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PUBLIC HEARING ON
LMS PROPERTIES, LLC
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
THURSDAY, MARCH 19, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 5:40 p.m., on Thursday, March 19, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

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1 NEWPORT BEACH, CALIFORNIA; THURSDAY, MARCH 19, 2009

2 4:00 P.M. - 5:40 P.M.

3
4 MR. ALLEN: All right. We'll open the hearing
5 on the only agenda item for today. My name is Thomas W.
6 Allen, and I'm the Hearing Office that's been selected by
7 the City to conduct hearings on the recovery facilities.
8 And with that one in particular, let's see, our item for
9 today is a reasonable accommodation application by LMS
10 Properties, Steve Kim.

11 Would everyone please turn off their cell
12 phones for starters, so that we don't interrupt the
13 proceedings?

14 And with that, Mr. Kiff, would you like to open
15 by giving us a report on the application?

16 MR. KIFF: Yes, sir, Mr. Allen, I'll do that
17 along with Janet Brown from our planning staff.

18 Because some folks in the audience may be new
19 to these hearings, I want to explain the process a little
20 bit. The City adopted an Ordinance in February of 2008
21 relating to group homes. And the Ordinance said that an
22 existing operator -- any existing operator would apply to
23 stay where they are provided they successfully received a
24 use permit to stay. And it said that new operators had
25 to go into certain zones, multi-family residential zones

1 versus R-1 or R-2 zones.

2 And it also provided the reason that we're here
3 today, it provided for an opportunity for persons who
4 represent persons who are in recovery who are disabled
5 individuals -- by definition under Federal law, a person
6 who is in recovery is a disabled individual and entitled
7 to fair housing opportunities.

8 The Ordinance provided that an Applicant
9 representing someone who is disabled could come in and
10 ask for a reasonable accommodation from the City's laws.
11 And if the City could not make a series of findings that
12 would say that that accommodation should be denied, then
13 the City is obligated to grant that accommodation and
14 allow that housing opportunity for those persons
15 in -- persons who are disabled.

16 So this Applicant is at 900 West Balboa. It's
17 an application that did not go through the use permit
18 process. And indeed, because of reasonable accommodation
19 in this case, that's not a black mark, for instance, on
20 their application. They are entitled to ask for
21 reasonable accommodation. We've done a staff analysis to
22 this effect, and the staff analysis is in the report
23 that's available on the Web site and out in front and
24 before the Hearing Office.

25 So this is the hearing at which the Hearing

1 Officer has an opportunity to make a determination as to
2 whether or not that application is appropriate.

3 And during this hearing, the Applicant has an
4 opportunity to stand up and speak first. And then the
5 Applicant can be asked questions by the Hearing Officer
6 or by staff. And then secondly, the public is invited to
7 come up and speak and the public testimony typically is
8 limited to 3 minutes per person.

9 And I would caution folks to limit your
10 comments to specific concerns about this application.
11 And we are talking about people who are a protected
12 class, so accusations or allegations about this protected
13 class I'm going to stand up and say that that's not an
14 appropriate comment to make in this forum. However,
15 specific comments about this operation, whether it be
16 parking, or noise, or otherwise, though are appropriate
17 comments.

18 At the conclusion of the public comment period,
19 the Applicant is entitled to come back up and rebut
20 anything he or she may have heard, and again, with an
21 opportunity for the Hearing Officer to ask questions.
22 And then finally, the Hearing Officer has an opportunity
23 to either approve the staff's recommendation, or to deny
24 it, or to ask us to modify that application and prepare a
25 Resolution for his either approval or could be a

1 Resolution of Denial, too.

2 So with that, I'm going to hand this over to
3 Janet Brown from our Planning Department to tell a little
4 bit more about the specific application.

5 MS. BROWN: Thank you, good afternoon.

6 This sober living facility was brought to the
7 City's attention last fall by a resident who indicated to
8 us that they thought that a group home might be operating
9 at this location. In response to that, our Code
10 Enforcement Division investigated and issued a Notice of
11 Violation for operating a residential care facility in an
12 R-2 district.

13 The operator of the facility wrote to the City
14 in November requesting applications that were needed to
15 comply with the City Ordinance, and they also provided us
16 with a copy of the house rules and the individual leases
17 that they had for the site.

18 This facility provides a sober living
19 environment in a three-bedroom apartment for up to four
20 resident clients and a day resident manager. This is a
21 use that we would classify as a residential care facility
22 small unlicensed, which is only permitted in an MFR or
23 multi-family residential district with approval of a use
24 permit.

25 In December, the facility operators submitted a

1 reasonable accommodation application requesting that the
2 unlicensed sober living facility be allowed to continue
3 its operations in the R-2 district where such leases are
4 not permitted, and for a relief from the requirement that
5 such uses are only permitted in a multi-family
6 residential district.

7 This is a small, stand-alone facility that
8 appears to be unrelated with any other residential care
9 or recovery facility in the City. Staff has reason to
10 believe that we think -- we think that the unit may have
11 been a sober living facility prior to this operator
12 occupying the unit.

13 The facility is located at the corner of 9th
14 Street and West Balboa, and the lower unit of a duplex
15 building. And to our knowledge, there is no other
16 residential care facility within this block of West
17 Balboa Boulevard or within two blocks in any direction.

18 The clients at the facility reside under a
19 separate written agreement with the operator and are
20 subject to house rules, which are enforced by the
21 resident manager. Some examples of the house rules are
22 abstinence from drug and alcohol, drug testing as might
23 be required by the resident manager, attendance at
24 12-step meetings.

25 There are curfew and quiet hours. The

1 residents must refrain from use of foul or racist
2 language. The residents are required to be employed,
3 either actively seeking employment or attending school
4 full-time. There are no transportation services provided
5 by the facility operator, and residents are permitted to
6 have their personal vehicles while residing at the
7 facility.

8 The parking that is provided on site is in the
9 form of a four-car closed garage, which two spaces are
10 assigned to this facility. This would meet the parking
11 requirements for residential use of two spaces per
12 dwelling unit, and it also meets the parking requirement
13 for a residential care facility of one parking space for
14 every three beds.

15 To date, the City has not received any
16 complaints about this facility that -- as of the time of
17 this report. And I believe that concludes my
18 presentation. And I have the City Attorney's Office come
19 and speak to us about the reasonable accommodation and
20 analysis now.

21 MR. ALLEN: While she's coming up, how many
22 people would be permitted at this facility if the
23 recommended action was taken?

24 MS. BROWN: Four resident clients and one
25 resident manager, so a total of five individuals in a

1 three-bedroom facility.

2 MS. WOLCOTT: Good afternoon, Mr. Allen.

3 Catherine Wolcott, Deputy City Attorney.

4 First slide, please, Mr. Kiff.

5 MR. KIFF: Yes.

6 MS. WOLCOTT: To give you a little bit of
7 background on reasonable accommodation, as we've done at
8 past reasonable accommodation hearings, the Fair Housing
9 Amendments Act poses an affirmative duty upon the City
10 and other government entities to grant reasonable
11 accommodations when the accommodation request is made on
12 behalf of the disabled individual, when the request is
13 reasonable, and when the request is necessary to afford a
14 disabled individual the opportunity to live and enjoy a
15 dwelling of their choice.

16 The first prong of the analysis is, is the
17 request on behalf of the disabled individual? In this
18 case, the Applicant has submitted an affidavit that every
19 resident client will be a person in recovery from alcohol
20 and drug abuse, which is defined under Federal
21 Regulations as a disability.

22 The second prong of the analysis is whether the
23 request is reasonable. Unreasonable has been defined as
24 either an undue financial or administrative burden or
25 fundamental change in the nature of a government program.

1 Fundamental change -- another word that courts
2 have used to illustrate fundamental change in the nature
3 of programs is whether or not the accommodation would
4 undermine the basic purpose which the restriction seeks
5 to achieve in the first place.

6 And the third prong is, is it necessary to
7 allow the disabled individuals the opportunity live in
8 the dwelling? Some of the requests that we received from
9 other applicants are broader than necessary. They could
10 feel that it's necessary to live and enjoy that dwelling,
11 however, they could have a more narrowly tailored
12 exemption, which would still allow their individual
13 clients to live in the facility but would not so
14 undermine the City's zoning programs.

15 LMS Properties has requested exemption from the
16 Municipal Code requirements that all residential care
17 facilities that are small and unlicensed be located in an
18 MFR zone with a use permit.

19 So our first analysis is, having already
20 established they're disabled, is the request necessary?

21 From our perspective, the facility is unique.
22 We went into this in detail in the staff report. Anybody
23 wanting to live in a small facility of this size
24 surrounded only by single housekeeping units on all
25 sides, including the other dwelling of the dwelling unit,

1 you cannot find it, to the best of our knowledge,
2 anywhere else in Newport Beach to -- from this facility
3 to the end of Peninsula Point, there are no known sober
4 living facilities.

5 There are no known facilities towards the Bay
6 or towards the ocean from this facility. And going the
7 other direction on Balboa Boulevard, the nearest facility
8 is over two blocks away.

9 Let's see. These are factors that the City
10 considers when under -- the Municipal Code when we're
11 analyzing necessity.

12 Whether the accommodation will affirmatively
13 enhance the quality of life of individuals with the
14 disability. That's analyzed in the staff report, and we
15 found that it would because of the small size.

16 Whether the disabled individual will be denied
17 an equal opportunity to enjoy the housing of their
18 choice. As we discussed, if we deny this request, there
19 are no other facilities of this nature available in
20 Newport Beach at this time.

21 Whether the accommodation is necessary for
22 financial viability. The facility operator did not raise
23 the viability -- did not raise any financial issues, so
24 we didn't have a chance to analyze this factor.

25 And the fourth factor is whether the existing

1 supply of facilities of a similar nature in the City
2 would be sufficient to provide these individuals with an
3 opportunity to enjoy a similar dwelling type. And as
4 we've established, there are no facilities like this that
5 we're aware of.

6 The next prong of the analysis is whether or
7 not the requested accommodation is reasonable.

8 The factors that we are allowed to consider is
9 whether the accommodation would fundamentally alter the
10 character of the neighborhood, increase
11 overconcentration, or make it a more institutional
12 environment;

13 Whether the accommodation would result in
14 substantial increase in traffic or insufficient parking;

15 Whether it would substantially undermine the
16 expressed purpose of the general plan;

17 And whether the accommodation would create
18 institutionalization of the neighborhood.

19 These are factors that are to be considered.
20 These are not the required findings. Municipal Code
21 establishes that these are factors that would be taken
22 into account in our analysis; therefore, they are fully
23 analyzed in the staff report.

24 First thing we look at is the required
25 findings. Would the request created undue administrative

1 or financial burden on the City? Having received no
2 complaint about this facility up to the time the staff
3 report was prepared, and not having -- in the letters
4 I've reviewed that have come in since, there weren't
5 specific impacts that were tied to this facility that
6 I've reviewed. If any member of the public wants to
7 correct that during the public comment period, they may.

8 However, given our record with this facility,
9 we do not believe that granting the accommodation would
10 create an undue administrative burden on the City. We
11 haven't had a burden from them in the past.

12 And I also say the Applicant's been very
13 cooperative in the process, unlike some of the other
14 applications we've been reviewing. They have
15 indicated -- they have shown their pattern of operation
16 by being very responsive and very prompt and providing
17 everything the staff has asked for.

18 The next factor we have to look at is whether
19 or not there's a fundamental alteration in the zoning
20 program, and this gets more complicated. The zoning
21 program that restricts the operation of residential care
22 facilities to MFR zones with a use permit requires a
23 two-pronged analysis.

24 One, do we undermine the fundamental purpose of
25 the R-2 of what we are trying to do in R-2 zones? And

1 two, by not -- by allowing them into the area without a
2 use permit, are we undermining the basic purposes which a
3 use permit requirement is put in place to achieve?

4 First, we're going to look at the R-2 and MFR
5 purposes. The purposes of the R-2 and MFR zoning are:

6 The R-2 are to provide areas for single- and
7 two-family residential uses in a medium to high density
8 development, depending on location. On the central
9 Newport area, it's a medium density development area for
10 R-2.

11 For MFR, provide single-, two- and multi-family
12 residential uses. And that also has been a medium to
13 high density development scheme.

14 So the density, particularly given the small
15 size of this facility, after analysis, the staff felt did
16 not greatly differ and, therefore, did not undermine the
17 purpose of the zoning code.

18 As for the purpose of the use permit, the basic
19 purpose of any use permit is to see that the zoning code
20 purposes are achieved and to mitigate negative secondary
21 impacts on certain uses on surrounding properties.

22 Newport Beach Zoning Code -- Municipal Code
23 details what these purposes are in there. They include
24 maintaining the character of the residential
25 neighborhood, promoting public health and safety,

1 implementing the goals of the general plan, and ensuring
2 the conditional uses do not change the character of the
3 residential neighborhood.

4 There's also a second purpose, which is to
5 protect and implement the recovery and reintegration of
6 the disabled, in part by avoiding the overconcentration
7 which creates quasi-institutional environment, which is
8 not beneficial to the needs of a recovering individual.

9 The purpose of community based care, as we
10 understand it, is to allow people in recovery from
11 addiction to recover and reintegrate into the surrounding
12 neighborhood rather than the other way around.

13 So our question becomes, if we grant this
14 accommodation, do we undermine the purposes of that use
15 permit requirement? We feel that it does not, because
16 the Hearing Officer can still impose the same controls of
17 the reasonable accommodation on this facility as it could
18 with the use permit. Zoning Code -- the Municipal Code
19 allows this.

20 And the other factor is that, unlike a use
21 permit, the reasonable accommodation does not run with
22 the land; therefore, you are not creating an entitlement
23 for future users. You are granting an accommodation to
24 this specific group. And when this specific group is no
25 longer there, we believe any new applicant at this

1 location would have to -- would need to go through this
2 process again to, once again, show that the request was
3 reasonable and necessary.

4 MR. ALLEN: So are you saying this permit would
5 be personal to Mr. Kim?

6 MS. WOLCOTT: It would be personal to LMS
7 Properties.

8 MR. ALLEN: Okay.

9 MS. WOLCOTT: The proposed conditions, on the
10 next slide, did ask for a bed cap of no more than four
11 clients, one resident manager.

12 We'd ask the facility not occupy the second
13 unit. Apparently, the Applicant has been offered
14 expansion of the second unit and has declined because he
15 did not want to increase the size of his operation.

16 We would want the weeknight curfew to be 10
17 p.m. We would want the weekend curfew to be 11 p.m.
18 We're not sure that having a curfew to 2 a.m. is doing
19 anything that's supportive of recovery, but the Applicant
20 can address that. Quiet hours, 10 to 8.

21 Controls put in that would guarantee that no
22 secondhand smoke is detectable from off the property.

23 We'd like 24-hour contact available to address
24 any concerns. And as Mr. Kiff has explained in past
25 hearings, this does not mean that you necessarily have to

1 be reachable at 2 a.m., but there has to be someone to
2 take calls who will respond and to say what action will
3 be taken within 24 hours.

4 Providing a list of similar facilities that are
5 owned or operated in the past five years that he can
6 certify that no person operating such a facility has done
7 so in violation of law. That's been an important finding
8 in other permit hearings, and we think it's important
9 here. At this point, we have no evidence that would
10 suggest that they have operated any similar facilities at
11 all, let alone in violation of law.

12 With these conditions, we believe that this
13 facility could comply with the actual required findings
14 of the use permit, which includes no secondhand smoke
15 detected off the property, operate and comply with state
16 and local law.

17 It would more than meets the
18 requirements -- the occupancy requirements of, excuse me,
19 the operating conditions required for a use permit, which
20 would allow no more than two residents per bedroom, plus
21 one. There is a three-bedroom facility. Under the
22 maximum limit of the use permit, they could get up to
23 seven people here.

24 Names of managers and owners provided, as we've
25 already discussed.

1 More required use permit findings would be that
2 the use has sufficient on-site parking for use, and that
3 the traffic and transportation impacts have been
4 mitigated to an insignificant level. Again, this is a
5 use permit finding rather than a reasonable accommodation
6 one, but we did want to analyze this so that we can show
7 the lack of impact.

8 Bed count of four. They have more than enough
9 parking.

10 We did the average daily trip calculations for
11 a duplex unit. With a single housekeeping unit, it would
12 be 6.72 per dwelling unit. So I'd like to correct an
13 error in the staff report we did there. The average
14 daily trips for residential facility is 2.74 per bed,
15 which is 13.7 average daily trips for the four clients
16 and the manager -- we included the manager in that
17 calculation -- which leaves a difference of about 7,
18 which, in past use permits hearings, we have not found to
19 be a substantial increase. And what we are considering
20 in a reasonable accommodation analysis is whether there's
21 a substantial increase in traffic.

22 Required findings for reasonable accommodation
23 are that the property be physically suited to accommodate
24 the use, which we believe the three-bedroom facility with
25 two covered on-site parking spaces and only four

1 residents plus a on-site parking individual, we believe
2 that's adequate, and it does not create overconcentration
3 under the APA standard of one or two uses per block. It
4 is the only one for -- in a two-block radius.

5 Operation of vans will not create additional
6 traffic. There are no vans.

7 And we are told by the Applicant there no
8 deliveries, and they use regular trash collection, which
9 addresses a required findings for a reasonable
10 accommodation.

11 For these reasons, staff recommends the
12 reasonable accommodation be granted. The
13 requirements -- the recommendation specific to this use,
14 four clients, three bedrooms, two on-site parking spaces,
15 operating one single unit of a duplex single housekeeping
16 unit on all four sides, residential manager supervising
17 on-site, under this situation, we believe a review in
18 court would find that we have affirmative duty to grant
19 the request.

20 Thank you. That concludes my presentation.

21 MR. ALLEN: Could I ask maybe a question of
22 you, Ms. Wolcott, because I'm not sure whether it would
23 be Mr. Kiff.

24 This application is interesting. Because when
25 we look at the care facilities and the recent Ordinance

1 that was adopted, we see that permits are required for
2 larger licensed facilities in that R-2 zone. And we also
3 know that small licensed facilities can be located there
4 without any permit. So six or less can be in those zones
5 without any permit, right?

6 MS. WOLCOTT: That's correct.

7 MR. ALLEN: So, now we have a use that has not
8 been dealt with by the Ordinance, and it's an unlicensed
9 facility.

10 MS. WOLCOTT: It is.

11 MR. ALLEN: The first question in my mind is,
12 why didn't the City deal with this type of use in the
13 Ordinance, if you know? I mean, if you don't --

14 MS. WOLCOTT: It is in the Ordinance. There's
15 a definition of "resident" -- in the definition section
16 of the Ordinance, they divided it into four categories.

17 MR. ALLEN: Okay. What I'm specifically asking
18 is, why didn't -- why wasn't the use permit process in
19 the Ordinance extended to include a small unlicensed
20 facility?

21 MS. WOLCOTT: It is, sir. It may not be as
22 clear on the face of the Ordinance, but if you look at
23 the language matrix, residential care facilities,
24 unlicensed, regardless of size, are required to locate in
25 an MRF zone with a use permit. That is a change from

1 before 2008.

2 In the earlier versions of the Ordinance that
3 affecting group homes, residential care facilities,
4 whether they were licensed or unlicensed, regardless of
5 size -- if they were six or under, they could go into R-1
6 and R-2 zones with the use per -- or excuse me -- without
7 a use permit. So that is a change for this facility.

8 Basically, unlicensed facilities, whether it's
9 two people or 20, are held to the same standards in the
10 Zoning Code.

11 MR. ALLEN: They are?

12 MS. WOLCOTT: They are.

13 MR. ALLEN: But they are not being applied in
14 this instance?

15 MS. WOLCOTT: They are in this instance. Well,
16 in the reasonable accommodation analysis, we're looking
17 at the small size, and saying that because of the size
18 and the controls on this particular operation, we could
19 make an accommodation and exemption from the standard
20 practices, policies and rules of the City, which is what
21 Federal law requires us to do if it doesn't undermine the
22 Zoning Code if the request is necessary and reasonable.

23 MR. ALLEN: Is it clear -- and you may not have
24 even thought of this. But does Federal law, in your
25 mind, reasonable accommodation requirements preempt state

1 or local law with regard to use variance? Because this
2 appears to me to be that very thing --

3 MS. WOLCOTT: Well --

4 MR. ALLEN: -- a use that's not permitted in
5 the zone at all, and yet we're saying it can go in,
6 pursuant to Federal law even if it violates state law.
7 And I'm not sure that the Newport Beach Charter addresses
8 use variances, but I doubt it.

9 MS. WOLCOTT: This is exactly the situation
10 which the Fair Housing Act Requirement that cities give
11 reasonable accommodations was intended to address.

12 When there are regulations in place that would
13 protect -- would prevent a group of disabled individuals
14 or a single group of disabled individuals from living in
15 a certain house, a certain area, the cities, counties,
16 states are required to make reasonable accommodations.

17 And it's an affirmative requirement from their
18 usual policies and practices, if the request is necessary
19 to allow them to live in a dwelling. And if the request
20 is reasonable, it doesn't impose an extra burden, and
21 doesn't undermine the purposes of that ordinance. And
22 yes, in some cases, it does preempt it.

23 MR. ALLEN: Okay. And whoever would prefer to
24 answer this or not answer it, another question I have is
25 that we have been specifically informed by legal staff

1 that a six or less licensed facility cannot be counted
2 for determination of overconcentration.

3 MS. WOLCOTT: That was the recommendation,
4 sir.

5 MR. ALLEN: Yes. Well, right. So the next
6 question would be, would this be -- is there a difference
7 between this and a small licensed facility?

8 MS. WOLCOTT: There's a big difference.

9 THE COURT: Okay.

10 MS. WOLCOTT: Under state law, Health and
11 Safety Code section 11834.23, we are required to treat
12 licensed facilities with six or fewer residents as if
13 they were any other single family residential use.

14 And it is very specific in that code section
15 saying that we cannot require any use permit, any
16 requirements under the Zoning Code against six or under
17 license facilities that we would not require under every
18 other single housekeeping use. It does not extend that
19 requirement to six or under unlicensed.

20 MR. ALLEN: Okay. Good.

21 That's all that I have right now.

22 MS. WOLCOTT: Thank you.

23 MR. KIFF: Mr. Allen, I just jumped on our Web
24 site. You can see on the screen up there, this is the
25 Ordinance, and this is -- these are the categories

1 allowed in the various zones.

2 So you can see Ms. Wolcott was discussing this
3 type of classification, residential care facility small
4 unlicensed. And they are prohibited in all zones except
5 for with a use permit offered by a Hearing Officer in
6 multi-family zones, where the one above are permitted in
7 all zones without a use permit, and that's small ADP
8 state licensed facilities.

9 So again, as Ms. Wolcott is pointing out, her
10 staff's interpretation is that Federal law under
11 reasonable accommodation obligates us to allow this use
12 in an R-2 with this specific case, this specific
13 operation, this specific situation.

14 MR. ALLEN: Understand. I don't understand the
15 rationale that didn't leave -- that didn't allow a small
16 unlicensed facility to get a use permit, but that's not
17 my prerogative. It's the City Council's.

18 MR. KIFF: It is interesting that you raised
19 that. There was a bill in Sacramento last year that made
20 it all the way through the legislature to the governor's
21 desk which would have required all cities, including
22 ours, to allow small unlicensed residential care
23 facilities in all zones, just like small licensed
24 facilities, without use permits. It was ultimately
25 vetoed for other reasons, apparently.

1 MR. ALLEN: Are there any more staff comments
2 or staff presentation?

3 MR. KIFF: No, sir.

4 MR. ALLEN: Would the Applicant please come
5 forward, and please give us your name and spell it for
6 the reporter.

7 MR. KIM: Good evening. My name is Steve Kim,
8 S-t-e-v-e, K-i-m. I'm manager of LMS Properties, L, as
9 in Life, M, as in Maintaining, and S, as in Sobriety,
10 Properties, LLC.

11 MR. ALLEN: You're welcome to give us a
12 presentation of anything that you would like to tell us
13 or the audience that would help us understand your
14 request.

15 MR. KIM: Okay. Well, everything that I had
16 given to Ms. Brown, she had put it together in a
17 wonderful staff report covering pretty much all bases
18 that I would have to cover also.

19 With parking concerns, there is only one
20 resident with a vehicle at the moment out of the three
21 clients and the one resident house manager. So that is
22 not a concern whatsoever.

23 With curfew hours I noticed, I would be able to
24 abide by any requests made by the City. Curfew hours, I
25 believe someone had stated that they don't understand why

1 it would 2 a.m.

2 Being that many of the other sober livings in
3 the community or in our communities nearby, all curfews
4 seem to be at that time. And a lot of people are friends
5 in recovery. We do allow that to go to 2 a.m. Now, most
6 don't stay out to 2 a.m. They come back 1 a.m. or 12
7 a.m. And most do not stay out that late. But that's a
8 final cutoff.

9 For example, movie times. If they were going
10 out with a big sober group to watch a movie with a 10:40
11 showing, that's going to go past 12:40 p.m. -- 12:40
12 a.m., and it gives them time to get home.

13 So as to any of the concerns, I'd be glad to
14 address, but everything else is included in the staff
15 report.

16 MR. ALLEN: There was some indication that you
17 also lease or rent the upstairs of this duplex facility?

18 MR. KIM: Actually, I was offered by the
19 landlord of Calco Properties. It was offered to me, but
20 I declined. I had no interest in enlarging it basically
21 because, financially, it's not profitable.

22 But my goal here is to enable people that are
23 in recovery to be sober people with the opportunity that
24 I was accommodated for, and also to live in a
25 single-family type residence, you know, in the community,

1 and become outstanding citizens and more like, quote,
2 unquote, real life.

3 MR. ALLEN: So that separate upstairs unit
4 could then be occupied by anyone that Calco Properties
5 chose to rent to in the future, right?

6 MR. KIM: Yes, correct.

7 MR. ALLEN: I don't have any other questions.
8 Does staff?

9 MR. KIFF: Just a quick comment, Mr. Kim.

10 With the use permits that have come through
11 that the Hearing Officer has approved, we've applied the
12 same curfew. So I don't know anyone that's gotten by
13 with a 2 a.m. curfew. So I appreciate your consideration
14 of the 11 p.m. curfew.

15 MR. KIM: Okay.

16 MR. ALLEN: So can you deal with a 11 p.m.
17 curfew? I think that's what Mr. Kiff was asking.

18 MR. KIM: I could. I believe my resident
19 manager can. My clients will be quite be opposed to it.
20 I may request that an occasional accommodation may be
21 given to clients, where if they do want a watch a movie
22 on a weekend, that it be accepted.

23 As you know, these other facilities you're
24 referring to, I believe, have more of a dorm-type
25 atmosphere, and they come home by 10 or 11 p.m. It's

1 more of a treatment-type atmosphere, where they have a
2 larger group.

3 Even though I only have four clients, it's very
4 small, you know, and to be out and just catching a movie
5 on a weekend, I may request that an occasional okay be
6 all right. But if not, then I'd have to say no, and 11
7 p.m. is fine.

8 MR. ALLEN: Okay. Anything else? Anyone else
9 from the Applicant want to speak? Your manager
10 or -- only if you wish to. I'm just doing the
11 invitation.

12 MR. TREAT: I'd be open to questions, but I
13 have no statement.

14 MR. ALLEN: Okay. All right. Anything else
15 before we open the public hearing?

16 MR. KIFF: No, sir.

17 MR. ALLEN: All right. We'll now open the
18 public hearing on this matter. And anyone in the
19 audience that wishes to speak for or against this
20 application is invited to come forward.

21 Would you please state your name and spell the
22 last, and you'll notice that there's a little light
23 system here on the podium. That's green when you start
24 talking, and yellow when you have about a minute left,
25 and then it turns red. And you need to do a quick wrap

1 up, if you will, please.

2 And with that, let's proceed.

3 MS. O'HORA: Thank you. Ladies and gentlemen,
4 my name is Marie O'Hora, O'H-o-r-a.

5 I'm a 38-year-old -- 38-year resident of
6 Newport Beach. I'd love to be 38 years old, but that's
7 not going to come back.

8 My attendance at this meeting is to voice my
9 objection to any accommodation to the property at 900
10 West Balboa Boulevard on the Balboa Peninsula for LMS
11 Properties.

12 Why would you ever even consider an
13 accommodation when our City is already up to its eyeballs
14 in lawsuits or potential lawsuits against sober living
15 group homes?

16 As stated in your newspaper notification, you
17 already have restrictions in the existing City code to
18 prevent this from happening. You have the opportunity to
19 say no. We don't want these facilities in our
20 neighborhood. You have heard of our objections. Please
21 say no.

22 Thank you. Here's my statement.

23 MR. KIFF: Thanks.

24 MS. JACOBS: Hi. I'm Joan Jacobs, J-a-c-o-b-s.

25 I'm a recent -- I recently sold Sports and

1 Liquor (phonetic), and it had been in the family. I'm a
2 lifetime dweller of Newport Beach. And at this point,
3 I've been in the same house is since the late '40s, and
4 I'm across the street from this particular thing.

5 Now, I know the property owner well, and I know
6 that the property was about to be foreclosed. It's been
7 a disaster, because it's been dirty, ill kept. There is
8 no yard. There's really no outdoors excepting a very
9 narrow little patio in the front. And as you might well
10 know, what goes on in the front when you pass by, they
11 have no other place to assemble in the front.

12 Now, with all of these homes coming in, these
13 businesses coming in, it must be terribly lucrative.
14 Now, I know the City does well with this. Now, the
15 property owner must do pretty well as well, otherwise,
16 these wouldn't be here or there wouldn't be that many.

17 I guarantee -- well, I don't know for sure,
18 because I don't know you people. However, how many of
19 you really live on the Peninsula or live next door to one
20 of these places? We never know.

21 Now, who pays the property owner for the lease
22 of this piece of property? Somebody came in and spiffed
23 it all up, painted it, cleaned it up. It's still vacant.
24 Who pays for this lease? Certainly not the men who are
25 going to be there who are out of work because they there

1 are. Who's paying for all of this? How much does the
2 State pay the City to allow this? How much do those men
3 pay in rent?

4 Now, the four-car garage you mentioned is a
5 four-car -- actually, a two-car garage. They have to go
6 in butt-end to butt-end. And that neighborhood that I
7 lived in, which I've lived in for so long, there's never
8 a parking place if it isn't in the garage. There's so
9 much rental already down there, that it's an
10 impossibility. If you have a maintenance a particular
11 day, there's no place for their trucks to even park. And
12 many of the places on the boulevard, they even park in
13 the alley, which is a no-no.

14 I just -- nobody has ever said where this money
15 is coming from that pays for these properties. I know
16 the property owner needs it. She inherited the property,
17 and I know she needs it. Somebody is even paying to
18 clean it up.

19 Thank you very much.

20 MR. ALLEN: Thank you.

21 MS. ABRAHAM: My name is Sarah Abraham, and I
22 live at 9th and Bay, which is one block over from the
23 facility.

24 But I have a couple of questions. I haven't
25 read the report. And the City has done a great job in

1 researching.

2 MR. ALLEN: What we generally try to do when
3 questions are asked by various public members is wait
4 until the public list is complete, and then one of the
5 staff members does their best to address those questions.

6 MS. ABRAHAM: Okay. Thank you.

7 Well, one question is, I'd like to know whether
8 the resident manager lives on the property as well.

9 And I'd like to know what the definition of
10 single housekeeping units means. You've mentioned you
11 would like the people who live in the single housekeeping
12 unit. What does that mean? Does it mean a single-family
13 house, or does it mean one enclosed unit with walls?

14 Because at this time, that property is pretty
15 much unnoticeable except for the patio, which is the only
16 area as the lady mentioned, because the upper unit is
17 vacant and the two units on the side are vacant. I
18 happen to know when they were all vacant or when they
19 were all occupied, there was no place to park, especially
20 in the summer. And on trash days, you cannot park in the
21 street. The residents couldn't park. And the trash
22 would over flow into the alley.

23 And these are things -- like, for one little
24 unit, fine. Maybe these are nice people. But when there
25 are dozens of people, there might be 50 people upstairs.

1 There might be 10 or 12 next door. That's a lot of
2 people on one little corner. And, you know, we just want
3 to live in harmony, you know, have the uses to the
4 residents that we pay for for the City and not have
5 problems.

6 So, that's all I have to say. And I would like
7 to know if the resident manager is there, so there's five
8 people in that house there and two cars right now. But
9 if you are -- if you're guests move out and others move
10 in with three or more cars, then that's five cars, and
11 that's only the lower unit.

12 And also, regarding the 11 o'clock curfew,
13 please don't go past 11 o'clock. We have elderly people
14 in the neighborhood. We have ill people. We have kids.
15 And we have -- you know, this whole row of people in
16 residents. We don't need people going in and out after
17 11 o'clock, and I appreciate that consideration.

18 MR. ALLEN: Thank you.

19 MS. ABRAHAM: Would you answer what the single
20 housekeeping unit?

21 MR. KIFF: It's up on the board, Ms. Abraham.
22 I just pulled that up, though I won't read it for you.
23 You asked kind of two questions. Does it relate more to
24 the house? No, it relates more to towards the second
25 thing you said, it's how the people inside the house

1 live.

2 Do they, for instance, interact with each
3 other? All the things that are up there. Sharing the
4 joint use and responsibility for common areas, household
5 activities, meals, chores, maintenance, and where the
6 unit is rented, all adult residents have chosen to
7 jointly occupy the entire premises.

8 For instance, when all of us were in college,
9 we would typically have rented under one lease. That's
10 what a single housekeeping unit is.

11 MS. ABRAHAM: Okay.

12 MR. KIFF: These folks have not asked to live
13 as a single housekeeping unit, but the goal of many
14 communities is to try to get a facility like this to live
15 like one.

16 MS. ABRAHAM: Well, they are living like one.
17 But in the summer, everybody's living together, and there
18 are lot of units there, and there are a lot of choices to
19 be made by all the people, but I appreciate you hearing
20 me.

21 MR. KIFF: I understand.

22 MS. MC MILLAN: My name is Pat McMillan,
23 M-c-M-i-l-l-a-n. I live at 9th and Ocean Front.

24 I really am not nearly as eloquent as a couple
25 of these people preceding me, but I do have some

1 questions, and I would like to give you a little
2 background, personal feelings and objections.

3 First of all, I highly emotionally object to
4 the word "disabled" with regard to people who have abused
5 unbelievably to the community, to themselves, to their
6 families. I have very personal interest in disabled. I
7 have them in my own family, physically and emotionally,
8 mentally.

9 I also have a very good background in sober
10 living. Paid a fortune. That was down on Seashore 20
11 years ago. It was pretty well concentrated down there.
12 Now we have come up, up further and further into the
13 Peninsula. And yes, at 9th Street. Yes, there are three
14 units within three blocks. At 11th, there's one right
15 across from each other. So that's one per block if you
16 average it out. That's getting pretty saturated.

17 I wonder also -- I'm jumping -- having been a
18 property owner and income property owner, why in the
19 world wouldn't you take advantage of the upper area of
20 that building? Is it profitable? I find that hard to
21 believe. That building has always been fully rented.
22 Many summers, it's rented on a weekly basis, and it's a
23 nightmare. Let's keep that in mind.

24 There are a group of seven or young ladies who
25 go by our homes every morning. I guess they come from

1 the unit down at 13th Street. But trust me, they are in
2 pajamas bottoms, they're smoking like fiends, they are
3 loud, and they are shuffling there are butts down to, I
4 assume, 15th Street. I don't know where the meeting is,
5 but I know now they are coming from a recovery house.
6 Some of these people are well behaved. Some of them
7 comply to the rules. Many of them don't.

8 And we live there. Where do all of you live?
9 Do you all live on the Peninsula? Do you all live in
10 Newport? I wonder how you'd like it. We have become
11 saturated.

12 I have a lot of empathy for those people, but
13 by God, they have got to learn to comply. Curfew? You
14 bet your life they will comply to curfew. That's
15 nonsense. We're not here on vacation. We're not here to
16 be mollycoddled by mommy and daddy. But they have the
17 bucks to send them here or I've been court mandated to be
18 here. Those are the two choices. Been there; done that.
19 Lots of experience with it. It's BS.

20 You mind yourself, you mind the rules, take
21 care of business, get back in the community. Why do we
22 need to be a half a block off the beach? Interesting.

23 Times up. Thank you very much.

24 MS. KLOST: Hello. I'm Joan Klost, K-l-o-s-t.
25 I own the triplex directly across from this particular

1 unit.

2 I didn't hear anything that addressed about the
3 conditions how it's going to impact the people living
4 there. I just heard that you will be able to get under
5 the Ordinance that was already passed, and you'll be able
6 to show that physically you can meet all the conditions
7 that are necessary, but you, in essence, have been able
8 to avoid the laws that were put in by the City of
9 Newport.

10 How is this going to impact my tenants? Am I
11 going to be able to keep good tenants in there? I have
12 tenants with children. Am I going to have to lower the
13 standards of my tenants? I worked really hard to get
14 good tenants and keep good tenants, because I have
15 neighbors that remind me when my tenants are not polite
16 and when they are noisy.

17 So now this increases the likelihood of
18 damaging my business, and it will damage, potentially,
19 the type of people I'm able to rent to. I may not be
20 able to get the same type of people.

21 I'm going to ask a question. What does the
22 City of Newport Beach get out of taking all these homes
23 in? Why is Newport doing it? What is your financial
24 gain? Why are you doing this? Because none of us want
25 this in our neighborhood.

1 Is this both drug and alcohol? And what is the
2 recidivism rate? What's going to be done if they are not
3 able to keep -- keep the standards? Who's going to
4 monitor that?

5 I know you would have a counselor there. And
6 like Pat said, I don't know that that's -- the leniency
7 and things like that are not going to be expected and if
8 it's not going to occur. I just -- I'm real concerned,
9 because I have a business there, and I've had it for a
10 long time. And I'm really not happy to have a situation
11 come in and bring down the value, both my property and
12 the quality of tenants that I might be able to keep.

13 Thank you.

14 MS. FUNDENBERG: My name is Louise,
15 L-o-u-i-s-e, my last name is Fundenberg. That's F, as in
16 Frank, u-n-d-e-n-b-e-r-g.

17 I cannot speak directly to the problem of that
18 house in that I have not seen anybody coming or going in
19 that house. But I can speak to my concern about the fact
20 that we are not that far from a grammar school, which my
21 grandchild walks to school. And I don't know what kind
22 of people are living in that house, and that worries me.

23 I do know that on Sunday, they have enough
24 garbage out in the public sidewalk waiting for the trash
25 can to come on Monday. There's nothing there today, but

1 it does all come out on Sunday. And there are other
2 people who are worried.

3 But I live down at 808 West Balboa. I cannot
4 hear any noise from the 9th Street corner on Balboa
5 Boulevard. I mean, there's enough noise from just the
6 cars going by too fast on Balboa Boulevard to hear any
7 noise from that particular house.

8 But my concern is, what kind of occupants we
9 have and the close proximity we are to a school, a
10 grammar school and a nursery school there at the Christ
11 Church By The Sea. And those are small children, and
12 that is a worry to me. These people may be perfectly
13 fine, but they might not be perfectly fine. And this is
14 a residential neighborhood in which we live.

15 Thank you.

16 MR. MATHENA: I'm Larry Mathena.

17 And despite my better intentions, I'm here.
18 I'm here to talk about this. And frankly, reading it,
19 I'd have to call it a reasonable application hearing, not
20 a reasonable accommodation hearing. You know, I just
21 want to point out that, as was observed, these are your
22 zoning rules.

23 And basically, you have the opportunity to,
24 under the zoning rules, allow this, through a Hearing
25 Officer hearing, in a multi-family residence. And

1 effectively, if you let this happen, you -- you're
2 trashing your zoning rules entirely. And you're going to
3 have the whole parade of people you had before.

4 The only thing is they wouldn't be licensed and
5 they wouldn't be 20's. They will be five or sixes for
6 the rest of the Peninsula. And you are destroying the
7 zoning rules that were in place after a long hard effort.
8 I sincerely cannot believe that your City Council would
9 dream that something like this could occur.

10 Secondly, you're actually blowing off the
11 underlying rules of the Ordinance. Smoking is okay here
12 even though there's a tiny little patio. And it's
13 actually explicitly in the record that's where the folks
14 smoke.

15 Last but not least, there's five people there,
16 and you will have car issues, because there's no
17 limitations on cars. You have not put on this or
18 proposed standards nearly as tight or even considered the
19 Ordinance requirements specifically for their use. The
20 reasonable accommodation thing evidently is a pass on
21 everything. Because nobody -- nobody here sat down and
22 waded through them.

23 Last thing I want to talk about is necessity.
24 You have to find a finding of necessity. I would argue
25 you cannot make a finding in support of allowing this

1 reasonable accommodation right now, because you
2 know -- you know that there are four-fold facilities on
3 the Peninsula per capita than any place in California.

4 You know if you deny this use at this location,
5 that those folks have got plenty of other places to go
6 without violating our zoning rules. You know all that.
7 I know all that. The City knows all that. And frankly,
8 I find it sad, and I've come to the conclusion the City
9 itself isn't interested in enforcing its rules. In fact,
10 the City itself is empirically attacking its own rules.

11 I don't believe you can legally make a decision
12 to agree with the recommendations of the staff. It's
13 totally against the findings you need to make. There is
14 no necessity behind allowing these people to get a use
15 permit. And you're destroying the Ordinance that was put
16 in place. Period.

17 MS. ABRAHAM: Excuse me. I have one more
18 question.

19 THE REPORTER: I'm sorry. Your name again?

20 MS. ABRAHAM: Sarah Abraham.

21 THE REPORTER: Thank you.

22 MS. ABRAHAM: If this facility is approved,
23 what are the limitations of it? If there are violations,
24 do the homeowners in the neighborhood have the ability to
25 report violations? And is it enumerable? Is it ten? Is

1 it five? Is there anything in the report as to that case
2 or in the permit?

3 MR. KIFF: We'll answer that question at the
4 end, if you don't mind?

5 MS. ABRAHAM: Okay. Thank you.

6 MR. ALLEN: Folks, we need give everyone a
7 chance here.

8 MS. JACOBS: Just a sort question.

9 MR. ALLEN: All right. But let's stop it here
10 with repeats until at least we complete everyone having a
11 first opportunity to come up.

12 MS. JACOBS: No, I --

13 THE REPORTER: Your name?

14 MS. JACOBS: Jacobs, Joan Jacobs.

15 THE REPORTER: Thank you.

16 MS. JACOBS: I forgot to thank you all for
17 putting a notice in the Daily Pilot regarding your
18 meeting. You can see what a large crowd we have here.
19 Mostly people just live around there and who received the
20 little blue notice.

21 This whole Peninsula is concerned about these
22 homes, not just our small group. And I think it was just
23 terrible that it wasn't in any of the Daily Pilots the
24 entire week. I looked and read it very carefully. And I
25 think that's awful.

1 Also, one other little short one. My nephew is
2 living with me. He's a grown adult, 40-year-old man. He
3 e-mailed a letter, and I don't recall to whom he
4 e-mailed. It might have been the City Manager. I don't
5 know who it was.

6 However, I thought, and he thought, it was a
7 private communication. And were you aware that that
8 communication was transferred to this group here, who
9 then started to inundate us with little notices,
10 messages, paper? That's private. You asked for it. You
11 asked for us to notify you by e-mail or mail.

12 Thank you very much.

13 MS. OGDEN: My name is Emily Ogden, O-g-d-e-n,
14 and I live at 106 9th Street, which is just across the
15 street.

16 And Mr. Kiff, I called you one day, and I said
17 that I heard that we were going to have a sober living
18 or, et cetera, facility across the street. And you said,
19 "Oh, no. Not in your neighborhood." And apparently
20 you're wrong and we are.

21 And I find it very interesting that Mr. Kim,
22 obviously, is in business to make money. There would be
23 no other reason for him to rent that facility if he
24 doesn't own it and doesn't wish to extend his record to
25 upstairs.

1 But why? Why do we have to attract these kind
2 of places on the Peninsula? What is the attraction? Who
3 is making the money? There has to be a profit here
4 somewhere or -- because I have apartments, and I would
5 never consider renting to more than one or two people.

6 I think my question is the why's and the
7 what-for's. Why do we have to put up with it?

8 Thank you.

9 MR. ALLEN: Does anyone else wish to speak?

10 UNIDENTIFIED SPEAKER: I just have one more
11 question.

12 MR. ALLEN: I requested that we have -- each
13 person have an opportunity to speak, and I don't think
14 it's fair to keep coming -- we can't turn this into a
15 merry-go-round. So whoever else would like to speak,
16 please come up.

17 MS. MC CLELLAN: I'm Bonnie McClellan,
18 B-o-n-n-i-e, M-c-C-l-e-l-l-a-n. I live at 1034 West Bay,
19 Avenue, so I'm a whole block away.

20 But I have a couple of questions just about
21 this whole unit. The first one is, if these people are
22 handicapped, have they put in handicapped bathrooms?
23 Because it would seem to me that you have to do that. So
24 that was question number one.

25 Then question number two is, if there's just

1 two garages, and the people are using them now, and
2 there's three other units, do those units have garages,
3 too, or are those just the garages that they share? And
4 when everyone else gets there, there's going to be a one
5 zillion cars.

6 So mine are just questions like that, because I
7 think there's going to be an overpopulation in these
8 units, and it seems to me just if there's going to be
9 five in his, and there's four more, that's a lot of
10 people so -- thank you.

11 MR. ALLEN: Thank you.

12 Anyone else wish to speak?

13 MS. MC MILLAN: I would be a second-timer.

14 MR. ALLEN: Well, we can go until six. And so
15 if someone feels compelled to come up again and make a
16 short quick comment, please do it.

17 MS. MC MILLAN: I'm sorry. Was your name
18 Ms. Brown?

19 MR. KIFF: Why don't you come up to the podium,
20 please, for the record.

21 MS. MC MILLAN: I'm sorry. I forgot your name?

22 THE REPORTER: Name again?

23 MS. MC MILLAN: Pat McMillan.

24 THE REPORTER: Thank you.

25 MS. MC MILLAN: But my question is this, if I

1 heard you right, if this permit is issued to LMS for 900
2 only, it's not issued to the building, as I understood
3 you to say, it's issued to the LLC; is that correct?

4 MR. ALLEN: That's what we were told by legal
5 Counsel, correct. This would not be a land use permit
6 that belongs to the land.

7 MS. MC MILLAN: Okay. This unit at this
8 location?

9 MR. ALLEN: Yes, this unit at this location.
10 And that's a fundamental distinction between the use
11 permits that are granted for most of these, which do run
12 with the land and would be permanent in nature, these
13 would be more or less temporary, depending on whether
14 they continue to operate by the same individuals, I
15 understand it, and within the confines of the permissions
16 granted.

17 MS. MC MILLAN: Mr. Kim's permit issued to his
18 LLC goes with his LLC. So what's to prevent this LLC
19 from opening several small homes of three to four clients
20 and a manager? There's nothing to prevent that; is that
21 correct?

22 MR. KIFF: We can answer that in a moment.
23 There is something to prevent that.

24 MS. MC MILLAN: Okay. As long as that's
25 addressed, I'd be satisfied.

1 One question. Is the manager of the building,
2 are you professional manager or are you --

3 MR. KIFF: You can still ask it of us, and
4 we'll we make sure we'll ask it of the manager. It's
5 better for the record, actually, if you do that.

6 MS. MC MILLAN: Okay. For the record, is that
7 a professional manager, or does he do this for a living?
8 Is he paying for it, or is this part of recovery?

9 MR. KIFF: Again, the Court Reporter won't
10 answer it, but we will.

11 MS. MC MILLAN: That's okay. Whoever wanted to
12 pick it up. I think that was it.

13 And the disabled question I think it was very
14 valid that Bonnie has, because if they are truly
15 disabled, they should have disabled equipment and parking
16 spaces in their units. There should be.

17 MR. KIFF: We'll address that, too. Thank you.

18 MS. MC MILLAN: Thank you.

19 MS. KLOST: Joan Klost, K-l-o-s-t. I won't
20 forget to do that now.

21 Several years ago, I had someone interested in
22 renting my apartments that wanted to open an
23 architectural office. But I was told I couldn't have
24 that business in one of my units. But now, another
25 business is possible right there in the same area. And

1 if I'm denied the opportunity of putting in a little
2 business, then why are they given the opportunity for a
3 business?

4 And will we get some answers to the questions
5 we've asked, like the impact it has psychologically on
6 people, and some of those questions that maybe nobody
7 really can give an astute answer? I know it's very easy
8 to talk about the facilities and all that, because it's
9 very plain and simple to do address. But the most
10 important thing I think is the impact on the
11 psychological effects of the people living around there
12 and how it's going to impact. And so far, I'd ready like
13 an answer in that arena.

14 Okay. I'm finished. Thanks.

15 MR. ALLEN: Okay. Anyone else wishing to be
16 heard?

17 MS. CANADA: Hi. My name is Debbie Canada,
18 C-a-n-a-d-a.

19 The one question that I have is regarding the
20 upstairs unit. I had a conversation with a gentleman
21 that lived up there. And he had told me -- we both have
22 dogs, and we were out on the beach. He told me that he
23 had been evicted from his apartment, and that he was
24 concerned that it was turning into a sober living.

25 And so I went over and checked his place out,

1 and he told me exactly how it would proceed, you know.
2 There was a wall, and they probably knocked that down and
3 put in however many beds would fit in there.

4 So I don't understand if they started down
5 below -- and I've seen this for rent sign up above, what
6 would prevent them from just going ahead and making the
7 upstairs unit, and just sliding that right in, you know,
8 right underneath our feet without anybody picking up on
9 that? That -- that concerns me.

10 Thank you.

11 MR. ALLEN: Okay. Would anyone else like to
12 speak?

13 MR. ALLEN: All right. We'll close the hearing
14 then, and bring it back to staff, and possibly some of
15 these questions that were asked can be addressed.

16 MR. KIFF: Thank you, Mr. Allen.

17 I may ask Ms. Wolcott and Mr. Pierce, who's
18 Special Counsel on this, to -- why don't we start with
19 the general question that had come up over the last two
20 years as this Ordinance has been adopted that if folks in
21 recovery are disabled, why -- why are not ADA
22 requirements, like disabled bathrooms and disabled
23 parking required in a home?

24 MS. WOLCOTT: Do you want me to answer that
25 one?

1 MR. KIFF: I know the answer, but I think it
2 comes better from an attorney such as yourself.

3 MS. WOLCOTT: Okay. My recollection, from our
4 analysis in 2007, was that the requirements for ADA were
5 not necessarily required for sober living facilities
6 where the -- or licensed facilities where the individuals
7 staying there were ambulatory.

8 Our Fire Marshal did also look at the issue and
9 said, yes, it's possible that there are some disabled
10 individuals who are, you know, disabled in other ways,
11 who are recovering alcoholics or drug addicts, who would
12 not have an opportunity to be housed if these facilities
13 do not have housed -- do not have access for facilities
14 in place for their specific disability.

15 But that is a separate issue and not one that
16 the City addresses. If Mr. Kiff would like to augment
17 that, he may.

18 MR. KIFF: Yeah. Just for the folks in the
19 audience, we did have this come up a number of times as
20 we adopted the Ordinance. And it is true that people can
21 have different types of disabilities.

22 Some disabilities allow you to be completely
23 ambulatory. If you don't have a disability that -- if
24 you have a disability that allows you to be completely
25 ambulatory, you can live in any home that doesn't have

1 disabled parking spaces, that doesn't have disabled
2 bathrooms or ramps. So please be clear, there are
3 different types of disability.

4 And what one person -- I'm going check on my
5 notes -- actually, Ms. McMillan objected strongly to the
6 fact that people in recovery are disabled. Well, very
7 respectfully, this is a protection in Federal law. The
8 City didn't devise the protection. The State didn't
9 devise the protection. It's in Federal law. We must
10 treat people in recovery with disabilities because
11 Federal law says we must. So folks can object as much as
12 they want, but we're following Federal law.

13 MS. WOLCOTT: And I would add there are
14 consequences if we don't.

15 MR. KIFF: Yes, very serious consequences.

16 Ms. Klost asked a question -- and I'm kind of
17 going by subject category rather than by person, so
18 forgive me -- about why can -- why could she not
19 establish a business in a residential area where this
20 could be allowed?

21 And that's because in part, again, because
22 we're dealing with housing for people who are of a
23 protected class and who are disabled. And those, pending
24 this analysis and this Federal law allowing reasonable
25 accommodation, arguably need to be allowed in every

1 residential zone.

2 A business, like an architectural office, is
3 solely within the purview of a City. The Federal
4 government doesn't tell us that architectural firms which
5 require some type of accommodation must be allowed in all
6 residential areas. But again, these are folks who are
7 disabled under Federal law and are entitled to fair
8 housing opportunities.

9 Cathy?

10 MS. WOLCOTT: I would add to Ms. Klost's
11 question, even if it was the type of architecture, like
12 it's a single architect who was living in the dwelling
13 unit, if he complied with the requirements of the Home
14 Occupation Ordinance, which has been on the City's
15 Municipal Code books for years, he would be able to
16 practice his architectural practice from that dwelling
17 unit. There are restrictions.

18 The definition of a home occupations, however,
19 is uses that are ancillary and secondary to the standard
20 residential use. And they do require that the individual
21 who is running that business live in the dwelling unit.
22 There are restrictions on who can visit, whether
23 appointments are required, whether any employees from
24 off-site can work there. And there's also a
25 \$100 -- approximately \$100 business license fee.

1 I would add that that same business license fee
2 for sober living facilities and for residential care
3 licensed over six is the only funds the City receives
4 from each of these businesses. The City is not making
5 money off these uses.

6 MR. KIFF: And let's put a finer point on that,
7 too, because that's something I've heard -- I've been
8 working on this issue for almost two years. That's
9 something that I've heard from the beginning is that
10 there's some allegation that, gosh, the City is making
11 money over this.

12 As Cathy notes, these folks have to pay a
13 business license fee, which is about \$100. There is
14 nothing else that the City gets from this type of use.

15 We don't get a special property tax. We don't
16 get a special sales tax. To me, the reason why this is
17 so prevalent in our community is -- there's a couple
18 reasons. One, we're close to the beach. Another is, not
19 only are we close to a beach, but you don't have to walk
20 up or down a hill to get to it.

21 So it's very easy for someone who -- a mom and
22 dad in Iowa to look on a Web site and see, "Look, I'll
23 send my son or daughter to Newport Beach to recover. He
24 can surf. It's right there. He can live right on the
25 water."

1 If you think about it, what other communities
2 in our neighborhood are like that, where it's so easy to
3 live by the beach? The Balboa Peninsula is the place.

4 And then the other problem, if it's a problem,
5 is that we do have a number of absentee landlords on the
6 Peninsula. You folks here are a lot of you are owner
7 occupied. Ms. Klost noted that she owns the property and
8 rents it out. And she said, "I wouldn't rent it to this
9 use." Well, there are a lot of folks who are owning
10 these properties and are renting it to this use.

11 And that's not something that the City controls
12 in any way except this Ordinance, which was adopted and
13 took affect last February. So very respectfully, that's
14 my observation is to why this has been a problem on the
15 Peninsula, if you characterize it a problem, and I know
16 many have.

17 Let's continue down some of the questions.

18 Ms. Abraham asked a question, which I think was
19 answered, about whether the resident manager lives
20 on-site; is that correct?

21 MR. TREAT: Yes, sir.

22 MR. KIFF: Do you want to comment about any
23 professional standards or how you came to be a resident
24 manager? Stand and state your name for the record,
25 please.

1 MR. TREAT: My name is Robert Treat.

2 R-o-b-e-r-t, T-r-e-a-t.

3 I've been sober for four and a half years. I'm
4 also Certified Addiction Counselor. I'm a Registered
5 Recovery Worker with the State of California, as well as
6 Registered Addiction Specialist Intern. I've worked with
7 various disabilities before getting into this particular
8 field.

9 And I feel that as far as a resident manager, I
10 am extremely qualified and probably exceedingly so. And
11 it just so happened that, you know, I live there. And
12 it's part of -- that's my payment is to live there.

13 But I also hold the place to certain standards
14 because I live there. I don't consider myself as "that
15 type of people." I have live in coastal communities in
16 Southern California off and on since 1979, and I know how
17 to act accordingly in these places.

18 And I know how -- you know, the standards that
19 my neighborhoods that I've lived in, San Clemente, Laguna
20 Beach, northern San Diego County. I just -- I get it,
21 and we get it where we live. We have a very clean place.
22 I ask my people who live there, you know, to be
23 respectful.

24 If the neighborhood would like to come over and
25 see the place and talk with me, that is great. They are

1 welcome. I just think that we've got something really
2 unique here. And because I've worked in the treatment
3 industry, I do understand the problems that Newport Beach
4 has to deal with, you know. And a lot of times, I'm
5 sympathetic to these things that the community goes
6 through.

7 You know, I've been a counselor to a lot of
8 these clients who don't want to get sober and things like
9 that. And, you know, I understand. And I'm doing the
10 best I can to make my house not a problem. And I think
11 we're doing okay with that. And if anyone else has any
12 other questions?

13 MR. KIFF: Mr. Treat, how long have you been
14 operating that house?

15 MR. TREAT: I've been there since about the end
16 of October, 2008.

17 MR. KIFF: Previous to that, there was another
18 house manager there?

19 MR. TREAT: Yes.

20 MR. KIFF: Okay. Thanks.

21 MR. TREAT: Thank you.

22 MR. KIFF: I think that's an interesting -- I
23 wanted to follow up, actually, on some more of Ms.
24 Klost's questions. From our records, this facility has
25 been in operation since July of 2007.

1 Is that correct, Janet?

2 MS. BROWN: I believe that's right.

3 MR. KIFF: So for the folks in the audience
4 that were wondering if this would prohibit you from
5 keeping good tenants or impact your ability to or cause a
6 change in property values, again, this place has been
7 there with a similar operation for about two years, and,
8 indeed, it was only brought to our attention recently
9 that it was there.

10 And remember, our Ordinance is set up so that
11 an existing use could stay if they got a use permit.
12 These folks are in a different situation. They didn't
13 apply for a use permit. I certainly have a problem with
14 that, because the process requires them to apply.
15 However, the process also allows for this hearing, this
16 reasonable accommodation hearing, and makes us go through
17 the analysis that Cathy has gone through.

18 And if we come to the conclusion at the end of
19 the analysis that this property, which protects the
20 housing for persons who are disabled, to stay, then we
21 have to make those findings, otherwise, we risk losing
22 the entire Ordinance and the entire protections within
23 it. And I know some folks, including Mr. Mathena,
24 strongly disagree with that analysis, but that is our
25 analysis.

1 I'm going to continue to look through quickly
2 and see if I missed any questions.

3 Ms. Funderberg talked a little bit with the
4 proximity to the grammar school and nursery school. We
5 did go through that analysis. It's about 1800 feet from
6 Newport Elementary. It's 2200 feet from the nursery
7 school at Christ's Church.

8 Ms. Abraham asked again about how folks who
9 live nearby could complain or report. You do this the
10 same way you would do with any house. And that means if
11 the trash is out at the wrong time, if the trash
12 conditions are left out beyond what they should be, if
13 the paint is peeling, if the parking is not used
14 correctly, that's what we have Code Enforcement for.

15 We have five Code Enforcement Officers. I
16 don't know if you've used them before, but when they hear
17 about a complaint, if they don't see it themselves, they
18 are on it fairly closely. We don't treat group homes any
19 differently from that. So I do expect if residents have
20 a complaint, to go ahead and give us a call. You can
21 also file a complaint on the Web site. It's quite easy
22 to do.

23 She asked also if there's a threshold of
24 violations that need to, for instance, cause a revocation
25 of a reasonable accommodation. There isn't a threshold,

1 per se. We would look at the totality of the complaints.
2 Certainly if operations changed in a manner inconsistent
3 with what the Hearing Officer may or may not grant, we
4 would review that and potentially revoke or fine, or both
5 of those things, this authorization if it were approved.

6 Ms. McClellan talked a little bit about the
7 amount of garages. As I understood it, there are four
8 car spaces. You're right, they are stacked spaces. So
9 two are allocated to this unit, and two to the other.

10 And number of folks expressed a concern that I
11 think is fair. And that is, well, what if you did get
12 five adults with cars in each house? And remember, you
13 can do that now with a single housekeeping unit. If you
14 had a bunch of college students renting a place, and all
15 five of them have cars, you'd have the same problem.

16 I think, unfortunately, that's the nature of
17 the Balboa Peninsula and the parking crisis there's
18 there, which is why we do have at least some special
19 controls on some of our use permits that we've looked at
20 that require tighter parking regulations that might be
21 applied to typical single-family use.

22 Cathy or Janet, did I miss a question, or
23 Mr. Allen? Ms. Canada or Canapa asked about the upstairs
24 unit, what would prevent that from being used?

25 Well, what would prevent it is our Ordinance.

1 We have -- we would have to -- that applicant, if it's
2 LMS Properties using the upstairs unit, we do a
3 completely different reasonable accommodation analysis.
4 And because of the proximity of the one downstairs, it
5 would be a completely different outcome.

6 We would not be able to make a finding -- I can
7 argue that we would not be able to make a finding that we
8 were making here today that this facility doesn't
9 contribute to overconcentration, because you add one on
10 top of it, it would contribute to the overconcentration
11 because of the proximity of the two units. So that's the
12 protection there.

13 I'm sorry, Cathy. Did I miss other things, or
14 Janet?

15 MS. WOLCOTT: The one that I would add is
16 Ms. Jacobs' concern about e-mails to the City.

17 MR. KIFF: Oh, that's right.

18 MS. WOLCOTT: Members of the public should keep
19 in mind that any communications to the City in writing
20 are public records. And anything that is submitted on an
21 agenda item will be included with the next agenda packet.
22 And generally people prefer this and want it. It's just
23 done straight across the board. So if you're writing to
24 the City, bear in mind it's a public record.

25 MR. KIFF: Yeah. If you write to us, if you

1 e-mail us -- and those records are -- they can be
2 recovered by anyone who asks them. You could ask, as a
3 resident, for all the City's records relating to this
4 property. We would produce those for you.

5 The Applicant can ask for all related e-mails
6 relating to this property, and we'll obligated to produce
7 them for them. That's the California Public Records Act.

8 MS. WOLCOTT: And I would add to Mr. Kiff's
9 response on the issue of the upper unit and whether or
10 not a similar accommodation would be given the upper
11 unit, every analysis of reasonable accommodation under
12 Federal law has to be done on a case-by-case basis.

13 If other similar facilities tried to locate in
14 the vicinity, we would not be making the argument that
15 they don't have an option to be in a similar house. It
16 would be harder for them to make the necessity finding.
17 It would be harder to make the argument that this does
18 not undermine the fundamental purpose of the zoning
19 code.

20 MR. KIFF: Mr. Allen, that about concludes our
21 comments. I think the most challenging issue in our
22 analysis, and the most challenging one for you to
23 consider, is whether or not the allowance of a facility
24 like this one is an R-2 zone, when such facilities, by
25 our Ordinance, are only permitted with MFR, is the most

1 challenging analysis that you're asked to make.

2 And I would submit to you the information in
3 the staff report that we believe that the size of this
4 facility, the fact that it's not linked with any other
5 facility, and -- I'm going to have to do a sidebar there
6 because that reminds me of another question I didn't
7 answer, where someone had asked if -- it was
8 Ms. McMillan, I believe, if LMS is granted this ability,
9 what is to stop them from opening other small homes
10 across the community?

11 And there is an integral facilities provision
12 anything our law. You saw the chart on the board. We
13 didn't point out the line right below it, that says, "If
14 the facility is integrated with another one, especially a
15 series of unlicensed facilities in this case, we do not
16 allow them, under our Ordinance, in anywhere but an MFR."

17 so again, if an applicant wanted to come in and
18 try to get around that, they would have to come in and
19 apply for reasonable accommodation with an entirely
20 separate and different analysis and, I think, one that's
21 much more challenging to make when you are operating more
22 than one home.

23 So with that, getting back to my point about
24 the uniqueness of this facility, I think the uniqueness
25 is its size. It's four persons. I've never seen a

1 four-person facility in Newport Beach. The smallest ones
2 we have are six, and the fact that you have a full-time
3 on-site manager, and the fact that you have adequate
4 parking, the fact that you have an ability to fit all
5 those four people in the amount of bedrooms -- the five
6 people in the amount of bedrooms that are there without
7 having any kind of waiver, and, as Ms. Wolcott points
8 out, we believe we're obligated to come to the conclusion
9 to recommend to you that reasonable accommodation be
10 granted in this request.

11 MS. CANADA: May I make a statement?

12 MR. ALLEN: No. We need to -- we're running
13 short on time, and I think we've heard a lot, and I think
14 we understand a lot about this. If one person starts,
15 another person starts. It becomes a conversation, and
16 we'll be out of time.

17 MS. CANADA: Pardon me. It's just one. I just
18 want to make sure that everybody knows that we didn't
19 know that it had been a sober living facility since 2007,
20 and that there are wading pools out in the middle of the
21 boulevard with people partying. And I don't know if that
22 is considered a sober living-type facility, when there
23 are parties in the wading pools --

24 THE REPORTER: I'm sorry.

25 MR. ALLEN: Okay. Thank you. Understand.

1 The most compelling problem I have with this is
2 necessity. And I'd like either Mr. Pierce, if he's
3 qualified, or Ms. Wolcott, to undertake --

4 MR. KIFF: They are listening.

5 MR. ALLEN: Well, they are talking.

6 And the compelling issue here is that this is
7 it a necessity in the community because it's a small
8 facility. That's all I've heard that creates the
9 necessity.

10 Now, let's stop for just a moment. This is a
11 wonderful little operation, it looks like to me. It's
12 just very suitable, and all of the requirements that are
13 in place. It all works just fine as compared to many of
14 the others that we've looked at. But that's not the
15 issue here.

16 The issue is, that we have to find an
17 necessity. And I would certainly like to hear more
18 compelling argument about how this becomes a necessity
19 under reasonable accommodation law besides the fact that
20 it's a nice small little unit, or, in the alternative,
21 why a nice small unit is a necessity?

22 MS. WOLCOTT: The reason we analyzed based on
23 the size and the services it was operating was because
24 there are cases in the Federal Fair Housing Laws, a large
25 body of law that we've reviewed over time, that says

1 that -- they have specific words in there, and the
2 wording can vary from case to case.

3 Sometimes the judge just looks at, okay, was
4 this necessary? Is there other housing in the area
5 available of any type? Sometimes, the judge
6 considers -- he uses the words "the housing of their
7 choice." And that offers a more -- that implies that
8 we're supposed to be making a more specific analysis.

9 It does not go, as far as my research, as
10 saying, "Well, they want to live in this specific house
11 in this specific location in the community." I have not
12 necessarily found case law saying that we have to
13 accommodate that, although applicants, not in this city
14 but others, have made that argument.

15 There is another kind of interim classification
16 that Courts have discussed in which they refer to the
17 housing type of their choice. And at that point, that's
18 when we look at, okay, what type of housing is this? Is
19 this another facility where you have, say, 18 people?

20 There are a lot of other opportunities in other
21 sober living facilities in town to live in a large sober
22 living group, if it's 12 people, if it's 6. There are a
23 lot of other opportunities for them to find that kind of
24 housing.

25 And our office has argued for a long time that

1 the smaller the facility, the better it's going to be for
2 the therapeutic benefit of the people living in it, and
3 the easier it's going to be for the neighbors surrounding
4 it, the more reduced the secondary impacts will be, the
5 more likely the facility is to be able to blend into the
6 neighborhood.

7 So looking at it from that perspective, it was
8 our analysis that smaller was good for the recovering
9 individuals and for the neighbors, and that's small with
10 a type. And small of this particular size, four, is not
11 a size we've seen. We have not seen this anywhere else
12 in the community, and that was why we looked at it as a
13 particular housing type.

14 So if they are looking for this housing type in
15 the community, they will not be able to find it anywhere
16 else. If they are looking for a Sober Living By The Sea
17 model, six up, six down, they can find it, I agree.

18 If you like more briefing from our office,
19 we'll be happy to provide it, or you can make your
20 determination on what you feel the necessity analysis
21 should be.

22 MR. ALLEN: So it still gets back to the
23 premise, then, that the size of this unit is what makes
24 it qualifying as a necessary accommodation in the
25 community, right?

1 MS. WOLCOTT: That was where we focused on the
2 staff report, besides the stand-alone aspect, the fact
3 that it did not have another facility upstairs or next
4 door or down the block, and that we could, through the
5 reasonable accommodation process, put controls on it that
6 would mean that, for this block, this would be the only
7 type of use of a small size and, hopefully, unobtrusive
8 nature.

9 MR. ALLEN: And I take it you're prepared to
10 defend the City against litigation in making this
11 determination, that the size alone constitutes the basis
12 for necessity?

13 MS. WOLCOTT: My concern is that if we do not
14 grant it, that this facility and others would make an
15 argument of their own in court that going through this
16 process is futile, and that the Court might find that
17 they did not have to exhaust their administrative
18 remedies before going straight to court. That was our
19 concern.

20 UNIDENTIFIED SPEAKER: Going through this
21 process --

22 THE REPORTER: I'm sorry.

23 MR. ALLEN: We can't have a conversation, I'm
24 sorry. I've been given the opportunity to speak. We're
25 just trying to focus in here on these issues.

1 So you're saying that you think there's as good
2 a likelihood that the City would get sued for failing to
3 find that a facility of this size is a basis for a
4 finding of necessity?

5 MS. WOLCOTT: That is our concern.

6 MR. ALLEN: And so if you're put to the test,
7 which way is it more likely to be successful in Federal
8 Court with those competing contentions?

9 MR. PIERCE: Your Honor, the City is -- your
10 Honor, I'm sorry. Old habits die hard. I'm used to
11 talking to judges.

12 MR. ALLEN: I'm sorry. You have to come up so
13 that -- I think so that she can hear you, Mr. Pierce.

14 MR. PIERCE: Good evening. Peter Pierce,
15 Special Counsel for the City.

16 Mr. Allen, the City would be far more concerned
17 with a lawsuit that challenged the denial of a reasonable
18 accommodation, based upon my thorough review of Federal
19 law, to answer your question.

20 MR. ALLEN: Would be far more concerned with a
21 challenge if this were denied?

22 MR. PIERCE: That's correct.

23 MR. ALLEN: Thank you.

24 Well, there is a lot of good about this
25 facility. And with that kind of legal reasoning, my

1 conclusion is to approve this use. I believe that that's
2 the correct decision to make.

3 And so on that basis, with the finding that
4 staff report set forth, that the size of this use,
5 together with its operation, constitutes a basis for a
6 necessary use in the community that is not otherwise
7 available.

8 And so, with that, if the staff would prepare a
9 Resolution that contains those findings and addresses at
10 least as much as in the staff report, and brings that
11 back for -- in draft form that we can consider, and
12 possibly even incorporate whatever additional language
13 can be brought from case law that was referred to, that
14 would be helpful.

15 MR. KIFF: Yes, sir.

16 MR. ALLEN: So we'll probably -- we don't need
17 to continue that to a date certain, then, do we? Because
18 that would not be a public hearing action, just for
19 adoption of the Resolution, so --

20 MR. KIFF: We would probably follow the
21 practice where the next time we met or you met, we would
22 have you sign that as the first agenda item. It wouldn't
23 be a public hearing item. You'd be able to execute that.
24 And at least the public would see the document being
25 signed.

1 MR. ALLEN: That's a week from today, I think,
2 is our --

3 MR. KIFF: Yes.

4 MR. ALLEN: -- next appearing here.

5 MR. KIFF: Yes.

6 Any other questions?

7 MR. ALLEN: Anything else?

8 I certainly think that you all heard my
9 concern, and I think that's a compelling concern. But I
10 believe that the legal analysis that they're willing to
11 stand behind it and willing to get up and say it, that's
12 important to me.

13 Thank you.

14 MR. KIFF: Thank you.

15 MR. ALLEN: We're adjourned.

16 (Ending time: 5:40 p.m.)
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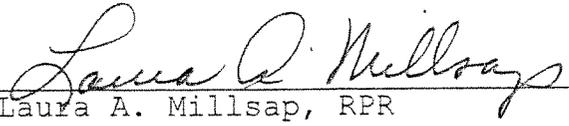
I, the undersigned, a Certified Shorthand Reporter for the State of California, do hereby certify:

That prior foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: APR 01 2009



Laura A. Millsap, RPR
CSR No. 9266

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