to come forward, and you're welcome to have anybody in your party speak. Just please, if you'd state your name when you get up to the podium.

(18:47:19) Troy Ferran: Good evening to all, my name is Troy Ferran. My address is 1711 Ellerbeck Lane, Draper.. I appreciate this opportunity tonight to be able to spend a few moments with you and present our project that we're extremely excited about. We've put a lot of work into this and we're excited to be able to do this project in Holladay City. I've been fortunate over the years to be able to, I'm a veteran builder of almost 25 years, builder developer. And, I have been fortunate to be able to build many homes within the Holladay City limits as well as projects. I've also enjoyed working within the City and taking a part of the beauty that Holladay has to offer. As we kind of take a look at this project here, I am an owner operator of Pinnacle Recovery as well as the general contractor for the actual construction of our home.

This picture here to my right is a close rendition to what we're trying to accomplish as far as the look of the home. We're using high quality products throughout the home. It will have a high grade architectural shingle to it. We are using a wood window, and a lot of those features will carry throughout the exterior and through the interior of the home. We feel and believe that it will really complement the area that is being built and really fit in nicely to the Holladay area. As we were looking for different parcels to be able to build this home, we wanted to be in Holladay City we felt like it was something that was needed for this City and for this area, and we did everything that we could do to do our best not to impact the City in a negative way. And that's one thing that I love about this project is that we, the way that it's positioned which I know you're all aware of it, just to reiterate we have two streets. We have 6200 South to the north of us, excuse to the south of us, and we have to the east of us Holladay Boulevard. And then the back of the home backs up to the creek, and then we have one adjacent property to the north. So, we just think that it's a great parcel to be able to have this home on and be able to do business for many many years and make it a fixture of Holladay City.

As far as, I want to just speak for a minute to the, I know it's kind of small for everyone to see, but our, you know there's nothing really second to none on this. We're really trying to do a top-notch project here. The back of the home, the blue mark up on the bottom there is the creek and the back of the home we required, and you know just in rough numbers about 50 feet to be setback from the creek, and the backyard offers a really nice area for us to have a patio and maybe a little fire pit and

a nice area for some of our residents to be able to congregate. You can see to the north of it we have some of our parking, and I want to talk about the parking for a moment. The parking and the traffic, we really feel that the, we will not be impacting this lot any more than what a residential use would impact it. So we're mindful of that, and we have what you can see in the front of the home a little bit of a sports court possibly and just an area that really our people can have some space there to stretch out and enjoy the home.

One of the most important things that we're concerned about is being a good neighbor to all of our neighbors, and especially to Mr. LeSueur and his family. We have both signed an agreement that allows us to put up an eight foot fence which is between our properties, and that we're going to be that fence has been ordered and it'll be installed in approximately 45 days. It's an eight foot pre-cast concrete fence and that will help to give us both an added level of privacy. One of the other things that we're concerned about doing is we're going to do the best that we can to screen our property from his for privacy as well. Back behind our parking there are some trees there and we want to do everything we can to just make it, you know he has a very private property and a very beautiful landscape property and we want to be able to have that continue to play for both of us as we go. We also have a gate that's an existing and that will also add a bit of security for both of us as well.

So, one of the things that I have done is I have met with Mr. LeSueur several times and we've discussed the fence and other issues that have come up I have told him how important it is to us as a group that if there are any issues that arise from our home that we will address them immediately. I've given him my cell phone and I want him or any other neighbors to be able to call and we want to be able to field questions and answer any concerns that they have, because we do not want to impact this area in a negative way whatsoever. We just feel that it really is going to fit well into the demographics and we're really excited about it. So, if I may, I would like to turn a few moments over to my Marketing Director, Lorna Burr, and we'll go from there. Thank you.

(18:53:17) Lorna Burr: I am the Director of Marketing for Pinnacle Recovery. I've done research on this as well and I've been in the industry for 25 years, but when I quickly just Googled group-size therapy for substance abuse clients, the very first thing that popped up from the National Center for Biotechnology Information of Medicine came up a small group size of eight to 15. So that's a small group size, just to give you that, that was the first thing that popped up on my Google search. The other thing I wanted to make a quick note on is in reading the material that I've been presented with from the Council and from Mr. LeSueur, Pinnacle Recovery has been oftentimes referred to as a sober living. We are not a sober living. We are a residential home and it is referred to in the medical field as residential treatment center. So we, there is a difference between the two and I will briefly describe that.

A residential treatment center is the beginning step for long-term recovery. It is a home that people live in typically 30 to 90 days. They don't have jobs. They don't have outside interferences, they are welcome to have family counseling, we will offer that. There's no overnight stays where they leave and come back, they go for the weekend, none of that. They are in our home, in our presence 24 hours a day for 30 to 90 days. Sober living is a transitional living, so that would be where they transition from our home into a step down, which is where they would gain a job or re-gain their job back. They would re-gain more accountability, they would have the right to come and go, they would have a lot less, they would have more expectations of themselves and very much limit, you know, the limits are not as strict as what we would have in our home. So I wanted to clarify those two things.

About myself, after attending University, or Utah Valley University, I worked with struggling adolescents for 13 years. That was kind of my passion when I was in my early 20s. After that I took my professional career to substance abuse and psych hospital in the Salt Lake area. I transitioned to that to become the Vice President of Operations for another residential center in Cottonwood Heights. I worked there for several years doing most all of the operations with financial records; I mean everything concerning the entire center. So I do have a lot of interest in that I do have a lot of knowledge in that to clarify the difference of what Mr. LeSueur said.

While doing this, a lot of people, I'm very passionate about what I do, I love helping others, and while doing this when I'm working with families I'm oftentimes the front person, the first person to speak to the family when a family member calls in need of help for their loved one. I'm often asked why, why are you in this field, what does it do, what got you here, and I just wanted to give you a little of my background. And my background is I grew up in San Diego, and my parents felt that I was a troubled teen so they sent me to Utah, twice. So I was able to live in Utah as an adolescent and was there for a year long program. After that, at the end of that time of my life I decided this is what I want to do. I want to be that person that helps people like this one particular counselor had helped me.

And so ever since then, I have children of my own, I've struggled with teenagers with a lot of the same behavioral issues that we see. And that's what my passion is. In working in my previous place of employment I came across a lovely family. They happened to be one of your neighbors, Nancy Kehl, she's in the audience and I'm going to ask her to come up and speak to you as well just for a very brief moment, but my heartstrings were pulled because like her daughter, who needs treatment and needed treatment when she sought me out, she's adopted. I was adopted. We have a lot of the same background. These people that we are going to be treating are people that are in your neighborhood, in Salt Lake, in Cottonwood. They are people that are all over America that are struggling. They're doctors, they're lawyers, they're professional baseball players, they're golf pros. These are normal people. There are so many people that struggle, and I think the stigma comes from drug addiction and with drug addiction that it's people that are coming straight out of jail, people that are sex offenders. I don't want you to think that this is what we're bringing into your neighborhood. This is a home for healing. It is a place that we want to bring, that we will do background checks on, we will not bring criminals into. We will know their records before they come in and they cannot be felons. These are people that you and I know that are struggling. They're our nieces or nephews, our grandchildren.

(18:59:02) Gunn: The Mayor doesn't want me to do this, but I feel shackled by the procedure we've adopted. I need to ask you questions about something different than what you're addressing.

Mayor: Mr. Gunn, you'll have time to ask them questions, but this is their time. They can—if they want to use their 30 minutes making the presentation they're making, that is their time to do so. If they run out, they run out. When they're done, you can ask them whatever questions you'd like.

Gunn: But we're not getting the information we needed.

Mayor: You can get it when you ask when you open it up to questions you can get the answers that you need. I don't think it's fair to dictate to them what information they're going to present the Council. It's their time to do with it as they choose.

Burr: Okay, I'll turn the time over to Nancy, I'll give her just a minute and a half, two minutes, and then after she's done I would like to have our attorney, Graden Jackson, come and speak for us.

Nancy Kehl: I'm Nancy Kehl, I live at 2428 Field Rose Drive in Holladay. I met Lorna a few months ago when my daughter, Courtney, is struggling with a drug problem. She was born fetal alcohol syndrome, and adopted and has struggled all her life. She found Lorna at one of the other addiction recovery homes that she was at and called her up and asked her if she would come help her. She was able to get her into another facility. Lorna has been there for her at 3:00 in the morning, she's been there for me at 6:00 in the morning, with our questions, with our concerns and how to help fix Courtney. I've grown up in a family of seven sisters, of which four of them have struggled with addiction. I've had a nephew die from an overdose, I've had several nephews and nieces that have struggled with alcohol and addiction. It's in every neighborhood. It's everywhere.

We need to get people like Lorna who care, that want to put self-esteem back in these people, make them feel good about themselves, make them feel like living. I have a nephew that was a heroin addict. He wrote his mother a letter the other day and said I think I'm going to end my life, I feel like everybody looks at me and is judging me. I don't think I can live one more minute. These people need help. They need help from all of us and some understanding. It's not easy, but if we don't start doing something we will see more overdosing. We will see more killings, more burglaries. I'm just very adamant about supporting Lorna in this facility. I'm happy to know her. My daughter is calling me, she sounds wonderful, she's getting some help. I appreciate your time.

(19:02:24) Graden Jackson: Good evening, Graden Jackson, 12548 South 1745 East in Draper. I appreciate this Council, Mr. Mayor, I appreciate your opening statement. Mr. LeSueur, I appreciate your position on this. I acknowledge that there are many neighbors here with us tonight and recognize that there are differing opinions on something like this, and so acknowledge that. Part of the reason for spending the time we have on getting this Council familiar and comfortable with what is being built is one of our requirements, legal requirements, is that this be necessary for a reasonable accommodation. I think we all understand that the Federal law requires that cities allow these types of homes and that; further the Federal law requires that a reasonable accommodation be allowed. And one of the points of under that doctrine is that it be medically, or excuse me, that it be necessary. Mr. LeSueur concentrated on whether it was appropriate, the type of facility that we are putting in. Hopefully you can see and our neighbors who are present here today, can see that we have brought in people with experience to run this operation. And these people who have had personal experience they have spent decades in the business. They understand how many individuals that we need to have critical mass to have these types of treatment be effective.

The other statement that I think has received probably too much attention is the financial side of this. I will say this; it is not to a City Council to dictate the amount of profit. I appreciate Mr. LeSueur saying that we don't need as exhaustive an executive team as was budgeted, but respectfully, that's not for an appellant to dictate. Fortunately for both this Council and for Pinnacle, an independent group did at the engagement of the City, an independent group that understands these types of homes gave us this analysis, and acknowledged the number of beds that are appropriate. And it was based on, it was this analysis that took some time to produce that the City made the appropriate decision in granting Pinnacle a reasonable accommodation. While we do not agree with everything that is in this report, we acknowledge its independence and also acknowledge that without any bias from us that this is the report that was generated from a firm that looks into these exact issues.

Now, the other prong of this legal test is that this accommodation be reasonable. Now fortunately, other cities have grappled with this same situation and Mr. LeSueur provided some of these cases in his brief. I would like to review a few of them. In the City of Milwaukee case, that addressed parking and traffic issues. I thought Mr. Ferran did a good idea identifying exactly what we're dealing with. We're not asking people to wander through the neighborhoods of Holladay City. The access beneficially to us and to you and to our neighbors comes off of these busy streets, and so we believe that is actually a positive. In the City of Milwaukee case, the issue was private lanes and access that required multi-point turns for anybody to even get into a particular home, and that obviously does not apply here.

In the (can't understand, 07:07:08) case, the issue there was whether it was reasonable to allow a home to build a front facing garage. We've tried to provide a rendering so that this Council can see that we will not be asking for our architectural changes. And that is part of our obligation to be reasonable in how we are asking for this request. And so our architecture is reasonable, it is complementary to the area. I suppose that if we came before this Council and said we were going to put a double wide on this lot that we may have a different uproar, and yet we are being criticized for using first rate construction for building this on a comfortable lot. I think those arguments cut both ways. We are trying to be good neighbors, and this will have nice landscaping, and this will have quality construction, and it will be complementary to the area. Mr. Ferran talked about the fence that will be put in, the gate that will be put in. Prior to this use, this lot was a parking lot for Tuscany restaurant. That's what it was used for. And it was a lot full of weeds. And so, we are going to make this into a very nice facility. In the (Edmund case? 07:08:49) that was an attempt by a City to preclude this kind of a home by somehow limiting the number of family members that could be in a home, and the court outright rejected that. The, simply because these people are not part of the same family, they cannot be precluded from living in this kind of a facility, in this kind of a home.

Finally, Cinnamon Hills case was cited, and that simply stands for a City's ability to say we don't have to allow a home in an industrial area, for example. And I think we are safely within the proper zoning for residential construction. Statements have been made by Mr. LeSueur that we intimidated the City. If we did, we did a lousy job. This reasonable request took months and months, and it was a deliberate process, and it was a thorough process, and we went back and forth with your executive team and I take exception to the word "threat". I think there was a collaborative process to get us to where we are, where we have a structure that is complementary to this part of the City and where we have an agreement as to the scope of what we are going to do in this facility. The City engaged a consultant as I indicated earlier. That took a long time, and we somewhat patiently waited for the City to go through the rigorous process that it did. We are here not to pose a threat. Statistically, multiple people in this room will either use our facility or a facility like it, or one of their children will. The City does not have a home and we believe that we have found the perfect place in Holladay City for this, too. If you arguments that Mr. LeSueur has made, then you adopt the notion that we should go to a poorer part of town, or that we should go to an area where perhaps the folks are not able to assemble and afford representation and counter this kind of thing. That is the exact thing that is prohibited by the law. Appreciate your attention, here. I'm not sure if we have any time left, we have come close.

(19:11:49) Mayor: You have five minutes left. You can reserve that after the City Manager speaks, but if you want to stay at the podium I'm quite certain we will have some questions.

Gunn: Thank you. The Lewis Young report says that your breakeven point, I think was 13 beds, is that right?

Jackson: Yes.

Gunn: So you make a, my recollection is that you would under their analysis, your rate of return would be something like 10 percent with 14 beds, is that right?

Jackson: I believe that was their conclusion, yes.

Gunn: So, why shouldn't the figure be 14 beds instead of 16?

Jackson: Let me answer that in two ways. One, if there are 16 beds it is rare that you will actually have 16.

Gunn: But their analysis takes into account an 87.5 percent occupancy rate.

Jackson: I acknowledge that we differ in how we look at it, but I acknowledge that that was their response.

Gunn: So why shouldn't we say that it has to be 14 percent, I mean 14 beds not 16.

Jackson: Well, that addresses a financial issue. If you buy into that report, and that addresses a financial issue, the other prong was the medical necessity, and I believe that we've been very forthcoming in showing this group data that was contained in our brief, that most homes like ours require about 18 people.

Gunn: Mr. LeSueur provided in some foot notes authority for the proposition that the maximum efficient size of a group would be, I don't know if I'm saying the right words, was 10.

Jackson: Yes, that was for sober living.

Gunn: Is that the distinction between sober living and whatever the other was?

Jackson: It is, and that's why we had Lorna explain that point to the Council. We are not a sober living facility. I know a complaint sheet was passed out to everybody that said Pinnacle Recovery, sober living center the facts. That was passed out to everybody to kind of encourage them. We're not a sober living center.

Gunn: So, what is the designation for your kind of facility?

Burr: Residential treatment.

Gunn: Residential treatment. And you're saying that 16 is a better number, a more efficient number for that kind of facility?

Jackson: It is.

Burr: And I'll speak to that as far as in our facility, we will typically meet to 15 is a small group size setting for substance abuse. What we will be doing is splitting our male and females for solo groups to do gender therapy, so that they will know, they will be able to speak to women's issues and such. So a size eight group for females and eight for males will break it into a smaller group and that's just beneficial for the whole group setting.

Gunn: Some other questions. I have some concern about the traffic problem, Mr. LeSueur spoke of it. So, we're all familiar with that intersection. People will be coming off the freeway and coming fairly fast around the corner from 62nd South onto Holladay Boulevard, and just a few feet, what is it, 25 or more past the place where cars will be entering Holladay Boulevard coming off the freeway from 62nd South, people going into your facility will be stopped to turn. Won't that present a traffic problem and a safety problem?

Jackson: No more so than a regular home. Somebody's entitled to build a home there, right? And so they're entitled to two homes.

Gunn: But a home won't have 16 residents and 16 staff and so many visitors. Will this not create a traffic problem?

Jackson: I don't believe it will, for these few reasons. Number one, this isn't a 7-11, it's not as if people are coming in and out all day long. When these folks come, they will be there to stay, and so they don't leave at night, they will stay for multiple months. There will be staff that will leave intermittently throughout the day and we acknowledge that there may be a shift change where they may be a few cars.

Gunn: How many employees per shift?

Burr: We'll have two to three line staff there, 24 hours a day. And then during the day you'll have executive people that will stay there for a minimum of eight or nine hours that they're working. But one thing to add is our 16 residents won't be coming in several cars, but will be in one van. So it's not a lot of traffic, it will just be all in one caravan.

Gunn: And would these residents typically have visitors?

Burr: One day a week, and that will be Sunday which is typically a less traffic day.

Gunn: Mr. LeSueur also raises the question of parking. Is your parking going to be adequate for that facility?

Jackson: Absolutely. So any vehicles that will be owned by the home will be in the garage, which will be a three car garage, and we'll have two vehicles for the home. So we have, and those will come and go only as needed for experiential or for any errands that need to be done. We have parking stalls here, here and then also in the driveway itself. So we have designed this to be able to take care of those needs.

Gunn: How many parking stalls do you have?

Jackson: Here we have one, two, three, four, five, six, seven, eight, nine stalls, across this area without parking in. We have other parking available in the driveway because the size of it. We

have to keep this, of course free, because it is a fire bank, so we've designed it in a way that we will have enough stalls for what is required, for what is needed, excuse me.

Gunn: Mr. Allred is holding up 10 fingers, is that right?

Paul Allred: I counted 10 on the site plan today.

Gunn: And you think that's adequate?

(19:18:40) Jackson: Yes, let me address one other issue if I may. We hope to be operating in March of this next year. So, we won't be able to get all of the landscaping in completely, right now the construction is the second four walls and we're getting ready for (inaudible) in about a week. But as we get to that point, there may be a few additional, some papers and what not here, so if we have any visitors, we'll make sure that if there's visitors there that we can park, we can take care of their needs.

(19:19:12) _____: There would be no parking on the street. I think that was the question that was raised.

Gunn: What rate of the return do you anticipate, rate or, not, rate of ROI, rate of, what is it? Return on investment, yeah. What do you anticipate the return on investment is?

Jackson: Between 10 to 12. With 16 beds.

Mayor: If I could, I would like to follow up with, on that note, I don't have any quarrel with the design of the home and the presentation. It's my understanding that, and this is where we had some problems with the public is, you have a right to build that home, and does it really require a public input or public hearing and I have no quarrel with your right to a recovery center, I think that's a Federally protected right.

What I am going to struggle with is the issue of ROI and the issue that Mr. LeSueur brought up and that is, and I know you mentioned before, that why should we be in the business of deciding what a reasonable rate of return is, but I think to be responsible Council Members to our citizens we have an obligation to provide a reasonable accommodation and there's some assumption there that you have to be able to analyze some numbers to get to that. And I'll try to make this quick because I don't want to drag this out. But, in looking at the pro forma spreadsheet I have real issues with, you say a 10 or 12 percent ROI, I think anybody that's run a business before knows they can make that number whatever they want depending on how they plug in their expenses. And that brings me to three questions that I have. There are three numbers at the bottom of the pro forma that I question when I look at the staffing figures that you have. It is astounding the amount of employees it's going to take to manage 16 individuals that are in that facility. And then on top of that you have a \$12,500 a month administrative management fee. You have an executive management of \$22,000 per month, and you have billing services of \$28,000 per month for a 15 bed facility. Could you provide any clarification about, let's start with executive management. Who is that and what do they do?

Jackson: Sure, we'll bring up Scott Geertson.

Scott Geertson: My name is Scott Geertson, I reside at 3590 Plymouth Rock Cove in Lehi, Utah. In speaking to that, the executive management team are a group of investors that, and owners of the facility that expect a return on investment, that we have been discussing. The other management that is required for a facility and a home, a residential home that would be operating are necessary to provide the treatment for any number of residents that would be in a facility. A clinical director is needed, a psychiatrist, and you need to have a marketing director. You've got to have staff, line staff, that are there 24 hours a day to help and any needs that are required. That is the reason for the need for these salaries.

(19:22:53) Mayor: I have no problem with having to staff the house. But when you say executive management, are the investors, and ROI is the money that you make off your investment. So, that would be the profit that you generate. So \$22,000 to me should be included in the bottom line and be considered as part of the ROI, is that not correct?

Geertson: Let me correct that. The executive management are the owners of the facility. Investors are separate from that number.

Mayor: Could you speak to billing services of \$28,000 per month?

Geertson: The billing service is a independent third party billing service that is needed in order to facilitate payments from the insurance companies that typically would provide coverage for these folks in treatment. So they facilitate and manage the billings of these patients.

Mayor: Are they a separate entity from the ownership?

Geertson: Yes, they are.

Mayor: I guess that is just a shocking number to me for having collecting payments from 15 individuals that stay there to be paying \$350,000 a year for that service.

Pace: Can I ask that, follow up on that? Is this your only facility?

Geertson: Yes.

Pace: So you don't have any other facilities?

Geertson: No.

Pace: This will be your first?

Geertson: Yes.

Jackson: If we may, I'd like to have Lorna talk to the billing service, because she understands it very well and has been doing it for a number of years.

Burr: So, it's a third party billing company that bills for several treatment centers, behavioral health, mental health and substance abuse and they typically charge a percent. The larger amount of beds you have, the less percent you have to pay. Where we're on the low end, there's several facilities

that have 100 plus beds, so they get a discount. So we are kind of at the high rate of billing charges because we're at a lower end of patient load.

(19:25:06) Mayor: So, it's actually going to go much higher once you get, if you had a higher patient load?

Burr: If we had a higher patient load, it would, our percentage would be less.

Jackson: In further follow up to your question, Mr. Mayor, Lewis Young in this report indicated that we had not concealed or exaggerated anything, so your inference that we are simply plugging in expenses to dictate an ROI, that, there was no intention to do that.

Mayor: No, I'm not inferring that and I did read the Lewis Young report, and the Lewis Young report was making assumptions along the way, too. I'm just clarifying these numbers because being in business myself I have to say that these are shocking, shockingly high numbers for a, what is a very, at the end of the day, a very small business when you're only housing 15 people. So, I just want to make sure that the, that when I'm considering what's a reasonable ROI know what numbers I'm analyzing. And, so I just wanted clarification on those. Thank you.

(19:26:16) Pace: I have a couple of questions. First, I think, one of them I think you just answered and that is you don't own or operate any other facilities.

Jackson: No.

Pace: Okay, so all these numbers that you presented are projections based upon not prior experience with other places, but what?

Jackson: Not prior experience owning other places, but we have Lorna who's been in the business for 25 years and has run another home, and we have Scott who is, been a student of the industry and has come up with these numbers based on data that we have been able to gather from other homes.

Sabrina Petersen: Lorna, how large was the home you ran before? How many beds?

Burr: We started with six, well we started with 12, we were able to get a reasonable accommodation up to 16, and then we built another home on the same property which was five acres for another 16 beds, so a total of 32 in Cottonwood Heights.

Pace: You indicated that other facilities, I thought I heard you say something about the number of beds in similar facilities, and I just wondering where that information came from.

Burr: I can speak to that, I give you off the top of my head several, there's one in Spanish Fork area, Willow Tree 16 beds. There's Recovery Ways in Murray, which is over 100 beds. Cottonwood Heights now has 32 beds along with another one called Turning Point with 24 beds. They're all over.

Pace: Okay, let me refine my question. I thought I heard you address two issues earlier. One is the financial necessity, enough beds to make a profit, and second was what I thought I heard you say was a medical necessity. And in response to a question Mr. Gunn asked, why doesn't 14 work if it

gives you a reasonable rate of return? And the answer was, well, medically we have to have 16. Tell me why that is.

Burr: Medically speaking generally the statistics, and I wish I had them for you, –

Pace: I wish you did, too.

Burr: We have millions of people in America that are struggling with this disease and there's not just not enough places for them to go. I've done a local call to all of the centers, I've been in the industry, like I said I know all of the owners firsthand, they're dear friends of mine. I've called all of them and as of last week every single one that is similar to us is completely full.

Pace: Do you know of any facilities that provide the same service that you do that operate with less than 16 beds?

Burr: I believe there's one in Draper that has eight to 12, and it has just opened and I don't know anything about their success rate or anything with how they're doing. They're brand new, named Chrystal, and they're in Draper. We don't know if they've requested an accommodation, like I said its brand new, so I'm not sure.

Pace: Okay, but it sounds like there are other facilities that offer the same type of services that you do with less than 16 beds, is that true?

Burr: Yes, and I truly can't say that they offer the same services. They are a residential home and I don't know what level of care they do. I don't know that much because they did just open.

(19:29:41) Pace: And then let me shift gears to another topic. What we're reviewing tonight is an agreement that was reached with the City, signed agreement, that said I assume you agreed that you could make a reasonable rate of return with 16 beds on this property, with 16 beds, that was the sense of the agreement, correct?

Burr: Yes.

Pace: Okay, and that was based upon your costs for both properties, correct?

Burr: Yes.

Pace: Can you just show us on that diagram, generally speaking, where the two properties are? I know this is both of them combined.

Jackson: The property divides here, this front lot, this house here is permitted with, in round numbers about 15, 16 foot setback on that property down there. And that fits us within the lot confines of that lot, and then I said the lot divides here.

Pace: One of them is basically a corner lot and the other one has frontage on 6200 South, is that right?

Jackson: Yeah.

Pace: The reason I say that is that it looks like your application to begin with asked for an accommodation for 16 beds on each lot, and now you've determined that you can make a reasonable rate of return with 16 beds on both lots. Is that correct?

(19:30:01) Troy Ferran: It is. It's very important to understand that when we tied the property up and as we moved forward to purchase the property and put money into it, our whole goal was to be able to make a reasonable accommodation for the two properties, and to be able to have more than the 16 beds. As we worked through approximately six to seven months of the time of our first letter of requesting a reasonable accommodation through my attorney, through Todd, through Mr. Godfrey and the City, we came to the conclusion, we talked as a group about how can we get this to the finish line. How can we make this work and have everybody benefit from it. So, we at that point took a look and said okay, what can we do? We're just, we wanted to get it done obviously like anyone would be. Overnight, get the accommodation and move forward with your business. So as we looked at it, we agreed through the attorneys talking and negotiating, we talked about if we gave up our right to build another facility like this that we're currently building on the second lot, then we would agree to a 16 bed count. And that was a very important factor because we by all means had the right to ask for it through reasonable accommodation and then to see where we ended up, because again its under the same laws and Federal protection as one.

Pace: Now, what I'm getting at is that your land costs, whether it's A and B considered separately, or A and B considered together, are the same. Right? It's either an aggregate cost for both lots or price A for one lot and price B for another lot. And what I'm trying to make sure I understand is that your total acquisition cost for both lots allows you to obtain a reasonable rate of return with 16 beds, correct?

Ferran: Yes.

Pace: Okay. I heard early when the appellants were talking that they said something about the land costs were not disclosed. I assume the land costs were included in your pro forma, right?

Ferran: Yes.

Pace: Was it the purchase price that wasn't disclosed?

Burr: I think Mr. LeSueur would have to answer that.

Geertson: The purchase price of the property is a matter of public information. That's, it's been disclosed. I mean to the 16 residents, because the amount of investment that's been on this property and what's being constructed, even furthermore I think alludes to the necessity of 16 residents in this facility. There are other facilities that invested a much lesser amount of money in other areas and were able to, you know, to operationally be profitable at 16 beds.

(19:34:04) Ferran: Before the property was purchased, it's important to understand that we spent several months with the City to determine that they were two, legal, non-conforming lots, because the City did not want to recognize that, even though the seller believed that they had two lots that they were selling. Before we closed on the property, we owned the property several months ago, but it took us several months of working, again with our attorney, to get to the point that we had two, legal non-conforming lots. And that was important.

Pace: And I understand that. I guess I'm not concerned about what was or wasn't disclosed. I just want to know, what I'm trying to get my arms around is to figure out the aggregate financial component that you were wrestling with in terms of determining your profitability. And it sounds like land costs were included, correct?

Jackson: That was. And we believe that the way this has ended up is very complementary to the City and to the area. This was a weed field and a parking lot for Tuscany. And we are going to beautify it, build a beautiful structure. We're not going to be invasive by taking people through Holladay neighborhoods. We believe that this is genuinely a perfect parcel for this type of a home.

Pace: And like the Mayor, I don't have any quarrel with what you're building here and your site plans and all that. The question that we're quarreling, struggling with, is how many beds are necessary to get you a reasonable rate of return, because that's the degree to which you need an accommodation, a variation as it were from the City's ordinances. So the question that I wanted to ask, that was I getting to is, it looks to me like the Lewis Young Burningham report also took into account all these same factors. Why is it that you think that, what is it about their report that says you could make a profitable return at 14 beds, that you quarrel with?

Jackson: I believe your question is would we be satisfied with 14. I mean that's the underlying question that you're asking.

Pace: We went out and hired an expert. The expert came back and said they can get a reasonable rate of return at 14 beds, and I assume you don't agree with that. I would like to know why.

Jackson: As we've run our numbers, as we've looked at what we had to put into this project, what we are putting into this project right now—

Ferran: As well as making the concession to take a parcel away from this. That's an important factor. That had to do—that's answering your question.

Pace: But Lewis Young Burningham factored in the total land cost, too. They factored in the cost of both lots and said you can make a reasonable rate of return on 14 beds. And I understand you don't agree with that, I want to know what in their analysis, where did they go wrong in their math that you disagree with?

Jackson: Well, it's a function of how we look at the expense, how quickly we can recover a return. Obviously we get a return faster if we have 16 beds. I've alluded to the attrition rate that Lewis Young also quoted in its letter. But we believe that 16 accommodates the medical necessity, like I talked about earlier, and the data that is in my brief, as well as addressing the financial necessity based on what we got into with these two lots, foregoing any opportunity any money on that second lot, that's how we arrived at that.

Pace: One of the questions that I'm struggling with is, and I asked this to some degree to the appellant, and that is to the extent that the applicant can control their own costs, let's suppose you go out and you pick a property in Beverly Hills. I would imagine that land cost would bring you back to the City saying I need 60 people in this home to make it pencil or whatever the number is. I'm making this up, obviously. So, I guess what I'm struggling with is to what extent by selecting, and I haven't done any market comparison, but I would assume that this is a very expensive property, if you have a \$2.5 million mortgage, it's an expensive property. So, I guess my question

is, how much weight should we give to the applicant's selection of a site that may be more expensive than necessary to provide the service they need? Isn't that a self-imposed financial hardship?

(19:39:11) Jackson: Let me respectfully respond to this. The Federal law allows somebody to go into a residential neighborhood. Now, if a City were to say, you know what go to the poor part of town because that's where the land prices are cheaper and go to where there are trailer parks and put your facility, your home over there. Well, the Federal law prohibits that kind of discrimination. That's saying we don't want disabled people on this corner. That's what you would be saying. And so, respectfully, I'm not accusing you of that, by the way, but respectfully if we have and find a great location which we believe this is, because of its proximity to 215, because on busy streets, because we're not going to be taking people through the Holladay neighborhoods that we all love, but it's going to be an easy access, then if that lot costs a lot of money then we're entitled to roll that into the analysis.

Pace: Okay, so your response to my question is, it is simply up to the applicant as to the property they choose and whatever the value of that property is, that goes into the financial necessity and the mere selection of an expensive or inexpensive property is really irrelevant. It is simply a financial matter beyond that point. Is that?

Jackson: Yes.

(19:40:59) Mayor: Any other questions from the Council? You've still got five minutes if you think you're going to need them I'm going to ask Mr. Godfrey to come up and address the Council.

Todd Godfrey: This will be the one time I may not use my allotted time. If there are any questions from the Council, I'd be happy to answer those. I think the position that we took as a staff in evaluating the application and advising Mr. Fitts and approving the reasonable accommodation is pretty well stated. I think you understand where we're coming from. The one question that I think is coming out of the Council is why 16 in the agreement as opposed to 14. And we approached the entire reasonable accommodation analysis from an impact of land use standpoint. And, at the point the study from Lewis Young came back and said they're viable at 14, and then our question was the request is for 16. What are the additional land use impacts of two more residents, and to be candid with you we couldn't find any. We consider this use like we would a single family home, and the impact of a single family home in this use we couldn't differentiate any significant land use impacts in that analysis and so that's why, at the point we decided to reach an agreement with these folks, the 16 number came into play. And the analysis is honestly as simple as that. It was an evaluation of land use impacts. When we looked at the totality of the reasonable accommodation request, we looked at your ordinance and those factors. We tried to assure that they were compliant with Federal law, and then we looked at those land use impacts in the context of that question of necessity both from a financial and a treatment standpoint. And that's the basis for why we came to the conclusion we did. I'd be happy to answer any questions you have.

(19:43:10) Gunn: I'd like to ask you the same question I asked of Mr. LeSueuer. That is, do you think we should take into account in our analysis the fact that the applicant apparently gave up the right, or at least, the claim to be able to build additional facilities on the north lot. Is that, does that, can that be factored into the analysis that's dictated by the case law?

Godfrey: Our analysis changed when they came forward and said they were willing to do and commit themselves legally to do one facility in this respect. When they were talking about potentially 32 residents on that, those two lots with that kind of a facility, our analysis changed to some of the case law that suggests that a reasonable accommodation is no longer necessary if it alters the fundamental character of the neighborhood. And our thought process was at 32, there's a very good chance that that's exactly what we would find, because we could see increased land use impacts above and beyond a single family home. So we did. We factored it in that way. But, in terms of then, when they came forward and said we're willing to commit to 16, our evaluation was then okay is an accommodation for 16 reasonable, given the whole the law, and we didn't at that point then say, well, we're dividing it into two lots. We didn't go through any of those mental gymnastics. Does that answer your question from our perspective? In your evaluation as an appellant body, this isn't a noble question.

Palmer: If I understood correctly, the original application was two units. If I recall it was 12 per?

Godfrey: We understood it was 16 per.

Palmer: Is it 16 per? So, we are looking at 32 total units. And, what I heard you say was that if you looked at it at the 32 level, it probably would have an impact on land use and likely the City would not grant the second unit at that point.

Godfrey: I don't know that I can go that far, but it certainly raised that specter in our minds. We hadn't done the thorough analysis of those numbers.

Palmer: Let me ask it another way. What I heard you were looking at the impact of 32 that it appeared to have a material impact on the residential neighborhood.

Godfrey: I think there is a much higher likelihood of that, yeah. We didn't do traffic studies, we didn't look at those things, but I think it's pretty natural to consider, you know there's a lot of slightly more than acre properties in Holladay and it's particularly in this neighborhood that has single families with a number residents. But, I think when you put, you know, 32 residents plus staff, there's a high likelihood you would fundamentally alter the character of the neighborhood.

(19:46:22) Palmer: Assuming that's the case, the 32 results in altering the fundamental character of the neighborhood, is it concession to give up a second unit that would fundamentally alter the neighborhood, really a concession?

Godfrey: Yes and again that's what I want to make clear. That was the original application, that's what we were struggling with in evaluating when they came forward and said we're willing to do one, we didn't necessarily, I didn't necessarily view it as a concession, but I thought it changed our analysis now. It changed the potential land use impact.

Palmer: We heard the appellant characterize it as a threat from the developer, we heard the applicant characterize it as a concession to the City.

Godfrey: And I'm sure from each of their perspectives that's accurate. What I would tell you is I'm so far beyond anybody saying we're going to sue you being a threat anymore. All of these facilities carry a very high likelihood of resulting in litigation, from one side or the other. That's the fundamental nature of what we're talking about tonight. It's close to being a foregone conclusion

with these types of things. So, in our evaluation what we did was we tried to focus on the characteristics of your ordinance, the requirements of your ordinance, whether or not it conformed to Federal law. Our understanding of Federal law is they had to prove necessity for their requested accommodation, and that has essentially two components; a financial and a treatment necessity. Looking at that, understanding at our point then with our study, the difference between 14 and 16, is the difference in land use impact and we could see very little if any. So, our analysis was really focused on and boiled down to that. I didn't, we always take risk into account, I can't say we didn't ever say boy this is less likely or more likely to get us a lawsuit, but that wasn't a driving, determining, or major factor in our decision. It just wasn't.

Palmer: So what I heard there was the Lewis Young study came back at 14, you and the staff looked at if 14 is reasonable, is there an incremental impact for two more, and factor ably said you didn't find any.

Godfrey: Correct.

Palmer: So, at that point the second lot factor doesn't really come into play.

Godfrey: No. No, I don't think it does. From that—no, from that standpoint it didn't.

(19:45:09) Pace: Just a couple of quick things, Todd. If I heard the dialogue correctly just a second ago, the analysis of granting an accommodation to 16 was not based on financial necessity. It was, our evidence showed 14 necessary, they were asking for 16 and it simply wasn't worth fighting over the two. If we could get to yes—

Godfrey: Simply worth fighting may be too strong a characterization, but again, with the request we didn't at that point then, to be honest with you, go back and look at pro forma numbers and say wow that changes it from 10 to 18. We didn't do that. And candidly, we didn't necessarily feel like that was legally our role. Our role was, is the accommodation requested reasonable in the circumstances, and then we focused on the land use impacts, and we just couldn't see additional.

Pace: Okay. And again, the, I'm assuming, based upon the conversation I had with the applicant, that the financial viability of this project was based upon the total costs. So if we had been looking at two separate facilities, we would have been looking at half the land cost for each separate facility.

Godfrey: Yeah, I would imagine that's how, one of the ways you could analyze it. Sure. To your point about the price of the real estate factoring in and how that, I think to some extent the legal requirements address that because if you do buy the property in Beverly Hills and you do have to have 40 or 50 residents, at some point that's going to fundamentally alter the character of the neighborhood also. And to me, at that point even if that's what's required for a reasonable return, that doesn't mean you have to grant that accommodation. I think at that point that accommodation becomes unreasonable. Does that make sense?

Pace: Yes.

Godfrey: Legally, I think it addresses that in that way, I think it balances it.

Petersen: I have one question, but I don't know that you can answer it for me, Todd, or if the applicants need to come back up. Is there a, when you were looking at between the 14 and 16, is there an employee per bed ratio with these facilities?

Godfrey: Under the State licensing requirements, I believe there is. I can't tell you off the top of my head what that may be. I believe there is a State licensing requirement. It's not a function of City ordinance.

(19:51:31) Mayor: Okay, thanks Todd. I'll ask Mr. Jackson, you've got five minutes left if you want to make any closing or clarifying statements, the podium is yours.

Jackson: No, I think the discussion's been thorough, again we're here to be good citizens of this great City that we love, and so we, I'm happy to answer to any further questions you might have, but I have no further statement.

Petersen: Do you happen to know my question about the, I'm just wondering if that 14, going from 14 to 16 requires an additional employee?

Burr: I couldn't tell you for sure the exact number, but there is a goal amount.

Jackson: I'm sorry, I don't know the answer to that question.

Mayor: Thank you and thanks to your team. Mr. LeSueuer, you've got 15 minutes left if you'd like to make any clarifying statements and if the Council has any other thoughts.

(19:52:23) LeSueur: I'll make just a few and I promise not to use the 15 minutes. I know everybody's tired and warm and wants to go home and I appreciate your patience. One, I don't think, if I argued, I don't recall arguing that these need to be located in poor neighborhoods. I actually think I argued that it would be appropriate in its current location at an appropriate level of beds. And I think that's what we're arguing over here, is the number of beds, not whether or not it belongs in this neighborhood. I don't think that's been a consideration. In terms of what was or wasn't disclosed, the mortgage cost is \$2.5 million. I believe the property was purchased for somewhere, the land was purchased for somewhere between 900 and a million. I don't know the exact number. But the rest of that cost is for building and finishing whatever, and whatever the cost of the building is, we don't really know, there's, you know, obviously about \$1.5 million of additional from the mortgage that's being applied to and whatever the equity investment is beyond that we just don't know.

I think that we've now confirmed that many of these high level employees are owners or investors or something which helps understand why the salaries are as high as they are. And I think that speaks to really, you know, the question of what really is necessary if these were, you know, your third party hired employees to do this and they were hired at National averages. Again, you get down to nine beds really being all that you need for the two prop-lots together. And, it's not really—and that's what we're talking about, is the two lots together, and I don't think there's really any suggestion that there's, if you divide them there's significantly more that's necessary, and that's not what we're talking about here. We're talking about a home for the two lots together, and with the costs when you take into account the salaries and add a National average, nine beds. It's really easy math, actually. Thank you for your time and for your attention. The questions have been very sharp and impressive and I appreciate your time and attention to this.

(19:54:55) Mayor: Any final questions for Mr. LeSueur?

Palmer: I have one quick question. You stated that really the question is determining the right number of beds.

LeSueur: Right.

Palmer: What do you think that number is?

LeSueur: Nine.

Palmer: Thank you.

LeSueur: I have to say that there does need to be a traffic study or a safety study in or—even if you determine the necessary number of beds. A reasonable accommodation is a term of art that is both necessary and reasonable. Once you determine necessary the next question is, is it reasonable. I, you know, I think there are serious questions at the very least about the traffic. We know a traffic study wasn't done, and that should also be done before, even if we determine the appropriate number of beds before granting the accommodation. Thank you.

Mayor: Thank you very much. Jody could you address the Council in terms of what our position is now with the public until this matter closes?

Jody Burnett: I understand that residents are used to being able to talk to members of the Council when you're acting in a legislative capacity, such as being asked to amend the General Plan, rezone property, adopt text amendments to your ordinances, but in this case I hope the members of the public can understand and respect that the Council is acting in a quasi-judicial function. That means that inadvertently you can jeopardize their decision and their ability to act as fair and impartial a tribunal by trying to engage in communications with them. So I'd ask you to please respect that and not put us all in an awkward position, because they can't talk to you. It would be inappropriate for them to talk to you about this, and they've got to make their decision based on the evidence that's been presented by the parties to the appeal, and that's what they should consider. So, they're not going to be able to reach a decision, or they're not going to reach a decision until next week. But in the interim, it would be inappropriate to talk to them about any aspect of this appeal until it's done, and hopefully everybody can understand and respect that. Thank you.

(19:57:04) Mayor: I would ask the Council if they have any, just open statements they'd like to make before we adjourn and go into closed session.

Pace: You can probably tell who the attorneys are on the Council. We apologize for that. But as, having been an attorney, I just want to compliment both sides for their presentations, their professionalism. This has been very helpful. It's a difficult issue to wrestle with, but I appreciate very much the courtesy and the professionalism and all of the work that has gone into making this presentation. So thank you for your time this evening.

Palmer: I'd like to just follow up on Jody's comments, and something that Mr. Godfrey said, which is we recognize from the beginning that these types of applications have a very high likelihood of ending up in court. And we struggled with, early on, because this started as an allowed over-the-

counter application, pulling a building permit that doesn't require a Planning Commission review, doesn't require a public hearing, doesn't involve the City Council, whether we should advertise the publication or something to the neighbors what was going on. And, that's a struggle as a Council person, but under legal advice, knowing this where this was headed and seeing we're in a quasi-judicial setting tonight, we elected not to do that, so, I just wanted to explain to the public why that is.

Mayor: Before we go into closed session, I just want to remind everybody that we will consider this matter in closed session immediately following. Obviously, that's going to be closed to the Council and our Council, I'm sorry, closed to the public, it will just be our Council and our Council in that meeting. If we are able to come to a decision, then it would be announced next week at our November 5th Council meeting and then it would be followed up with a written decision. So with that, I would entertain a motion.

Council Member Gunn moved to adjourn the City Council Meeting and convene in a closed session. Council Member Palmer seconded the motion.

Vote:

Council Member Palmer - Aye
Council Member Pignanelli – Aye
Council Member Gunn – Aye
Council Member Pace – Aye
Council Member Petersen – Aye
Mayor Rob Dahle – Aye

The motion passed unanimously.

IV. *Possible Closed Session for Deliberation on Above Appeal Pursuant to Utah Law and Statute (if needed).*

V. *Adjourn Work Meeting.*

The meeting adjourned at 8:00 p.m.

I hereby certify that the foregoing represents a true, accurate and complete record of the Holladay City Council meeting held Thursday, October 29, 2015.

Stephanie N. Carlson, MMC
Holladay City Recorder

Robert Dahle, Mayor

Minutes approved: 11-19-15