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December 24, 2020

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*Re: Response to Reasonable Accommodation Request*:

The City of Bluffdale (the "City") hereby submits this response to an application by [redacted] ("Applicant" or "ABH") for a reasonable accommodation request dated December 1, 2020 (the "request" or "requested accommodation").

**Factual Background**

…

On December 1, 2020, the City received a new business license application from ABH to operate a sober living home at the facility. ABH is also concurrently requesting a reasonable accommodation from City Code to allow up to 20 unrelated persons recovering from drug and alcohol addictions to reside at the facility. ABH's application was deemed complete on December 7, 2020, when ABH paid all applicable fees.

**Introduction**

Claims of discrimination are often, as here, factually complicated and legally intricate. Yet ABH provides only general references to general federal laws. ABH's request provides neither the necessary caselaw nor reasoned analysis to support its theories: it mentions one case but that case provides no relevant legal analysis. This lack of information and analysis makes it difficult, if not impossible, for the City to adequately respond. Notwithstanding, the City will attempt to answer the requested accommodation by providing the legal landscape of applicable laws and analyzing those laws as applied to this request given the limited information provided by ABH.

## Standards Governing Accommodations[1]

The Fair Housing Act ("F.H.A."), passed by Congress as Title VIII of the Civil Rights Act of 1968, prohibits housing discrimination because of race, gender, and national origin. 42 U.S.C. § 3601, *et seq*. However, in its original form, the F.H.A. did not include persons with disabilities. The legislature overcame this issue by enacting the Fair Housing Act Amendment of 1988 ("F.H.A.A."). The F.H.A.A. extended the F.H.A.'s protections to include disabled individuals and familial status. 42 U.S.C. § 3604(f). Not only does the F.H.A.A. prohibit discrimination against individuals with disabilities, "[t]he F.H.A.A. imposes an affirmative duty to reasonably accommodate handicapped people." *City of Edmonds v. Wash. State Bldg. Code Council,* 18 F.3d 802, 806 (9th Cir. 1994), *aff'd,* 514 U.S. 725 (1995).

The F.H.A. not only prohibits discrimination in the sale and rental of housing on the basis of race, color, religion, sex, familial status, national origin, or handicap, but also bans certain practices that discriminate against protected categories, including "a refusal to make a reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C.A. § 3604(f)(3)(B).

The protection afforded to individuals with handicaps was "intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and condition or special use permits that have the effect of limiting the ability of [the handicapped] to live in the residence of their choice in the community." *Bangerter v. Orem City Corp*., 46 F.3d 1491, 1498 (10th Cir. 1995) (quoting H.R.Rep. No. 100–711, 100th Cong., 2d Sess. 24 (1988)).

However, it is uncontroverted that municipalities have a substantial interest in enforcing its zoning code and that, under appropriate circumstances, local zoning codes are entitled to a considerable amount of deference. *See, e.g.*, *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7-8, 94 S. Ct. 1536, 1540, 39 L. Ed. 2d 797 (1974); *Doe v. City of Butler, Pennsylvania*, 892 F.2d 315, 318 (3d Cir. 1989). In fact, "in requiring reasonable accommodation, . . . Congress surely did not mandate a blanket waiver of all facially neutral zoning policies and rules, regardless of the facts." *Oxford House, Inc. v. City of Virginia Beach, Virginia*, 825 F. Supp. 1251, 1261 (E.D. Va. 1993). Nor did Congress intend to "give handicapped persons carte blanche to determine where and how they would live regardless of zoning ordinances to contrary." *Thornton v. City of Allegan*, 863 F. Supp. 504, 510 (W.D. Mich. 1993). Additionally, "courts have been reluctant to ride roughshod over local zoning codes, but 'must resolve the necessary tension between a municipality's right to control land use through neutral regulation, and its duty to make

[1] ABH's request included brief reference to the Americans with Disability Act ("ADA"). As a threshold matter, ABH has not carried its burden of demonstrating that an accommodation is required under other federal or state provisions, because it declined to adequately brief whether an accommodation would be specifically required under those provisions and failed to carry its burden of persuasion. Even if the Hearing Officer applied those provisions, however, the outcome would likely be the same for the reasons discussed below. *See, e.g.*, *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006) (explaining similarities between the FHA and ADA); *see also Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685 F.3d 917, 919 n1. (10th Cir. 2012) (evaluating claims under similar standards).

reasonable accommodation for the handicapped under the Act.'" *Recovery Landholdings, L.L.C. v. City of S. Ogden*, 2019 WL 1489003, at *5 (D. Utah April 4, 2019) ("[I]t was not the intent of Congress to gut local government power and functions when it enacted the F.H.A."). For these reasons, mere invocation of the F.H.A. is not sufficient. *See, e.g.*, *Bryant Woods*, 124 F.3d at 604 (discussing reasonableness requirement under the F.H.A.).

**Group Living Arrangement Regulations**

When the City passed its updated regulations for residential facilities for the handicapped, the City Council found

> through its observation, study, and experience, as the United States Supreme Court recognized in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974), that group living, including "[t]he regimes of boarding houses, fraternity houses, and the like present urban problems." Among other things, "[m]ore people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds."

Ordinance 2020-12.

Group Living Arrangements, or G.L.A.s, "tend to introduce transiency, congestion, increased traffic, increased parking, and other urban problems and challenges into communities." *Id.*

The stated purpose in the City's General Plan is to be a "guide for future land use" and growth. General Plan, p. 16. The General Plan describes Bluffdale's value as the "love of open space and parks" with "many people in the community own horses and enjoy the equestrian amenities." *Id.* at p. 10. The City's total population, as of 2014, was 8,000 with over 3,000 acres being dedicated to residential 1-acre homes. *Id.* at p. 7 and 16. The City's average family size is 4.01 with 84.7% of people living in the same house over one year. *See* Ord. 2020-12. Furthermore, the owner-occupied housing unit rate was 79.2%. *Id.*

The goals and purposes of the General Plan are accomplished through City ordinances. The purpose and intent of the Land Use Regulations are to "promote the health, safety, morals, convenience, order, prosperity, and general welfare of the [residents] of the City" with the intent to "[l]essen congestion on the streets, prevent overcrowding of the land…." City Code § 11.10.030; *see also* Ord. 2020-12

The definition of "family" under City Code § 11.20.020 only allows "[n]ot more than four (4) unrelated persons residing together as a single, nonprofit housekeeping unit." However, City Code provides for a permitted upward deviation from the definition of family to accommodate the handicapped. *Id.* at § 14.20.020.C ("[a] facility shall not house more than five (5) persons with a handicap."). Notwithstanding City Code regulations, "[a]n applicant may request a reasonable accommodation pursuant to Federal and State law and this Chapter.

A requested accommodation may be made concurrently with a complete business license application (BCC 14.30)." *Id.* at § 14.40.010.

## I. Burden

City Code § 14.40.040.A. provides:

> The applicant bears the burden of proving that its residents are handicap and that the reasonable accommodation is necessary and reasonable for the handicapped to enjoy an equal opportunity to use the dwelling.[2]

## II. ABH Failed To Provide Sufficient Evidence That Show Its Clients Are Handicapped Under The F.H.A.

### A. A Business Acting On Behalf Of Its Clients.

A threshold issue of being granted protections of the F.H.A., a challenging person must prove that s/he is handicapped within the meaning of the F.H.A. *See Keys Youth Servs. v. City of Olathe*, 248 F.3d 1267, 1273 n.4 (10th Cir. 2001) ("Of course, to prevail on a handicap discrimination claim, Keys' residents must in fact be handicapped."). When a business is seeking the protections of the F.H.A. based on a current or potential client's handicap, the F.H.A. extends its protections to the business if the company can show that it will house handicap persons. *See generally, McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803 (W.D. Pa. 2010). A business can usually do this in two ways. First, the business can provide expert testimony about specific individuals attending, or seeking to attend, its treatment facility. Several *Oxford* cases have used this method. *See, e.g., Oxford Invs., L.P. v. City of Phila.*, 21 F. Supp. 3d 442, 454 (E.D. Pa. 2014) ("Oxford has presented voluminous record evidence that establishes that a large majority of potential residents of the Property suffer from physical or mental impairments in the form of addiction to drugs and alcohol and/or the residents are mentally ill.").

The second method is to show

> the criteria for admission to the *facility* at issue. In other words, an individual can sometimes establish that he or she is "handicapped" within the meaning of the F.H.A. simply by demonstrating that he or she resides in a facility that only admits "handicapped" individuals. *Regional Economic Community Action Program, Inc.*, 294 F.3d at 47-48 (relying on New York's admission criteria to determine that recovering alcoholics residing in a "halfway house" were statutorily "handicapped" and "disabled"); *Wagner v. Fair Acres Geriatric Center*, 49 F.3d

[2] *See also*, *White v. York Int'l Corp.*, 45 F.3d 357, 361 (10th Cir. 1995) ("As with discrimination cases generally, the plaintiff at all times bears the ultimate burden of persuading the trier of fact that he has been the victim of illegal discrimination based on his disability.")

> 1002, 1010 (3rd Cir. 1995) (observing that "no one would be able to meet a nursing home's admissions requirements in the absence of some handicapping condition necessitating nursing home care").

*Id. at* 822 (emphasis in original); *see also Cohen v. Twp. of Cheltenham*, 174 F. Supp. 2d 307, 329 (E.D. Pa. 2001) ("Setting admission standards tied to the F.H.A.A.'s definition of handicap does not place an onerous burden on group home operators who seek F.H.A.A. protection. It simply ensures that the purposes of the F.H.A.A. are properly implemented.").

In the present case, ABH makes broad assertions that its clients are generally handicapped. However, ABH does not provide any expert testimony about how specific clients are handicapped. ABH also did not provide the admission criteria of the facility that demonstrates ABH will only admit legally handicap persons.

B. Elements Of Proof To Determine "Handicap".

Regardless of whether ABH provides expert testimony or the admission criteria, both methods require proof that the requestor will house *handicap* person(s). The F.H.A. defines a person as "handicap" when that person has "a physical or mental impairment which substantially limits one or more of such person's major life activities." 42 U.S.C. § 3602(h). This definition contains three elements: (1) the person must have a recognized impairment; (2) the person must identify one or more appropriate major life activities; and (3) the person must show that the impairment substantially limits one or more of those activities. *See Bristol v. Bd. of County Comm'rs of Clear Creek*, 281 F.3d 1148, 11456 (10th Cir. 2002). This is needed because "[i]t is clearly established that not every illness, medical condition, or physical impairment is a disability under the A.D.A. and the F.H.A." *Davenport v. Sugar Mt. Retreat, Inc.*, 2009 U.S. Dist. LEXIS 98472, at *7 (N.D. Okla. 2009). Thus, the requestor "must articulate with precision the impairment alleged and the major life activity affected by that impairment." *Poindexter v. Atchison, Topeka & Santa Fe Ry.*, 168 F.3d 1228, 1232 (10th Cir. 1999).

1. *Physical or mental impairment.*

There is generally no dispute that a person recovering from drug and alcohol addiction constitutes an "impairment" within the meaning of the F.H.A. *See e.g. Oxford House, Inc. v. Cherry Hill*, 799 F. Supp. 450, 459 (D.N.J. 1992) ("we are confident in saying as a matter of law that alcoholism and drug addiction (excluding current drug use) constitute "impairments" under the Act."). However, the more difficult question is whether that impairment ***substantially limits*** a ***major life activity***.

2. *Major life activity.*

The term "major life activity" is not defined by the F.H.A. but is generally borrowed from the A.D.A. definition section, which states,

> major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

42 USCS § 12102)(2)(A).

In determining major life activities, "the court takes into account the following factors: (i) the nature and severity of the impairment; (ii) the duration or expected duration of the impairment; and (iii) the permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment." *Monell v. Kan. Ass'n of Sch. Bds.*, 2001 U.S. Dist. LEXIS 5829, at *12 (D. Kan. 2001); *citing to* 29 C.F.R. § 1630.2(j)(2).

In the present case, ABH simply states that its clients are protected under the F.H.A. "because their alcoholism substantially limits one or more major life activity." This assertion, however, is simply a conclusory statement with no analysis or evidence.

3. *Substantially limits*.

A person is "substantially limited" in a major life activity if he or she is: (i) unable to perform a major life activity that the average person in the general population can perform; or (ii) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. *See* 29 CFR § 1630.2(j)(1).

While this element does not demand extensive analysis, ABH failed to contain any information of whether their clients who are recovering alcoholics are *substantially limited* in a major life activity compared to an average person in the general population.

Based on the above, ABH failed to provide evidence that its clients are in fact handicapped. Therefore, ABH failed to meet its burden of proof for this element.

## III. The Request Is Not "Necessary" Because ABH Relies On A Theory Not Viable In The Tenth Circuit And, Notwithstanding, Failed To Provide Sufficient Evidence On That Theory.

Although the F.H.A. requires municipalities to provide a reasonable accommodation "when such accommodation may be necessary to afford [a handicapped person] equal opportunity to use and enjoy a dwelling," the person seeking an accommodation bears the burden of proof, and municipalities remain free to deny the person's request if the accommodation fails to comport with the F.H.A. *Corp. of Episcopal Church in Utah v. West Valley City*, 119 F. Supp. 2d 1215, 1220 (D. Utah 2000) (quoting 42 U.S.C. § 3604(f)(3)); *see also*

*Cinnamon Hills*, 685 F.3d at 923 (holding that municipality did not violate the Act in denying request for variance).

The F.H.A. requires reasonable "accommodations that are necessary (or indispensable or essential) to achieving the object of equal housing opportunities between those with disabilities and those without." *Cinnamon Hills*, 685 F.3d at 923. "[W]hen a defendant possesses a legitimate nondiscriminatory reason for a housing decision, a plaintiff's requested accommodation must substantially negate the defendant's concern in order to be considered reasonable." *Keys Youth Servs., Inc. v. City of Olathe*, 248 F.3d 1267, 1276 (10th Cir. 2001) (holding municipality's decision to deny facility's request to increase the number of residents from eight to ten did not violate the Act, where the facility failed to proffer evidence of the necessity of the increase in the number of applicants and failed to rebut legitimate concerns about public safety).

Here, ABH proffers one theory of necessity—financial necessity. ABH argues that the "accommodation is necessary because it is not financially viable for Renaissance Ranch to operate with a smaller number of beds than the 20 requested."

The F.H.A.'s "necessity" element is "expressly linked to the goal of 'afford[ing] ... equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). According to the Tenth Circuit, "the point of the reasonable accommodation mandate" is "to require changes in otherwise neutral policies that preclude the disabled from obtaining 'the *same* … *opportunities* that those without disabilities automatically enjoy.'" *Cinnamon Hills Youth Crisis Ctr., Inc. v. St. George City*, 685 F.3d 917, 923 (10th Cir. 2012). However,

> while the F.H.A. requires accommodations necessary to ensure the disabled receive the *same* housing opportunities as everybody else, it does not require *more* or *better* opportunities.

*Id.*

In other words, the query is "by asking whether the rule in question, if left unmodified, hurts 'handicapped people *by reason of their handicap*, rather than . . . by virtue of what they have in common with other people, such as a limited amount of money to spend on housing.'" *Wis. Cmty. Servs. v. City of Milwaukee*, 465 F.3d 737, 749 (7th Cir. 2006) (quoting *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999) (emphasis in original)). The Seventh Circuit's causation analysis was expressly adopted by the Tenth Circuit in *Cinnamon Hills*. *See Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685 F.3d 917, 924 (10th Cir. 2012) ("the *en banc* court's decision in *Wisconsin Community Services*, which is entirely consistent with our disposition."). Accordingly, the *Cinnamon Hills* case has seemingly abandoned the financial necessity theory and the "necessity" inquiry requires a stricter causation analysis. Stated differently, a party seeking the accommodation must show that "*because* of conditions created by their disabilities" they cannot access "the *same* housing opportunities as everybody else . . ." *Id.* at 923 (emphasis in original).

Thus, in the City's opinion, the "financial necessity" argument is not viable in the Tenth Circuit since a company's economic status is not "because of" its clients' handicaps nor does it ameliorate those effects which preclude the handicapped from availing himself/herself of an otherwise available housing opportunity. But even if financial necessity was viable in the Tenth Circuit, ABH failed to demonstrate that economic necessity warrants 20 residents. Accordingly, ABH failed to meet its burden even if this theory is viable in the Tenth Circuit.

## IV. The Request Is Not "Reasonable" Since The Request Is Would Cause A Fundamental Alteration Of The City's Zoning Scheme.

ABH states that its requested accommodation should be granted because "this facility has operated without incident with the same number of residents for approximately 5 years." And because the operations have been without incident, it "would be discriminatory against the residents of [ABH] because there is no apparent reason to deny it." However, this allegation, even accepting this flawed[3] premises as true, it does not explain how the request is *reasonable* as defined by the F.H.A. and interpreted and applied by caselaw.

Ordinarily, an accommodation is not reasonable if it imposes undue financial or administrative burdens or results in a fundamental alteration in the nature of a program. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1220 (11th Cir. 2008). "[O]rdering a municipality to waive a zoning rule would ordinarily cause a 'fundamental alteration' of its zoning scheme if the proposed use was incompatible with surrounding land uses[.]" *Id.* at 1221. "On the other hand, if the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult to show that a waiver of the rule would cause a 'fundamental alteration' of the zoning scheme." *Id.*; *Bryant Woods*, 124 F.3d at 604 ("[A] court may consider as factors the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations and the benefits that the accommodation would provide to the handicapped.").

The facility is located in the R-1-43 Zone. ABH is requesting 20 residents to live at the property with 2 staff members there at all times. ABH claims that it will have 10 vehicles parked at the facility, which include staff and residents. While ABH provided a site plan, that site plan does not provide any information other than a red box drawn around the garage and driveway. Reading between the lines, ABH may be indicating that the facility has enough

[3] ABH alleges some facts that are not accurate. First, this facility received its business license in 2017 for "residential treatment." Second, the facility was permitted by the State to operate its residential treatment program at 16 residents. *See* State License, Ex. D. Even though ABH operated at a census higher than permitted under City Code, this issue is moot when ABH changed its State license to a "residential recovery" program. ABH fails to understand the legal difference between the two and the different impacts to the neighborhood. In other words, ABH is attempting to piggyback off a program that is no longer in place, accepted clients in a different recovery phase, the treatment is different, the social aspect is different, etc. Because the spectrum of addictions and addiction treatment varies so widely, the legal analysis requires a case-by-case determination. Comparing a residential treatment program to a residential recovery program is like comparing apples to oranges.

parking for 10 vehicles. Even so, ABH fails to explain how its proposed use is *reasonable* given the City's zoning scheme.

Notwithstanding the lack of information, City Planner, Grant Crowell, provided the following information: "based on the latest U.S. Census data, 'the average household size is 4.01 persons per household; about 84.7% of the individuals living in the City lived in the same house for over a year or more; the owner-occupied housing unit rate is 79.2%; and the City has a very low population density of 743.4 population per square mile." Dec. of Crowell, Ex. J (citing to Ord. 2020-12).

Bluffdale has an interest "to regulate group living arrangements, especially in residential neighborhoods." *Id.* This is because "congregate living can create, regardless of disability status, urban problems, such as more people occupy a given space, more cars rather continually pass by, more cars are parked, noise travel with crowds, etc." *Id.* (citing to Ord. 2020-12). "Accordingly, the City has a legitimate interest in preserving single-family neighborhoods, [decrease] traffic and congestion, decrease noise in residential areas, and making sure that adequate measures have been or shall be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets." *Id.*

The City of Bluffdale is "comprised of mostly large residential properties, especially west of the railroad." *Id.* The City is mostly "rural" with limited commercial areas. *Id.* In other words, the City is considered a "bedroom community." *Id.* Most of the City west of the railroad is zoned R-1-43, which is designated as rural residential with a minimum of one (1) acre lot size. *Id.* (declaration includes zoning map). The City intends to keep the City rural with large properties as shown in the General Plan Map. *Id.* (declaration includes General Plan Map). In fact, City Code prohibits flag lots and guesthouses in the R-1-43 Zone. *Id.*

Mr. Crowell found that the "facility with an occupancy of 20 is inconsistent with this neighborhood's residential make up. First, the City's average household size is approximately 4 persons and 79% being owner-occupied. ABH is proposing a household size over 4 times that of the average Bluffdale household size with this property not being owner-occupied." The proposal is also inconsistent since the City seeks to maintain low density in the R-1-43 zone. *Id.*

For traffic, Jeremy Searle of Wall Consultant Group provided a memorandum based on the information provided in the requested accommodation. *See* Trip Generation Study, Ex. K. Mr. Searle was asked to "estimate the existing traffic volumes on the surrounding roadways, and the anticipated number of trips from the ABH facility." *Id.* Mr. Searle used "the Institute of Transportation Engineers (I.T.E.) *Trip Generation, 10th Edition* manual" as a basis for its estimates. *Id.* The study found that this neighborhood has an average of 10 trips per day per residential home, which was increased from an average single-family home "[d]ue to the slightly larger family size in Bluffdale." *Id.* Because ABH failed to provide much information about traffic impacts, Mr. Searle made several assumptions based on, among other things, the number of proposed residents and the number of staff at the facility each day. Mr.

Searle found the facility would produce a "total of 62 trips per day" with an average "trip generation rate of 3.1 trips per resident," which "is consistent with the range of trip generation rates for similar land uses (2.6 and 3.44 trips per resident for Assisted Living and Senior Adult Housing[.])" *Id.* Mr. Searle concluded that even though the road itself can accommodate the increased trips, "[t]he proposed facility would generate approximately 6 times as much traffic as a typical single family home (62 trips per day compared to 10 trips per day)."

Based on the above information provided by planning and engineering professionals, the proposed use is not compatible with the surrounding uses. First, a household occupancy of 20 is over 4 times that of an average Bluffdale household. This proposed density is also significantly higher than the "rural" densities Bluffdale is accustomed to. Second, the amount of traffic this facility would produce is 6 times more than that of an average home in the neighborhood. Stated differently, the R-1-43 Zone only allows for one unit per acre and this facility would have an impact of 6 homes per acre. Furthermore, the requested accommodation produces more traffic than an assisted living center, which is not permitted in any residential zone in the City and is only permitted as a conditional use in one nonresidential zone. *See* City Code § 11.350. Therefore, the proposed accommodation is not "reasonable" because the accommodation, if granted, would undermine the legitimate purposes and effects of existing zoning regulations.[4]

V. **Distance Between Group Living Arrangements**.

As the City was reviewing the application and request, the City found that this facility is located .32 miles from another group living arrangement. *See* Dec. of Crowell, Ex. J. City Code § 14.20.020.E. states:

> Distance Restrictions. No Group Living Arrangement shall be located within one-half (1/2) mile of another Group Living Arrangement. Measurement shall be in a straight line between the closest property lines of the lots/parcels, whether located in the City, County, State, or a surrounding municipality.

Accordingly, the requested accommodation, even if granted, fails to meet this provision of City Code. As soon as the City obtained this information, the City Attorney contacted ABH's counsel and relayed this information (among other things) to him. This conversation took place on December 21, 2020.[5]

[4] The City is also interested in the average stay of the residents. However, this information was not provided, and the City cannot opine whether this would also be an unreasonable alteration of City Code.

[5] Another issue that should be brought up is that the Bluffdale Fire Department inspected this facility during the summer. The Fire Department found that this facility was not equip to house more than 16 residents under the International Fire Code. *See* Dec. of James, Ex. G. If an accommodation is granted with an occupancy over 16, the IFC requires additional and costly fire improvements to be made to the facility, such as a fire sprinkler suppression system in certain areas of the home, thicker drywall in living areas, etc.

## CONCLUSION

While the City appreciates ABH in the City and the good work they are doing with its clients, the law requires that ABH prove its clients are handicapped and that the requested reasonable accommodation is necessary to afford such persons equal opportunity to use and enjoy a dwelling. The City formulates this opinion based on the evidence currently submitted (or lack thereof) and is subject to change at the hearing.

*/s/ Todd Sheeran*
Todd Sheeran, City Attorney