

**CERTIFIED COPY**

PUBLIC HEARING ON  
NEWPORT COAST RECOVERY, LP  
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER  
NEWPORT BEACH, CALIFORNIA  
MONDAY, DECEMBER 8, 2008

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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 5:50 p.m., on Monday, December 8, 2008, before  
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.  
9266.

1 APPEARANCES:

2  
3 For The City of Newport Beach:

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7  
8 CITY OF NEWPORT BEACH  
9 BY: DAVE KIFF, Assistant City Manager  
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1 NEWPORT BEACH, CALIFORNIA; MONDAY, DECEMBER 8, 2008

2 4:00 P.M. - 5:50 P.M.

3  
4 MR. ALLEN: Good afternoon. We're going to  
5 open the proceedings here. My name is Thomas W. Allen,  
6 and I've been designated by the City as a Hearing Officer  
7 for this particular hearing involving 1216 West Balboa  
8 Boulevard.

9 I am not employed by the City except in the  
10 capacity as a Hearing Officer, and I don't have any  
11 interest in or involvement with group homes or recovery  
12 homes. So my role is as an independent Hearing Officer.  
13 The matter today, as I said, involves the 1216 West  
14 Balboa Boulevard and is designated a use permit 2008-003.

15 Before we commence, does anybody have any  
16 motions or requests or requirements?

17 MR. KIFF: Nope.

18 MR. ALLEN: Then we'll proceed with the  
19 hearing, and we'll commence with presentation of the  
20 application by City staff, and I expect Mr. Kiff will  
21 proceed first.

22 MR. KIFF: Yes. Thank you, Mr. Allen.

23 And I'm going to present a brief background on  
24 this material. For those in the audience who were,  
25 including the Hearing Officer, at the last hearing, it

1 will be somewhat repetitive, so I apologize for that.  
2 But for those who are new, it won't be, and I think it's  
3 valuable information.

4 When I'm done, Debbie Lynn, who is with our  
5 Planning Department will provide specific information  
6 about this application. So if you will excuse me, I need  
7 to turn some lights off.

8 So this is the use permit hearing for Newport  
9 Coast Recovery, LP. At today's hearing, there will be  
10 this presentation by the City staff. Then following a  
11 specific discussion about the Newport Coast  
12 application -- for those you in the audience, it should  
13 be available outside. It was also available on the Web  
14 site.

15 Then the Applicant gets up and speaks, and the  
16 Applicant may offer comments about the operation. The  
17 Applicant's time is not constrained. This is how we do  
18 any use permit hearing.

19 Then the public comments are open, and those  
20 comments are limited to three minutes, unless the Hearing  
21 Officer determines otherwise. Then he closes the public  
22 hearing.

23 And the Applicant can return to rebut or  
24 clarify comments made. And again, there are no time  
25 constraints on the Applicant's presentation, because it

1 really is their use permit application.

2           And then there are questions from the Hearing  
3 Officer to the Applicant and the City staff, and then the  
4 Hearing Officer can make one of three determinations. It  
5 can approve with conditions, deny the application, or  
6 continue the hearing to a date certain.

7           So to give folks an additional background of  
8 why we are where we are, this is a use permit hearing  
9 under the Newport Beach Municipal Code that relates to  
10 use permits in residential districts.

11           And this chapter was amended into the Code in  
12 February of 2008, which calls out a specific process that  
13 most existing group residential uses had to apply for a  
14 use permit to stay in operations, and they had to apply  
15 by May 22nd. Newport Coast Recovery did apply for that  
16 use permit.

17           A Hearing Officer can then make a determination  
18 to approve or deny the use permit. The Hearing Officer's  
19 decision, either way, can be appealed to the City  
20 Council. The City Council's decisions may not be  
21 appealed, but a reasonable accommodation may be  
22 requested.

23           Reasonable accommodation is a concept in  
24 federal law involving persons are who entitled -- who are  
25 disabled, like persons in recovery, and entitled to fair

1 housing opportunities. And those reasonable  
2 accommodation requests would go before a Hearing Officer  
3 and a hearing substantially similar to this one and can  
4 also be appealed to the City Council. So you can see  
5 there are a number of steps in this process. This is  
6 just one of them.

7 Now, the ordinance exempts one type of home  
8 from the use permit process, and that is a state licensed  
9 treatment home, and the state agency that licenses these  
10 I'll refer to as ADP. That's the Department of Alcohol  
11 and Drug Programs.

12 And it allows homes that house six or fewer  
13 persons and which do not operate integrally with other  
14 facilities, so you couldn't have six next door to six  
15 under the same ownership. That's what our ordinance  
16 literally said.

17 In May of 2008, we were in court on this item,  
18 and the Federal Court blocked the City from enforcing  
19 this requirement that we have in our ordinance that  
20 allows to us consider linked or networked state licensed  
21 homes with six or fewer people from going through a use  
22 permit process.

23 Now, the major company in town that does this  
24 is Sober Living by the Sea. The subject of the hearing  
25 today does not do this. This is a

1 one-home -- sorry -- one facility with 29 beds in it. So  
2 it is clearly subject to the use permit process.

3 And just as a reminder, I showed this to the  
4 folks on Thursday, this is a map for the Hearing  
5 Officer's benefit as well that shows where homes are  
6 located on the central Balboa peninsula.

7 And I'm going point out, for instance, this is  
8 Balboa Horizons with 11 beds. This is Ocean Recovery  
9 with 22 beds across the street. This is the subject  
10 property, 29 beds at 1216 West Balboa.

11 You'll see a couple of hash mark spots. These  
12 are homes that could have applied but did not apply for  
13 the use permit -- for a use permit. These are subject to  
14 abatement by February of 2009.

15 There's another Ocean Recovery facility up here  
16 with 16 beds that did apply for a use permit. And then  
17 that's Narconon Southern California with 49 occupants.  
18 They are subject to a different kind of abatement. They  
19 have agreed to leave town effective February of 2010  
20 without going through a use permit process, and, again,  
21 agreed to leave. So the City has entered into an  
22 agreement with them to do just that.

23 This is the immediate vicinity of the area for  
24 Newport Coast Recovery. This is 1216 West Balboa.  
25 You'll see the property uses around it. I may,

1 Mr. Hearing Officer, refer back to these maps if you have  
2 questions. And then with that, I'll have Debbie discuss  
3 a little bit about the specific application.

4 MS. LINN: Thank you, Mr. Kiff.

5 The application before you this afternoon is  
6 use permit number 2008-033, which is an application by  
7 Newport Coast Recovery for approval of the use permit at  
8 1216 West Balboa Boulevard.

9 The project site, as David explained, is a  
10 seven-unit apartment building in an R3 zone currently,  
11 with an occupancy -- permitted occupancy of 29 residents.

12 The Applicant submitted their application on  
13 May the 20th. And subsequent to that, the City issued a  
14 letter of -- a Notice of Incomplete Application to the  
15 Applicant on June 16, 2008.

16 The contents and requirements of the use permit  
17 application for group homes are the same requirements and  
18 content requirements as for other use permits in the  
19 City.

20 And, in fact, to help facilitate the assembly  
21 of the application materials, the requirements for the  
22 use permit in group home situations have been somewhat  
23 simplified in the form of a checklist, so that Applicants  
24 would have a little easier time of getting their  
25 applications in.

1           On August the 4th, the City sent a follow-up  
2 letter to the Applicant requesting that the application  
3 materials that were outlined in the Notice of Incomplete  
4 Application be submitted by September 2, 2008, and also  
5 advised the Applicant that the failure -- the reason that  
6 these application requirements are necessary were in  
7 order conduct and completely evaluate their applications,  
8 and that failure to obtain the use permit could result in  
9 an abatement proceeding taking place.

10           Since the August the 4th letter to the  
11 Applicant, staff conducted a series of telephone -- tried  
12 to make contact by telephone with Applicant on several  
13 occasions. In October, the Applicant and City staff  
14 discussed the status of the application.

15           And at that time, the Applicant stated that the  
16 remaining materials as outlined in the June 16th Notice  
17 of Incompleteness would be submitted to the City by the  
18 first week of December 2008.

19           And at that time, staff also offered to assist  
20 the Applicant in any way necessary in order to facilitate  
21 the submittal of the materials to the City, so that we  
22 could bring the application forward with a good and  
23 complete analysis.

24           On November 14, this Applicant did submit the  
25 required fee for the application. And by November 25th,

1 some of the additional materials that were requested in  
2 the Notice of Incompleteness were submitted. Those are  
3 included as Exhibit 5 to the staff report.

4 Staff evaluated the materials submitted and has  
5 determined that the application is still incomplete for  
6 the reasons stated in the staff report.

7 As an addendum to the staff report, we'd like  
8 to mention that, as part of the staff report, some of the  
9 letters that were received from residents in the city  
10 were included as exhibits to the staff report.

11 And we'd like to augment that with some  
12 additional letters that have been received since the  
13 publication of the staff report, which are  
14 available -- these letters are available both outside the  
15 Council chambers here and have been delivered to the  
16 Hearing Officer.

17 In addition, staff has received a police report  
18 from the City of Newport Beach Police Department listing  
19 a chronological history -- a chronology of the calls that  
20 have been made since 2005 regarding the specific address  
21 at 1216.

22 Because the application is incomplete at this  
23 time, staff has been unable to prepare a comprehensive  
24 analysis of the project; however, it is presented to the  
25 Hearing Officer at this time as a form of an update and

1 to direct the next steps regarding this application.

2 The Hearing Officer has the authority to either  
3 approve this application, conditionally approve the  
4 application or disapprove the application. In order to  
5 approve or conditionally approve the application, the  
6 finding as stated in the staff report need to be made by  
7 the Hearing Officer.

8 At this time, staff is recommending that this  
9 hearing be continued to a date certain in order allow the  
10 Applicant to submit the remaining materials, but also  
11 to -- needed for this application to be deemed complete,  
12 but also to direct the Applicant to provide all the  
13 materials within 21 days prior to the scheduled continued  
14 hearing date.

15 That concludes our presentation on this  
16 particular application, and staff is available to answer  
17 any questions.

18 MR. ALLEN: Can you indicate what items are  
19 still outstanding or -- I mean, in the staff report,  
20 there's item one through six. I believe that some of  
21 those have been submitted, but what specifically is still  
22 lacking here?

23 MS. LINN: Well, actually, all of those items,  
24 one through six, which I can enumerate for the public's  
25 benefit, those items are all still outstanding.

1           We did not -- a signed affidavit from the  
2 property owner needs to be submitted. A comprehensive  
3 site plan is required, as is required of any use permit.  
4 The Applicant submitted some form of a plan that's not  
5 really what's considered to be a site plan. The site  
6 plan needs to show the facility's building footprint, the  
7 property lines, adjacent parcels, and building footprints  
8 on adjacent parcels.

9           We had not yet received a preliminary title  
10 report. They did submit a preliminary what we call  
11 routing plan. This is item number four. However,  
12 we -- the requirements for the routing plan for shuttle  
13 service to and from the project site require that we also  
14 be provided with times of departure and return for -- and  
15 the travel destinations of the shuttle service or bus  
16 service that is providing service to the site. And that  
17 was not included on the route map that we received.

18           We received a sort of directional map in  
19 response to our request for a building diagram and floor  
20 plan of all the rooms. We can provide an Applicant of  
21 the example of the type of floor plan and building  
22 diagram that is needed for the application when and if  
23 the Applicant requests it. But to date, that has not  
24 been supplied.

25           And then the last item is a statement as to

1 whether or not the facility disposes of medical and/or  
2 bio waste, and if so, to also include a plan for the  
3 disposal of these materials.

4           And if the facility does not dispose of medical  
5 and/or bio waste, really all we need in that regard is a  
6 statement in letter format that says, "We do not deal  
7 with those sorts of materials." So those are the  
8 outstanding items to date.

9           Additionally, the Fire Marshal will request a  
10 comprehensive code analysis before the use permit is  
11 valid. We have requested and received a Form 850, which  
12 is a fire clearance, from the Fire Marshal. However,  
13 up-to-date fire codes -- the Fire Marshal is now  
14 requiring a complete and comprehensive code analysis as  
15 part of a condition of approval or complete -- prior to  
16 the sign-off on the CUP.

17           MR. ALLEN: Have there been discussions with  
18 the Applicant regarding the fire requirements and the  
19 need to have an analysis or study done to commence that  
20 process?

21           MR. KIFF: Yes, Mr. Allen. And not directly  
22 with the Applicant himself, but we've had a couple of  
23 discussions since the Balboa Horizons' hearing on  
24 Thursday. And this requirement will require  
25 modification. I'll speak that to that later in the

1 hearing, depending on what your direction is as the  
2 hearing goes forward.

3 But it has involved a legal review with Special  
4 Counsel and our own City Attorney with the Fire Marshal.  
5 I apologize. I wasn't able to let Debbie know that  
6 before the hearing.

7 MR. ALLEN: Thank you.

8 Okay. I think we're at a point where we can  
9 ask the Applicant to come forward and, hopefully,  
10 commence by addressing the issues here that are on point,  
11 primarily the code requires there be a diligent effort to  
12 comply with the use permit requirements, and it looks  
13 like it's been about six months.

14 So where do we stand?

15 MR. NEWMAN: Where we stand is that I believe  
16 we'll have it all in this week. We had somebody that we  
17 had hired to do all of this, was working with a few of  
18 the different facilities. And unfortunately, he failed  
19 to get this all completed.

20 We have since gotten the title reports. We  
21 have site plans. We had to have an architect come in and  
22 redraw the site plans. The site plan that I actually  
23 submitted with the application was one that I ran by Dave  
24 Kiff, and we thought that it might suffice, but  
25 apparently it didn't. It was one that was in the City

1 records.

2           The building is over 50 years old, so it's very  
3 difficult to -- actually, older than that. It's very  
4 difficult to find anything on record, so we've had to  
5 start from scratch. But I do believe we have most of the  
6 information completed.

7           The City requested is that we not piecemeal  
8 any more information, and for it to all come in at one  
9 piece, and that's what we intend to do this week. And  
10 I'll go on from here.

11           You know, I've never walked into a place before  
12 where I know everyone's against me. I'm usually on that  
13 side of it. And I realize what's going on here, and I'm  
14 going to address a few of these things right now.

15           My name is Mike Newman, and I'm a partner in  
16 Newport Coast Recovery. My partner to Newport Coast  
17 Recovery is --

18           MR. ALLEN: I'm sorry. We have a problem, and  
19 I've forgotten already the first time. Everybody that  
20 comes up to talk needs to give their name and -- there's  
21 no address requirement, I take it?

22           MR. KIFF: Name is fine.

23           MR. ALLEN: -- their name and spell the last,  
24 so that it can be made a part of the record. Thank you.

25           MR. NEWMAN: My name is Mike Newman. My last

1 name is spelled N-e-w-m-a-n. I'm a partner in Newport  
2 Coast Recovery. My partner in Newport Coast Recovery is  
3 Dr. Albert Pizzo.

4 Dr. Pizzo has lived and practiced medicine in  
5 Newport Beach for over 50 years. I've lived in Newport  
6 Beach for over 45 years. My wife and I both graduated  
7 from Newport Harbor High School, and our kids have all  
8 attended and graduated Newport Beach public schools.

9 I'm a founding board member of the Newport  
10 Harbor Baseball Association. And my wife and I are  
11 involved in numerous local charities. My partner and I  
12 are not profiteers the came into the City with bad  
13 intentions. Our roots in this community are deep.

14 Newport Coast Recovery is a State licensed and  
15 City licensed facility. We have never tried to  
16 manipulate the system in any way.

17 Newport Coast Recovery has been in business at  
18 our current location for over five years. The building  
19 was previously a recovery home for men operating under a  
20 different name five years prior to my involvement.

21 When my partner and I took over the facility,  
22 it was in a horrible state of disrepair. We've literally  
23 invested several hundred thousand dollars of improvements  
24 to the building. We came in and cleaned up the mess that  
25 was a visual stain on the street. We really are trying

1 to be good neighbors.

2           It's tough in this business, because neighbors  
3 don't like the business. So it's tough for anyone to  
4 look at us with a friendly eye. And this is a first time  
5 that I've ever come up and really associated myself with  
6 this business. I've lived here my whole life, and, you  
7 know, I don't want to be enemies with my neighbors.

8           I want to address a few of the specific  
9 concerns that the new ordinance calls out.

10           Noise. We do our best to control the noise.  
11 No music is to be played after lights out, which is 11  
12 p.m., and nothing before 9 a.m. We encourage our clients  
13 to use headphones and found that this has solved a lot of  
14 the noise issues.

15           But when you get 20 men together, it can get  
16 loud sometimes. We try to keep it orderly. If the  
17 neighbors can hear it and I know that our people who work  
18 for us can hear it, we try to take care of it as quickly  
19 as possible.

20           Secondhand smoke. Our clients may only smoke  
21 within the properly designated areas. We have areas  
22 inside the facility where our clients do smoke. People  
23 in rehab smoke. We'd like for them to stop. We'd like  
24 for them to do a lot of things, but it's not easy to  
25 change someone's life in 90 days completely.

1 Traffic congestion. Newport Coast Recovery  
2 owns one van for transporting our clients. At any given  
3 time, we may have five staff members on-site. We can  
4 generally accommodate most of our employee's parking  
5 on-site.

6 Our clients are not allowed to have cars during  
7 the first 30 days of treatment. And generally, they must  
8 have a valid reason to have a car thereafter. A valid  
9 reason would be a job. Currently, we have 14 clients in  
10 the facility and not one of our clients has a car.

11 Excessive trash. The only outside service that  
12 actually comes to our facility is Waste Management. We  
13 have a dumpster where we get rid of all our trash. We  
14 don't utilize the City trash. And they come twice a  
15 week.

16 Excess of debris on the sidewalks. Along with  
17 our no smoking policy in front and rear of the facility,  
18 our employees every morning go in front and the rear of  
19 the facility and sweep up and clean. They want the place  
20 to look very good. It doesn't look good when there's  
21 garbage, cigarette butts, out in front. And generally, we  
22 make every effort to keep that as clean as possible.

23 Police activity. The Newport Beach Police  
24 Department Records Division can verify they have  
25 responded in 2008 to no calls or complaints from the

1 public regarding our operation.

2 We've had five incidents that have involved  
3 police activity in our facility. Three of them were  
4 medical aid that they followed up for one person that was  
5 having a diabetic seizure three times in a 90-day period.  
6 Two of the calls were from us for vandalism to our  
7 vehicles.

8 In closing, I'd like to offer something to the  
9 City and concerned citizen of Newport Beach. I would  
10 immediately offer to reduce our ADP licensed bed count by  
11 20 percent. I really hope that this offer is taken in  
12 the spirit that we're making it. We're not looking to  
13 load up our building and make millions of dollars. It  
14 just doesn't happen. We really want to be responsible  
15 neighbors.

16 I've met with Denys. I've given her my pledge  
17 that I would work with their group the best I could. And  
18 I still believe that we can work together as neighbors,  
19 and I'm willing to do that. I'm happy to answer any  
20 questions.

21 MR. ALLEN: Before any questions, if anybody  
22 else has a cell phone that's going to go off, will you  
23 please turn it off? It really does interfere with the  
24 orderly operations.

25 I don't know. Staff may well have questions,

1 but my concern in looking at this application -- and this  
2 is only the second one I've looked at, so I'm not  
3 entirely up to speed -- is that I don't see in the  
4 application enough detail to give the staff the ability  
5 to say that you've presented a plan of operation and  
6 management. And I think that's a really important  
7 element of these operations.

8           You began to address you're doing your best,  
9 you know, and you mentioned cars and smoking, and  
10 sweeping and cleaning. And in all that plan of  
11 operation, those are only small parts of it. Really give  
12 the City and you a level of knowledge about what your  
13 plans are and what you're obligated to do and operate.

14           And certainly, I mean, if I had total control  
15 here, I wouldn't approve one of these facilities until  
16 there was an operating plan in place so that we knew what  
17 the permit was going to say in pretty good detail.  
18 Because, as you can see, we know there's a lot of  
19 conflict here. And the more detail we can get, the  
20 better off everybody is, I think.

21           MR. NEWMAN: Is that something that is omitted  
22 from our application right now?

23           MR. ALLEN: Pardon me?

24           MR. NEWMAN: Is there something in our  
25 application that's supposed to cover that that we didn't

1 do, or is that something in addition that you're looking  
2 for, or something for me right now?

3 MR. KIFF: I'll help answer that, Mr. Allen.

4 There is a section of the application, if I  
5 have the correct one in front of me in the packet, that  
6 basically starts at page 14, or so, and then moves to  
7 page 17. And that section is not filled out. And those  
8 are some of the issues that Mr. Allen raised about --

9 MR. NEWMAN: Okay.

10 MR. KIFF: -- about the quiet hours that you  
11 spoke to.

12 You mentioned, for instance, 11 to 9. And I  
13 think the 9 o'clock is something that we're supportive  
14 of. We may want to try to pull back to 10 or so, but  
15 these are the kinds of things that we'd like to see  
16 discussed.

17 MR. NEWMAN: Then, Dave, what I can tell you  
18 right now, as of today, I will get on that, and I will  
19 have that in addition to the other things that are  
20 omitted that I believe we have in place right now.

21 I will personally fill that out and have that  
22 into your office before the week. They are not things we  
23 have to create or make up. It is part of our operation.  
24 So I'm sorry it was omitted, because it should be  
25 relatively easy to fill out.

1 MR. KIFF: Okay.

2 MR. NEWMAN: We did have a lot of hands  
3 touching. I'm not generally the person that fills out  
4 these things. I did hire an attorney to handle this, as  
5 you know. And, unfortunately, when your attorney stops  
6 returning your phone calls, and he's cashed your check,  
7 it's a difficult situation. So we've had a difficult  
8 time with our Counsel, and we're hoping to rectify  
9 that.

10 MR. LISKIN: Do you have a note from your  
11 mother? This is ridiculous.

12 MR. NEWMAN: All I'm looking for is some  
13 dignity and respect, sir.

14 MR. LISKIN: Give to the communities --

15 MR. ALLEN: No more of that. Thank you.

16 Anyway, I thought that that would be helpful.

17 Let's see. At this point, I don't think we're  
18 prepared to go on and talk about specific deadlines or  
19 anything. I think we need to hear from anyone else.

20 Do you have any other -- any other people other  
21 than the Applicant to --

22 MR. NEWMAN: I do not. I can answer any  
23 questions that many people are definitely going to have.  
24 I don't know if the questions are mostly statements, like  
25 the last gentleman. But again, you know, I'm happy to

1 answer anything. I'm not here to create any more  
2 problems. I'm sorry for whatever was created with this  
3 whole situation. I'd like to help.

4 MR. ALLEN: I think it would be really  
5 important while the hearing is going on if you would  
6 think about what kind of time commitment you can make to  
7 put a complete wrap on this presentation.

8 Because if we agree to a continuance, which is  
9 probably the case, I think, in substantial part for legal  
10 reasons but also to give you an opportunity get it done  
11 right, it needs to be pretty quick.

12 MR. NEWMAN: We'll have it done.

13 THE COURT: It needs to be comprehensive.

14 MR. NEWMAN: It will be comprehensive. We have  
15 one through six pretty well completed, and I can have  
16 this all completed by Friday of this week.

17 MR. ALLEN: Well, okay. You know how that  
18 goes. You submit it, and then the staff says, well,  
19 that's not really complete-complete. And so -- but if  
20 you can commit to make your submittal by Friday, and then  
21 we go from there, and I bet you the staff has some  
22 recommendations on that.

23 Why don't we hold off on that for the time  
24 being, and let's hear from the public, and then we'll ask  
25 you to come back up, and you'll have an opportunity.

1           So, we're going to open the public hearing now.  
2   And as Mr. Kiff mentioned, we have got a time limitation  
3   on three minutes for each speaker, and please stay with  
4   that. We aren't using this light system, but there's a  
5   little buzzer that goes off at the end of three minutes,  
6   and please just put a wrap on it at that point, I mean,  
7   10 or 15 words at the most. Because, otherwise, you're  
8   just being rude to other people that want to have the  
9   opportunity to talk.

10           So with that, let's start an orderly  
11   progression here. And please remember to give your name  
12   and spell the last before you start speaking. Thanks.

13           MR. LISKIN: My name is Matt Liskin, and I want  
14   to apologize -- L-i-s-k-i-n. And I want to apologize to  
15   everyone here.

16           But after the speaker from the facility got up,  
17   I lost my temper. The reason I lost my temper is because  
18   it's clear to me that the attitude of this gentleman is  
19   the attitude that all of us are is so disturbed about,  
20   and that's really rationalizing bad behavior.

21           And if this -- my background is about 20 years  
22   ago I started a company in health care which became the  
23   third largest provider of acute care hospitals in the  
24   country, 50 hospitals.

25           And from the facility level up, health care is

1 a local business. At each facility, you have an  
2 administrator who is responsible for very basic  
3 operations. And the fact that there is not a plan that  
4 was submitted to you after all the consternation and what  
5 you've been asking for speaks volumes about this  
6 individual and its operation.

7 My view is that if they can't respond to the  
8 City, how are they ever going to respond in a respectful  
9 way to their neighbors? It makes no sense.

10 And again, excuse, after excuse, after excuse.  
11 This business depends on running a tight ship with  
12 difficult people. If you cannot have a partnership with  
13 the City, given the time they have been given, again, how  
14 can they respect our community?

15 So again, without specifics -- and finally, I  
16 think what we've seen today is why all of us are so upset  
17 with the operators and, perhaps, this one in particular.  
18 And it's clear this gentleman is being an absentee owner,  
19 and I don't care if the doc who has been here for 50  
20 years is associated with the facility.

21 How many hours a week is the doctor there?  
22 What is he responsible for? Is this JACO certified, this  
23 facility? I don't know.

24 But again, foremost I want to apologize to  
25 everyone here. But with all these people here, all the

1 time that they have put in, all we're getting is excuse,  
2 excuse, excuse, my lawyers, this people, that people.

3 Sir, if you are an owner, this is your  
4 responsibility.

5 MR. ALLEN: No, you need to address up here.

6 MR. LISKIN: Excuse me.

7 As an owner, it is his responsibility. We are  
8 homeowners. This is our community. I don't care if he  
9 lives in Newport. Let him live 24/7 in the facility, and  
10 then I will respect that as an owner. Let him have a use  
11 plan, and then he'll respect the City. But this is  
12 nonsense. And to give him a continuance is disrespectful  
13 to everyone in this room. Thank you.

14 MR. BATLEY: My name Craig Batley, B-a-t-l-e-y.  
15 Mr. Allen, City staff, and all of these fine people out  
16 here who came out today for this hearing.

17 You know, I think everybody here feels the same  
18 way here. We have all this City time taken, we have all  
19 the time of the people out here, and I probably imagine  
20 not one person out here is for this facility being  
21 approved.

22 And I just can't even believe that this process  
23 can even have a hearing without a complete  
24 process -- a completed application. I think we shouldn't  
25 even have a hearing. This is ridiculous. From

1 henceforth, I would recommend that the City staff, if you  
2 don't have a completed application, just postpone the  
3 hearing.

4           You, as the -- and your time is being wasted,  
5 too, Mr. Allen. You have no choice but to continue this,  
6 no choice whatsoever, or just not approve it. On its  
7 face, this is not approved. I would just not approve  
8 this thing. I'm totally against any operator who not  
9 organized and can't even make a responsible presentation.  
10 This application should be flat turned down.

11           And another thing, we have this development  
12 agreement being approved, and the operator has agreed to  
13 not have the facility within a thousand feet of a school.  
14 This is within a thousand feet of a school. It's in a  
15 wrong location. How can you have one operator not  
16 operate within a thousand feet of the school and the  
17 other one you can? That makes no sense either. This  
18 whole process makes no sense.

19           I recommend that you flat reject this  
20 application.

21           MR. MILLER: My name is John Miller,  
22 M-i-l-l-e-r. And I live in the block that the Applicant  
23 is presenting here today. And I think from my own self,  
24 and my wife too, we discussed it, we think that this  
25 whole idea is bad.

1           And some of the reasons are, to begin with,  
2           it's less than a block to the school. Now, I know these  
3           people that stay in here are not hardened criminals, but  
4           still, they are criminals. And for them to wonder around  
5           close to this open school yard -- our school yard at  
6           Newport Elementary School is not fenced in. Anybody can  
7           walk up there at any time. So I'm not against sober  
8           living, but I'm against this location.

9           Also, when they have trucks come up to deliver  
10          things and take waste away, the alley behind there is  
11          quite narrow, and there's no way a fire truck can get  
12          through there in case of an emergency. So that's a bad  
13          thing.

14          And also, even though he says that maybe some  
15          of the people -- a few might have cars, man, there's no  
16          parking and especially in the summertime. And these  
17          people are going to have family and friends come to visit  
18          them. There's no place to park.

19          But anyway, I just think it's a bad location,  
20          and thank you very much for letting me address you.

21          MR. LOPEZ: My name is Paul Lopez, and I live  
22          at 1125 1/2 West Balboa Boulevard with my wife.

23          MR. ALLEN: Could you spell your last name?

24          MR. LOPEZ: L-o-p-e-z.

25          And I actually have to say that I'm probably a

1 pretty good person to comment on this house and others  
2 only because I feel as though I've been in rehabilitation  
3 for five years. And I've got a facility on both sides of  
4 my house and have for, I think, one for three years and  
5 another for five years.

6 And in reading the report from last week, I  
7 know we're comment commenting on this one, but when  
8 someone says that there is no negative impact to a  
9 neighborhood, it's somebody that doesn't understand  
10 what's going on in these houses.

11 The gentleman that spoke, I guess, Mr. Newman,  
12 who talked about it's like having 20 guys together, and  
13 we do our best to manage them, another way I would call  
14 that would be a fraternity, basically. And it's very  
15 dependent upon the individual that they put in charge of  
16 managing those individuals.

17 And I drive by that place every day. And in  
18 all respect to Mr. Newman, I don't see him sweeping. I  
19 see him smoking, okay, and gathering out front in the  
20 morning. It's within -- it's less than a thousand feet  
21 from the school.

22 I thought that the City had reached a  
23 negotiation, and -- and I thought a good understanding  
24 that we wouldn't put these facilities close to schools  
25 and potentially jeopardize our kids. How does one

1 enforce, you know, these?

2           Again, I'm probably a little bit different in  
3 that I've got one on each side of me. I've got 1132  
4 across the street, which I understand is on its way to  
5 approval. And then this one, that's 400 feet across the  
6 street. All of those four facilities are within a  
7 thousand feet of the elementary school.

8           The parking down there. And again, in respect  
9 to Mr. Newman, I've heard everybody say that they don't  
10 allow their people to use cars. And I know we're going  
11 to hear a few more applications come up. But for anybody  
12 that lives between 11th and 12th Street over the last  
13 three or four years, to see the density of parking there,  
14 and we've got four facilities there, I see these folks  
15 get in their cars every morning.

16           So I would just say as part of the application  
17 process, that we're able to validate what these owners  
18 are saying about their clients being able to have cars  
19 on-site. I can tell you the two on each side of me, all  
20 those kids have cars that they park out in the street.

21           Noise? Again, I must be living to next to the  
22 two worse facilities in Newport Beach, because I don't  
23 see any type of time code. They are down at the  
24 courtyard at 11:30 at night joking and smoking. God,  
25 must have bad managers there.

1           And, you know, the littering and the like. I  
2 think all the stuff will be documented by other people  
3 that speak here. But what I would suggest as part of  
4 process and a part of somebody that's running the  
5 business that this group has had ample time to submit a  
6 full application.

7           Okay. So we're sitting here. Mr. Newman  
8 talked about how he's going to run his facility. And my  
9 question to him and others is how you can make a  
10 commitment to the community here that you're going to run  
11 an orderly facility when you can't even fill out an  
12 application.

13           I think that's quite disrespectful to the City  
14 and to the neighbors. And I urge the City -- I  
15 understand that you're recommending a continuance. I  
16 don't know why we just don't reject the application. If  
17 they can't put the time and effort and respect into doing  
18 it, as others have in the community, I see no reason why  
19 we should entertain their permit any longer. Thank you.

20           MR. MATHENA: I'm Larry Mathena. I submitted  
21 written comments, M-a-t-h-e-n-a.

22           Just very briefly, because I think there's a  
23 number of things to focus on here. Number one, you have  
24 not had diligent pursuit, whatsoever.

25           Number two, you have had a clear example, as

1 Paul has rightly said, as to, from my perspective,  
2 utterly poor management.

3 Number three, I live in the same building as  
4 Paul, so everything he said is also true for me.

5 MR. ALLEN: I'm sorry. What's your address?

6 MR. MATHENA: 1125 West Balboa Boulevard.

7 Number three, you have an interesting  
8 comparison here. On some levels, I'd almost suggest that  
9 these folks at least consider the 1132 Balboa Horizons'  
10 efforts in the comparison, by the way, of someone who  
11 appears to be a responsible operator compared to someone  
12 who, on the face of things -- I don't want to make any  
13 direct judgments.

14 But having said that, I want to make a very  
15 clear point. If you go back and look at the proposed  
16 statement of conditions of Balboa Horizons' conditions,  
17 there's nothing in there that precludes them from having  
18 100 car permits tomorrow. So I totally agree with your  
19 observation that there should be a plan of operation and  
20 management.

21 But it should end up, if you did have a  
22 responsible operator -- and by the way, if you did have  
23 one more than a thousand feet from a school, because, to  
24 me, that really does trouble me. It troubled me from  
25 Balboa Horizons, and it troubles me for anybody -- that

1 they follow those specifics. And if they don't, that  
2 they are subject to potentially losing their permit.

3 Next thing I want to put out there -- and I  
4 hear sort of the waffling already. You know, I've been  
5 involved in real estate. And to me, I've had fire  
6 departments shut down operations. And I hear this sort  
7 of, well, we're going to do this and that and the other.

8 Is that a policy decision by the City of  
9 Newport Beach? Because if it is, I think you should go  
10 all the way to the City Council and allow the public to  
11 speak to it. I mean, you are talking a fire safety  
12 issue, not who.

13 You know, frankly, we could have prevented  
14 these businesses or else put them in safely to begin with  
15 years ago. And from my perspective, it looks like we're  
16 trying to bury the point potentially because we should  
17 have dealt with it properly to begin with.

18 Last thing -- I have two more things. We've  
19 got a building that, unfortunately, is 14 occupants at  
20 the moment. That's terrible, so we have somebody that's  
21 willing to sacrifice 29 down to 5. Big deal. It's a  
22 meaningless gesture.

23 Last point is, I totally agree with the  
24 observation, but just to reiterate, one, the planning  
25 director has the absolute authority in the context of a

1 failure to accurately and with due diligence submit an  
2 application to dismiss it. Should have been done.  
3 Alternatively, they shouldn't have wasted your time.  
4 They shouldn't have wasted my time by dragging us in  
5 here.

6           And three, it's the last important point, if  
7 they do do an application, and we do get conditions out  
8 of the City, I sincerely think we would have a full  
9 hearing all over again, so that the public is given the  
10 opportunity to respond.

11           Having said all that, if you can't terminate  
12 this one, there's none that you can terminate at all.  
13 And this is -- if that's the case, this is a complete and  
14 total charade.

15           MS. OTTING: Hi. Good evening -- I mean, good  
16 afternoon. Happy Holidays, Merry Christmas. My name is  
17 Dolores Otting, O-t-t-i-n-g. I live in Newport Beach.

18           My concern is for the health and safety and the  
19 fire code issues. This building was stated that it's  
20 50-plus years old, and that there's an inside area which  
21 allows for smoking of 29 men. So that has to be a  
22 considerable amount of cigarettes.

23           A couple of years ago, my husband was on the  
24 peninsula. We have two properties on the peninsula,  
25 including the family home, and there was a fire. And I

1 don't know if you've driven down there, sir, but in the  
2 meantime, the density is quite intense.

3 Basically, you can get two fire engines down  
4 there, but then you had 13 or 15 fire engines from all  
5 the other areas in the county that came to help, but you  
6 can't really get them near the fire.

7 So if you go to the staff report, page 67, it's  
8 a letter dated January 29, and it's from Steve Lewis, the  
9 Fire Chief, which is signed by Steve Bunting. And I want  
10 to read these paragraphs. It says,

11 "Notwithstanding that the current California  
12 Building Code, which took effect in Newport  
13 Beach on January 1, 2008, contains new  
14 provisions for the group home uses which may  
15 allow you to have an operation that complies  
16 with current codes. It also contains several  
17 newly adopted regulations for group homes with  
18 more than six residents."

19 It goes on to say,

20 "Because the California Department of  
21 Alcohol and Drug Programs, ADP, requires you to  
22 seek fire clearance from me, as Newport Beach's  
23 Fire Marshal. I may be unable to do so without  
24 having a comprehensive code analysis by a  
25 qualified architect in hand as I complete my

1 review of each situation. As such, I strongly  
2 encourage you to seek this comprehensive code  
3 analysis by a qualified architect prior to your  
4 next licensing renewal."

5 Then it goes on to another letter of June 6th,  
6 okay, which states,

7 "To date, I have not received the analysis  
8 for your facility. Please be advised that I  
9 need to review your code analysis and make a  
10 plan for corrections, if necessary, prior to  
11 the issuance of the fire clearance. That is  
12 part of your use permit application and part of  
13 the ADP application if you're seeking a new or  
14 extended ADP license."

15 Then I heard -- and I want some more clarity on  
16 this, because I think that we're putting the cart before  
17 the horse with this. They get to get a permit, and then  
18 we get to understand what the fire codes are? It has to  
19 be the other way around.

20 I think that the public needs to feel secure  
21 that the building has been maintained or has been  
22 upgraded to such a condition that they don't feel that  
23 there's a fire hazard for their children or for  
24 themselves. And so to say that you're going to give them  
25 a permit, and then later on, you're going to go after all

1 of this, and -- I don't think this process is handled  
2 properly.

3 And part of the reason that we got here is  
4 because of the lack of code enforcement within the City  
5 of Newport Beach. And I've been involved in these  
6 hearings since 2003, and it's now 2008. And that's a  
7 long time, it's a lot of units, and it's a lot of fire  
8 code in an area that has a lot of density. And I think  
9 that's the number one issue, and I think the way you do  
10 this needs to be redone.

11 Thank you very much for your time.

12 MR. WETHERHOLT: Mr. Allen, my name is Drew  
13 Wetherholt, W-e-t-h-e-r-h-o-l-t. My family and I have  
14 been residents here for 15 years on the Newport  
15 peninsula.

16 Newport Coast Recovery, as we all know, is  
17 literally adjacent to Newport Elementary School. How  
18 does this have a negative impact about the school and the  
19 community? Under no circumstances should a drug rehab be  
20 located this close to an elementary school.

21 The safety of the children of this school, and  
22 all of the schools, are of the utmost importance. I have  
23 two school-age children who would have gone -- who would  
24 not only go past Newport Coast Recovery but would also go  
25 past several other rehabs to get to school.

1           Given the typical rehab client profile of  
2 Newport Coast Recovery, this is certainly not a good mix.  
3 It is not an environment that I wish to subject my  
4 children to.

5           That fact has been a major consideration why  
6 our family will not be attending Newport El. I  
7 personally know three other families that will be not be  
8 attending Newport El. They have chosen to select other  
9 schools or private schools.

10           How does this impact Newport El.? Less  
11 students, less funding, the District -- less money the  
12 District receives.

13           Also, the client of Newport -- a lot of clients  
14 out of Newport Coast Recovery have often found the  
15 Newport Elementary School playground located on the  
16 beach. On the weekends, my kids like to go to this  
17 playground and have often found rehab clients playing on  
18 the equipment before and after their meetings at the  
19 beach. These clients are often full of tattoos, rude,  
20 using vulgar language, obscenities, as well as smoking.

21           When parents have asked them to tone down the  
22 language, these clients have been intimidating to  
23 parents. And in several cases, the police have been  
24 called. I have been cussed at personally by various  
25 rehab clientele.

1           Many of these clients are on behavior  
2 controlling drugs. I've personally been to Lido Drug  
3 when the operators are picking up their drugs for their  
4 clients. What happens when one of Newport Coast  
5 Recovery's clients falls off his medication and then  
6 decides to take it out on a passing Newport Elementary  
7 student? I don't think it's a question of if, I think  
8 it's a question of when this happens.

9           The operator claims to have a medical director,  
10 Dr. Michael Ludoff (phonetic), M.D., but he certainly is  
11 not overseeing all these patients all the time. I find  
12 it funny that this doctor is also on the staff of some of  
13 those rehab operators.

14           I question whether there's much medical  
15 oversight with this operator. Given his responsibility,  
16 why -- irresponsibility, why would you locate the rehab  
17 this close to an elementary school, especially if he's  
18 been a resident of Newport Beach and understands how the  
19 peninsula operates in the close -- the high densities  
20 that we have down there?

21           Is it really in the best interest of the  
22 patients, the school, as well as the community to have  
23 this operator this close to an elementary school? They  
24 don't even have the responsibility to put their  
25 application together in a timely fashion. Do we not

1 understand deadlines? Time lines?

2           Given that, I would request you deny their use  
3 permit. Thank you.

4           MR. BACICH: My name is Nick Bacich, and thank  
5 you, Mr. Allen, for taking time --

6           MR. ALLEN: Spell the last name.

7           MR. BACICH: B-a-c-i-c-h.

8           And we have a residence that's 1213 behind the  
9 facility in which we have had for awhile, and -- more  
10 than the five years that he's been operating there.

11           We have been effected by the facility in  
12 several different ways. One is traffic. They may only  
13 have one van, but I've been in the garage -- we don't  
14 live there. This is a rental.

15           But I have been in the garage and working, and  
16 in a 45-minute period, there was 18 vehicles that came  
17 up. And several of them were white vans, so they must  
18 have been picking up quite frequently.

19           But there was electricians or just different  
20 people that would pull up and run in and run out. And  
21 sometimes there would be multiple cars blocking the  
22 alleyway while people ran in and out. So the car  
23 transport is a factor.

24           And the different times that we've had problems  
25 with them, we have gone over and spoken to them. And

1 they have been very receptive and said, "Fine. We'll try  
2 to work on this." But it's at the point that we stopped  
3 doing it.

4 We finally decided it would be better to try to  
5 work with the City to get them to do something about it,  
6 because it's not up to us, as neighbors, to supervise  
7 their business, and every time there's a problem, go over  
8 and knock on their door and tell them to, "Please,  
9 would you watch this?" or "Please, watch that?"

10 They do have trash pick-up, but somehow we  
11 always seem to get cigarettes and different things in the  
12 trash cans of our tenants. And since -- one time I went  
13 over, one of the time we were working at our place, and  
14 opened up -- because all the trash cans were full, and  
15 one as full the lasagna and probably a couple -- hundreds  
16 of cigarettes butts.

17 And so -- since none of my tenants at that time  
18 smoked, I went over, and they apologized. They didn't  
19 mean to be using it. This is all within the five-year  
20 period that that gentleman has owned the facility.

21 And everything else, I conclude with. I have  
22 no reason to repeat. The main thing is I totally agree  
23 that if they run their business in the same way  
24 they -- it's showing you in the same way they are doing  
25 their application, it's not very business like.

1           It seems like if you were doing paperwork that  
2 meant you were going to be in business or not in  
3 business, you'd be pretty diligent. And they certainly  
4 haven't been diligent.

5           And police activity, he mentioned. We've seen  
6 cars, police cars, out there before. We've stopped going  
7 down Balboa Boulevard. One time, there were at least six  
8 police cars. We asked the police, "What is going on?"

9           And they said, "Do you live in that facility?"

10          We said, "No."

11          And they said, "Well, we can't talk to you  
12 about it." We went back and tried to pull up on -- the  
13 police is supposed to do information reports within a  
14 couple hours after they go to a site. Nothing was done.

15          So anyway, I think it's relatively easy to deny  
16 this application, because they haven't followed through  
17 as they should, and I hope you take that impetus now and  
18 do it.

19          MS. DEININGER: My name is Mary Deininger,  
20 D-e-i-n-i-n-g-e-r. I've lived here 35 years.

21          I'm one of the parents. I did take my children  
22 out of Newport Elementary because of the atmosphere  
23 there. But I would also ask that you deny this request  
24 and turn my two minutes left of whatever time over to  
25 Denys Oberman, because she has a longer presentation.

1 MR. ALLEN: You took your children out of  
2 Newport Elementary because of the conduct of the --

3 MS. DEININGER: Because of the atmosphere  
4 there.

5 MR. ALLEN: -- rehab facilities?

6 MS. DEININGER: Yes.

7 MS. OBERMAN: Good afternoon, Mr. Allen. Denys  
8 Oberman, O-b-e-r-m-a-n.

9 I'm a resident, and I live approximate to  
10 Newport Coast Recovery. And I'm a daily beneficiary, and  
11 have been for the last five years, of impacts of the  
12 20-plus men wandering around that are, as the operator  
13 admitted, difficult to control.

14 I do want to say that I'm a little bit nervous,  
15 and I know people aren't used to me being like that. I  
16 have been -- there are been efforts, and I've been  
17 subject to certain efforts to intimidate. And my family  
18 fears for their personal safety associated with this  
19 situation.

20 And you said that there is a reason -- you  
21 expected to see this place filled with parents and people  
22 at the church and teachers if there was -- at this  
23 hearing, as evidence, if you will, that there was an  
24 issue with this operator.

25 I'm here to tell you that the reason those

1 people are not here is because they have been  
2 intimidated, and there have been threats of intimidation,  
3 and there's been confrontational behavior. There is a  
4 history of confrontational behavior.

5           And it's unacceptable to me and inequitable to  
6 expect us to continue to put up with that. So I feel I'm  
7 taking a personal risk by standing here. But I'm going  
8 to move on to some other substantive issues associated  
9 with this application.

10           I do agree with others that the Applicant has  
11 had over six months to complete the application and has  
12 substantially failed to do. So this amount of time is  
13 more than what we would consider to be reasonable.

14           Relative to the representations thus far made  
15 and submitted, I have some additional comments. One is I  
16 noticed on page 1, and this is relative to the  
17 application submitted as of December 4th, that the  
18 Applicant left blank items questioning compliance with  
19 state and local law.

20           We contend that the Applicant has been in  
21 violation of state and local law based on the following:

22           One, a neighbor's organization, of which I'm a  
23 member called Concerned Citizen of Newport Beach, had  
24 professional representations administering a number of  
25 Public Records Act requests during the period February

1 2007 through June 2008 time frame.

2           The reviews demonstrated that Newport Coast  
3 Recovery had never applied for or received conditional  
4 use permits or FEP's that they were supposed to within  
5 the various time frames, even though local ordinances  
6 required this operation and legally required the  
7 operation to do so.

8           Two, the Applicant operated a second facility  
9 across the street from 1216 West Balboa -- I apologize  
10 I'm going quickly, but I'm trying to beat the clock -- at  
11 1219 West Balboa, whose residence confirmed that they  
12 received counseling from Newport Coast Recovery staff at  
13 the 1216 location.

14           And so we feel that the Applicant has attempted  
15 to circumvent the state law requirements and residential  
16 care, which have to have a supervisor on staff by  
17 repeatedly claiming that this facility was good boys or,  
18 as in the application, a "transitional care" facility.

19           The Applicant does hold an ADP license for 1216  
20 West Balboa but not a license to provide counseling for  
21 1219 West Balboa. And there is some evidence in the file  
22 coming from me, and we did submit complaints and request  
23 for investigation from the City, myself and other  
24 residents.

25           Is that my three minutes? I get two left.

1 Thank you. Okay. I feel like Dolores here. She does it  
2 better than I do. Okay.

3 Three, the Applicant obtained a local business  
4 license which represented the business as a "personal  
5 service miscellaneous," rather than a residential care  
6 and treatment facility.

7 And also on that license, the person named as  
8 the responsible operator was the man whose name is  
9 Richard Perlin. And I do have a copy of that. I thought  
10 it was in the application. I couldn't find it, but I do  
11 have a copy of that.

12 Dave, do you have your map? Could you flash  
13 that just quickly?

14 It wasn't Dr. Pizzo. It wasn't the name,  
15 clinical director, that's on the application. Mr. Perlin  
16 has an unlicensed facility, not ADP licensed, facility at  
17 1129 West Balboa. I don't believe that's on the map,  
18 Dave.

19 MR. KIFF: I believe it's one of my  
20 strike-outs?

21 MS. OBERMAN: Okay. Okay. Is it gone?

22 MR. KIFF: It needs to be abated by the end of  
23 February.

24 MS. OBERMAN: Okay. Very good.

25 The other thing tied to Mr. Perlin is that

1 Mr. Perlin is -- he does provide intake services to  
2 another operator. Why does this matter? Because there's  
3 a representation on the Web site associated with Newport  
4 Coast Recovery -- and I'll submit it herein -- which  
5 names Richard Perlin as an executive director of Newport  
6 Coast Recovery. So I'm confused. I'm confused.

7 Okay. Going on. On page 14, the Applicant  
8 doesn't respond to a lot of the questions in the  
9 application concerning total occupancy, smoking,  
10 operations, et cetera. It doesn't respond to the  
11 disability compliance. And the Applicant's business is  
12 actually within 300 feet of Newport Elementary School.

13 Had the Applicant submitted to what he was  
14 legally required to submit to, in terms of the local  
15 review, chances are it would be very likely that he would  
16 not have gotten a conditional use permit in the first  
17 place.

18 But having said that, we now have a permit for  
19 29-plus men, many of whom have been coming out of the  
20 court system. So they have been involved with  
21 alternative sentencing and other types of conditional  
22 programs, which definitely has added to the risk and  
23 inappropriateness or incompatibility to have a facility  
24 like this so close to Newport Elementary School, and a  
25 facility, I may add, as with other facilities but

1 particularly this one, where people are moving around  
2 largely unsupervised.

3 I had -- you know, I've had upwards of 20-plus  
4 people in front of my house, particularly in the summer  
5 season, loitering, smoking, being vulgar, and creating  
6 this -- the smoking thing, by the way, does not just  
7 create a fire hazard for the particular facility.

8 When you have large numbers of people throwing  
9 little cigarette butts on your property, meaning my  
10 property, it creates a fire hazard for me. And I talked  
11 to my insurance company about that, and they suggested --

12 MR. ALLEN: I think it's time to do a wrap, all  
13 right?

14 MS. OBERMAN: Okay.

15 MR. ALLEN: We're out of time.

16 MS. OBERMAN: I will wrap. I will wrap.

17 MR. ALLEN: Pardon?

18 MS. OBORNY: Almost seven minutes.

19 MR. ALLEN: Seven minutes? It's wrapped. It's  
20 done.

21 MS. OBERMAN: Okay. I'm a wrap, baby.

22 MR. ALLEN: Thank you.

23 MS. OBERMAN: Excuse me. I don't mean to be  
24 disrespectful. This is late in the afternoon. So I also  
25 respectfully request that this application be denied, and

1 that it be denied today.

2 Mr. Allen, may I submit an inaccuracy in the  
3 application also today for this reference? There's a  
4 letter addressed to the manager of Sober Living by the  
5 Sea and Newport Coast Recovery package.

6 MR. KIFF: Sure.

7 MS. OBERMAN: Thank you.

8 MR. KIFF: I got it from you. Thank you,  
9 Denys.

10 MR. ALLEN: Mr. Kiff, just while we have that  
11 map up on the board, and -- what is the facility that's  
12 just north of that? Looks like it faces on Bay Avenue of  
13 this facility.

14 MR. KIFF: Let me go back to this page here.

15 This facility is Newport Coast. This facility  
16 is 1217 West Bay. It's not a facility today. They have  
17 submitted an application to ADP for a six and under, and  
18 that's why I had it as a smaller icon on this map.

19 MR. ALLEN: Okay.

20 MR. KIFF: This is the class of homes that is  
21 except from local regulations.

22 MR. ALLEN: But the probability is that one  
23 will locate there, then. Is that fair to say?

24 MR. KIFF: That would be fair to say, yes.  
25 That's why I put it on the map.

1 MR. ALLEN: The one that you referred to  
2 earlier that was commented on, that one is subject to  
3 abatement but will, presumably, go through the abatement  
4 process?

5 MR. KIFF: Maybe I'm being overly optimistic,  
6 but some of the operators have told me that they intend  
7 to close their facilities. They have until February 2009  
8 to do that. And where they have approached us for any  
9 kind of assistance in closing, we've been happy to do  
10 that.

11 My understanding is that this facility will  
12 close or has already been closed, but it's not something  
13 we go out and knock on their door everyday and say, "Are  
14 you still open?" Because February 28th, sorry, February  
15 22nd is the deadline at which that would occur.

16 MR. ALLEN: Okay. Thanks.

17 MR. STEEL: Good afternoon. My name is Parker  
18 Steel, S-T-E-E-L. I'm a lifetime Orange County resident,  
19 and I've in Newport Beach for four years.

20 I lived in the Newport Coast Recovery house for  
21 60 days. I also identify myself today as an alcoholic.  
22 I'd like everybody to know this place changed my life.  
23 You talk about criminals being there, I have a Master's  
24 degree in business and environmental law from one of the  
25 highest ranked colleges in the nation.

1           There are people there -- it's -- obviously  
2           it's a difficult time. Is there smoking going on? Yeah.  
3           But I'll tell you what, the other three-plus years that I  
4           have lived in Newport Beach, we were doing drugs, and the  
5           thrash we created was way worse and much less manageable  
6           than any refuge that may be created here.

7           Want to talk about parking problems? This is a  
8           seven-person -- there's seven-unit apartment complex, you  
9           know. Even if it was not a recovery house, there's  
10          parking problems. It's Newport Beach. I mean, you've  
11          just got to deal with that, I think. I think that in my  
12          opinion, that's an non-issue.

13          I'm just here to say, you know, what? I think  
14          what this is a case of, based on what I've seen from  
15          sitting in this room today, is that these folks  
16          absolutely know what they are doing with recovery. That,  
17          I can tell you. And I've seen this in a lot of different  
18          businesses before where, you know what? They are not  
19          good at paperwork. I've seen that.

20          Well, you'll have your moment, ma'am, so please  
21          let me have mine.

22          So, you know, I would implore the business  
23          owners to get better at their administrative practices.  
24          And I can tell you, as someone who went through this  
25          program, there are very strict regulations with regard to

1 curfew and noise and smoking and clean up and  
2 responsibilities. And those are things that are not  
3 imposed on any other residents within Newport Beach.

4 Thank you very much.

5 MS. NUGENT: My name is Joyce Nugent  
6 (phonetic), and I live on the peninsula.

7 And I want to say that that gentleman who was  
8 just up here who was talking about that he was an  
9 alcoholic and all this, what happens is after they are in  
10 these facilities for their -- their 29 men in these  
11 facilities, they are out of the facility, but they  
12 perhaps stay in the neighborhood. They start drinking  
13 again. They start taking drugs. And this is their home,  
14 the Newport peninsula, and it only causes trouble.

15 If the City really does have an ordinance that  
16 is designed to curb the spread of rehabilitation homes in  
17 this peninsula, this is the time to start it now and  
18 close this facility.

19 And let's go forward with the plan so we can  
20 have a decent life here and not have to hear people  
21 screaming at 2 o'clock in the morning, because they are  
22 drunk, because they are on drugs, walking up and down the  
23 street with no consideration for any of us who are just  
24 trying live a normal, peaceful, happy life and enjoy the  
25 ocean.

1 Thank you.

2 MR. KIFF: Mr. Allen, before the next speaker  
3 comes up, I wanted to make a moment to state the City's  
4 position that we would reject a certain amount of Ms.  
5 Nugent's comments. I think it's unfair to make a blanket  
6 statement about persons in recovery, that they  
7 immediately fall off the wagon and are unable to maintain  
8 recovery.

9 We certainly have seen good instances where  
10 people stay in recovery and stay in sobriety the rest of  
11 their lives. These are folks who are disabled.

12 MS. NUGENT: I'd like to know what the  
13 percentage is --

14 MR. KIFF: Ms. Nugent, your time has come and  
15 gone to speak.

16 We have -- these folks are a disabled class.  
17 They are entitled to fair housing opportunities. This  
18 ordinance builds in an opportunity for folks who are  
19 disabled to stay in the community with the goal of  
20 eliminating an overconcentration of such facilities in  
21 certain neighborhoods.

22 Thank you.

23 MR. ALLEN: Anyone else wish to speak?

24 MR. MYERS: I would. Can I submit stuff to the  
25 record? Is it all right?

1 MR. KIFF: Sure.

2 MR. MYERS: Okay. My name is Jeff Myers,  
3 M-y-e-r-s. I live adjacent to the facility with my wife  
4 and two young children. And we've lived there over ten  
5 years.

6 And I just have to say the facility, before  
7 five years ago, was horrendous. It was a jail house gym.  
8 It was people making comments to my wife. It was just  
9 incredible. Now, I'd like to give you a little bit of  
10 thanks for cleaning up the situation.

11 But the fact of the matter is, it's still  
12 basically a fraternity, and we have problems associated  
13 with a fraternity. So -- let's see. I brought a DVD  
14 that I'd like to show that explains some stuff, but maybe  
15 I will have to give it to you for later evaluation or  
16 whatever.

17 The first thing is fire danger. My house,  
18 along with three of my neighbors, are built on zero lot  
19 lines. That means we're literally 3 feet from the  
20 adjacent facilities.

21 The 1216 West Balboa facility actually had a  
22 fire several years ago during the summer. I believe it  
23 was on a Saturday or Sunday. I have some information on  
24 it. But let me tell you about the heavy black smoke that  
25 was coming out of the back bedroom and how close that is

1 to our facilities.

2 And what really bothers me is, in addition to  
3 that fire occurring there and our houses being so close,  
4 I learned later -- one of my neighbors give me some  
5 information, which I'd also submit to the record, which  
6 is of City permits.

7 And apparently, they were doing some work in  
8 the garage converting the two -- there's two two-car  
9 garages there, along with another garage, like carport.  
10 Both of those two-car garages have never been used as  
11 long as I've been down there.

12 In fact, what they were doing is converting one  
13 of the garages into -- originally it was a gym. Now, I  
14 guess, it's a laundry room or whatever. But they were  
15 actually moving a gas pipe to a washer and dryer without  
16 the proper City permits.

17 So that type of information, in addition to,  
18 you know, the smoking and everything else, and the  
19 proximity of our houses, gives me an extreme amount of  
20 uneasiness. Because there is a potential -- not  
21 potentiality, but there is probability of fire, and it  
22 actually has occurred at that facility.

23 Now, thank God Newport Beach Fire Department is  
24 so fantastic and able to put it out so quickly. Thank  
25 God it was an Saturday or Sunday when people noticed it

1 quickly and didn't go on and become something worse.

2           The second thing I'd like to discuss on the  
3 fire issue is I don't understand why they don't have to  
4 resubmit a new fire clearance to the City every time they  
5 get relicensed. So that's very interesting.

6           And for them to have, what is it, two or three  
7 correspondences from the Fire Marshal asking for this  
8 stuff and them not to respond to that, that's negligent.  
9 I mean, that's negligent. So I fear that.

10           I mentioned earlier about my two young kids,  
11 ages 9 and 7. Well, there's constant profanity that  
12 occurs from the facility.

13           I'll wrap it up real quick and submit on this.  
14 Let me tell you. See this, please, and listen to this,  
15 and you'll see exactly what I'm talking about.

16           Jeff, you've gone good work in helping out this  
17 neighborhood. It's much better than it was five years  
18 ago. But it's still a fraternity, and it's still an  
19 environment that's not conducive to family and children.

20           Thank you.

21           And then I'll submit this also, which is what  
22 she was talking about regarding the recidivism of the  
23 facility.

24           MR. KIFF: Thank you.

25           MR. ALLEN: Anyone else wish to be heard?

1 DR. ALKIRE: I do. My name is Dr. Gloria J.  
2 Alkire. I'm a former superintendent and principal, and  
3 I'd like to talk to two issues. Both have to do with --

4 MR. ALLEN: Would you spell your last name,  
5 please?

6 DR. ALKIRE: Alkire, A-l-k-i-r-e.

7 One is the application process. And this is  
8 something that we need to deal with within the City in  
9 anything that we do, whether it's code enforcement,  
10 application or running for City Council.

11 When I ran for City Council just to get my  
12 paperwork in, I had to cross every "T" and do every  
13 single thing right, or I could not run. And I spent an  
14 entire week on the application, or I wouldn't have been  
15 able to run. When I got permits from my home, I had to  
16 do the same thing for all three projects that I did, or I  
17 wouldn't be able to proceed with the things that I did.

18 I think as a City, the larger issue here is we  
19 either all follow the law, follow the codes and we turn  
20 things in on time, and we don't have exceptions. When we  
21 give people exceptions, then I wonder, why is it okay for  
22 one person to get away with this, or one business, or  
23 not.

24 I think all of us in the City needs to be  
25 consistent about when we turn things in, and whether or

1 not we get considered or not based on that, because those  
2 are the rules. So let's be consistent.

3 This application shouldn't be accepted because  
4 it's not complete. And if you were filling out anything  
5 for the State of California, as a superintendent or a  
6 principal, you don't get your money until your  
7 application is finished and in on time. No exceptions  
8 unless the State makes a problem or they have something  
9 that they didn't do properly.

10 So as a principal and a former superintendent,  
11 I would be denied millions of dollars for my school  
12 district if I missed a deadline or had an incomplete  
13 application. So I think this is a basis right here.

14 Secondly to that and most importantly is  
15 school safety. This is very unique campus that's on the  
16 beach. It's very difficult to secure. It has no fence,  
17 and it's an old building, so it makes it even harder to  
18 secure. There are not enough personnel in any school to  
19 do the kinds of safety issues that we need now but yet we  
20 are required to.

21 As I ran for City Council, I had to go to Cox  
22 Cable to do an interview. I also went to the Times and  
23 did an interview. Both places would not allow me in  
24 without a badge, my name, parking stickers, and all kinds  
25 of information about me first.

1 Schools are not allowed to ask for that kind of  
2 information or do those kinds of things as schools sites  
3 to keep kids safe. I was appalled at how much safer  
4 businesses are allowed to be than school districts and  
5 schools are. That's how much things have changed.

6 We have to continue as schools districts to be  
7 open, because we serve the public, and we're not allowed  
8 to have barriers. Even when I wanted to talked to  
9 somebody at the City, I have a barrier always that's  
10 between me until time invited in. Very seldom does that  
11 happen in schools.

12 So from this point of view, I say two things.  
13 You reject the application, because it's not complete.  
14 You don't have the information you need, because that's  
15 following procedure.

16 And secondarily to that, this is a no-brainer  
17 when it comes to having a facility this close to a  
18 school, because you are asking for trouble, and you're  
19 putting that principal and those parents and all site  
20 supervision people and teachers in a difficult situation.

21 And for those reasons, I think that in itself  
22 are enough to consider. Thank you.

23 MR. ALLEN: Anyone else?

24 MR. SCHOONOVER: My name is Mark Schoonover.  
25 I'm a property owner of 1400 West Ocean Front, and --

1 MR. ALLEN: Can you spell the last name,  
2 please?

3 MR. SCHOONOVER: Yes. It's  
4 S-c-h-o-o-n-o-v-e-r.

5 I'm not going to have much to say. It's just I  
6 noticed on Saturdays and Sundays, there's big group  
7 meetings right in front of my house. They bring your  
8 vans over, drop off all their residents right in front of  
9 my house. The van also stops right in front of my  
10 property, which blocks my tenants from getting out of the  
11 garage, in and out.

12 Also, there's continuous, continuous smoking.  
13 I mean, there's clouds and clouds and clouds of  
14 cigarettes. There are cigarette smoke in front of my  
15 house, and my son has to deal with this shit -- excuse my  
16 French. It's just very frustrating, and there's not much  
17 I can do. I called the cops, and they can't do much.

18 It's definitely not the way it used to be.  
19 Back when I was a kid, my grandparents, you know -- I  
20 would come up here all the time when I was a little kid  
21 and see my grandparents, and they wouldn't put up with  
22 any of that from what I remember. There's no way.

23 They are very disrespectful. The gentleman  
24 that was talking earlier, he's definitely right. The  
25 playground, they all hang out there. They use profanity

1 all day long. My truck has been stolen in front of my  
2 house. It's been graffitied on. It's been broken into  
3 three and four times. My stereo's been stolen.

4 It's just non-stop, you know. And I'm a couple  
5 blocks away. I can only imagine what's going on with  
6 these people right in front of their house. Excuse me.

7 So I have to say I agree, and I think that this  
8 application should be denied.

9 MR. LONGYEAR: My name is Willis Longyear,  
10 L-o-n-g-y-e-a-r. The first name is W-i-l-l-i-s.

11 I am amazed, first of all, to hear that you've  
12 been calling and calling and calling somebody to plead  
13 with them to bring the information in. Every time I've  
14 wanted a permit, I had to turn the permit in. If it  
15 wasn't in, it wasn't there, and that was the end of it.

16 Why six months of coddling this thing? Why is  
17 there even a question if there's a limitation of a  
18 minimum of a thousand feet away from the school? Do you  
19 have to wait for something bad to happen to suddenly  
20 realize there's a reason for it? This is a no-brainer.  
21 They should not be permitted.

22 Thank you.

23 MR. ALLEN: Anyone else?

24 MR. MYERS: Can I make one more quick comment?

25 MR. ALLEN: Sure. Quick.

1 MR. MYERS: Sorry. I also wanted to state for  
2 the record --

3 THE REPORTER: Your name again, please?

4 MR. MYERS: Jeff Myers, M-y-e-r-s.

5 I've lost tenants in my rental unit because of  
6 the proximity and the noise and profanity coming from  
7 this place. So I've had a financial burden.

8 MR. ALLEN: Anyone else?

9 MR. MCKENZIE: Well, my name is Terry McKenzie,  
10 M-c-K-e-n-z-i-e. And I own and live in the property at  
11 1149 West Balboa.

12 And I just want to add my voice to the chorus  
13 of citizens and neighbors who basically -- I think a  
14 number of us have a problem with recovery homes, and I  
15 think they do a lot of good. But the concentration, I  
16 think, is very unsettling and upsetting to us.

17 And certainly, it goes without saying, that the  
18 issue of the proximity to Newport El. -- my children went  
19 to school there, and, you know, it's a wonderful school.  
20 And it's -- basically it's a legacy, and it's an  
21 important part of the community.

22 And alternative would be to move Newport El.,  
23 and I don't think any of us want to do that. So that's  
24 it. I agree with -- and I'm a local builder. And yet,  
25 God forbid that I would try to get a permit without

1 having all my ducks in a row, and -- which I think is  
2 great, and I think that's the way it should be.

3 Thank you.

4 MR. ALLEN: If someone's waiting to be the  
5 last, come on up.

6 MR. SIGALOS: My name is Tony Sigalos,  
7 S-i-g-a-l-o-s. I live at 1019 West Balboa Boulevard.

8 I'm amazed that that there's any consideration  
9 even for these people to get a permit when they haven't  
10 filled out their paperwork. Several years ago, when I  
11 was a young kid, I was in business. And I was in the  
12 City of Newport Beach. And the license department caught  
13 me and said, "Do you have a licensed?"

14 And I said, "No, I haven't."

15 They said, "Well, you can't operate in Newport  
16 without a license."

17 So the place I was doing business with said,  
18 "Don't worry about that. We'll take care of it. You  
19 come back tomorrow." I went back the next day.

20 City license man was there and said, "You can  
21 follow me back to the police department, or I call the  
22 police and have you arrested. In Newport Beach, we don't  
23 do business without business licenses."

24 I had friend build a house on Lido Via Lido.  
25 He submits plans to the City. They went through all the

1 proper channels and the fire department. Everything was  
2 approved. The house was completed.

3 He came in to get his permit to move into the  
4 house, and the fire department came and looked, and  
5 looked in one of the closets and said, "Well, we want to  
6 put another sprinkler outlet in the closet."

7 And my friend said, "Why? I gave you all the  
8 plans and the permits, and got all the permits and  
9 everything was approved."

10 "Well, we're looking at a closet that's bigger  
11 than we realized, so we are not going to give you a  
12 permit to move into your house until you get this  
13 sprinkler -- add a second sprinkler." So the fire  
14 department seemed to be tough in some instances and kind  
15 of turn their back on others.

16 That's all I have to say. I think the permit  
17 should be denied.

18 MR. ALLEN: All right. Anyone else?

19 (No audible response.)

20 MR. ALLEN: Hearing none and seeing none, we'll  
21 close the public hearing, then, and commence some  
22 discussion from staff. There certainly has been a lot of  
23 issues raised.

24 Any suggestions where to start here, Mr. Kiff?

25 MR. KIFF: Mr. Allen, a couple of options for

1 you. You can certainly have Mr. Newman come back at this  
2 time. There were a number of issues that I think would  
3 address more the City and the City regulation. I'd be  
4 happy to address those earlier or later, depending on  
5 what you'd like.

6 MR. ALLEN: How about having Mr. Newman come  
7 back up and give his rebuttal, if you will, or whatever  
8 additional comments he'd like to make, and then we'll do  
9 that. Thank you.

10 MR. NEWMAN: Well, I don't know how I can  
11 follow that up. Basically, this hearing -- Newport Coast  
12 Recover at this hearing is definitely, you know -- we  
13 messed up on this application. I mean, I delegated it,  
14 it didn't work out, and it's my fault. It doesn't mean  
15 that we're -- that the facility isn't managed properly.

16 Our people are under strict time constraints.  
17 They have to be in meetings. They have to sign in and  
18 out when they leave. They are not just running around,  
19 sitting, causing havoc.

20 There is a meeting on Saturday and Sundays that  
21 is a Narcotics Anonymous meeting. Maybe one or two of  
22 our clients attend that meeting. But that's a meeting  
23 that is every rehab in Newport Beach and outside of  
24 Newport Beach.

25 And I don't think it's fair that, you know,

1 that we're going to take the brunt of every rehab that  
2 comes -- when there's a problem on the beach. Our  
3 clients don't smoke on the beach. They'd get a ticket.  
4 It's against the law in Newport Beach to smoke on the  
5 beach.

6 And, you know, it's -- I think that to be fair,  
7 I don't know that, unless you want to ask me specific  
8 things, that I can address -- I'm, obviously, in a  
9 position here where nobody wants the business. I  
10 understand that.

11 It's been there a long time, and we were there  
12 before Sober Living by the Sea had 180 beds, before  
13 Coastal -- before any of these other recovery homes were  
14 there, Newport Coast was there.

15 We don't get citizen complaints to the police  
16 department. I mean, you can go to the records. There  
17 are no citizen complaints in 2008 about our facility.  
18 Not one on record from the Newport Beach Police  
19 Department.

20 Yet, everyone's here voicing these problems. I  
21 would have been glad to meet with anyone. I've met with  
22 some of these people. I appreciate my neighbor at least  
23 acknowledging that we've tried. I'm talked with him  
24 before. We are not perfect, you know. We're trying to  
25 make progress. We are not perfect.

1 I've talked to some other people before who  
2 kind of professed friendship, and they are going to work  
3 with us. And then they came up here today and told me  
4 how horrible, and they feel threatened.

5 Yet, I sat across from one of these people in  
6 an attorney's office, and we agreed that, hey, we're  
7 going to disagree on the use, but let's try work to a  
8 resolution. And all of a sudden, you know, I don't know  
9 what's happened to that relationship. I thought it was  
10 friendly, but this is an unfriendly situation right now.

11 And I do understand when people are dealing  
12 with their homes. It's very personal, and I do  
13 understand. I just want to try to work with all these  
14 people to rectify things that we can. And there are  
15 certain things that we're never going to be able to  
16 appease our neighbors.

17 You know, I hear about when a Waste Management  
18 is coming to pick our garage up in our alley, that now  
19 fire trucks can't get through. But when there's four  
20 City garage trucks in a row, a tiny car can't get  
21 through. So this isn't a problem just because we decided  
22 to take the burden off of the garage collectors in  
23 Newport Beach. We've gone private, so we don't have a  
24 problem.

25 But, you know, it's very easy to twist

1 everything we're trying to do positive into a negative,  
2 and it's a very difficult situation. And I wish I could  
3 tell you that I can address all these things and fix all  
4 these people's concerns about our business, and I can't.  
5 But I will do my best, and I would meet with every single  
6 one of these people individually.

7 I came to this City three years ago, and I  
8 talked with the City Council member when some of these  
9 things were just coming up. And I said to that Council  
10 member, "Please, let me talk to the concerned citizens.  
11 Please, let me get involved in this process."

12 They said, "No, that would just infuriate the  
13 situation."

14 You know, I really don't know -- other than  
15 what we've done in not having this application complete,  
16 which is a pretty obviously thing that is a real hot  
17 point, and we should have had a done, and I take  
18 responsible for that, but it is what it is now, and we're  
19 going to try to fix that. We're going to to get  
20 everything in this week.

21 But besides that, there's just too many things  
22 that came up. And again, if you would like to go  
23 individually, I'd be happy to try to address them  
24 individually.

25 MR. ALLEN: Well, no. I don't see any point in

1 that. Unless there are any specific questions of the  
2 Applicant, I don't think that's appropriate.

3 One thing I would say is that it's certainly  
4 clear from almost everyone that's spoke that your  
5 proximity to the school is a big concern. And it seems  
6 like there needs to be some special attention paid to  
7 that if there's any hope of making this approval work.

8 MR. NEWMAN: Can I address that a bit?

9 MR. ALLEN: You certainly can.

10 MR. NEWMAN: You know, I hear over and over  
11 about all the criminals and all the criminal element.  
12 You know, our facility does take DUI a fenders. No  
13 question about it. We take drug offenders. That's are  
14 not violent. We don't take any violent criminals  
15 whatsoever.

16 Our people are really regulated. I mean, the  
17 people that come in are required to sign in and out. And  
18 if it's less than 30 days, they can't even leave the  
19 facility without a staff member.

20 All that vandalism and all these things that  
21 people want to attribute to a facility where people pay a  
22 great deal of money to come to for a short period of  
23 time, these aren't people that are stealing and causing  
24 vandalism.

25 But, you know, I read in one of these letters

1 that when a complaint was made, next thing they found  
2 out, their car was keyed. You know, it's just not what  
3 we do. It's just not our MO. We don't let the  
4 complaints get to the clients.

5 The complaints about us, we don't address them  
6 with our clients and say, "This person said you did  
7 this." We know how to address those things. We don't  
8 want any confrontation between our clients and our  
9 neighbors. That's not what we're about at all.

10 My one neighbor who has problems with us but he  
11 was nice enough to say he's seen some progress, I've  
12 talked with him a couple times, and I would be glad to  
13 try to work with him more to try to work things out.

14 But we are near the school. We have been.  
15 It's been near the school for as long as I've been  
16 involved and prior to that. And it was near the school  
17 before this proliferation of all these other facilities.

18 And I think if you go to the school and ask  
19 them if they have had any run-ins with us, I think you'll  
20 find, at least in the history that I have know of in the  
21 five years I've been there, we've never had a problem  
22 with the school.

23 And I do want to address the one thing Denys  
24 Oberman mentioned about 1219 West Balboa. We did operate  
25 Sober Living there with six or less people. As soon as

1 all this came up with the City on the Sober Living, we,  
2 as Denys knows -- she speaks as though we still have this  
3 facility -- we gave it up well over the year ago.

4 And we have not -- it's owned by a Newport  
5 Beach businessman. He lives next door, and he rents it  
6 out to a group of people. We haven't been there in a  
7 year, and she knows that. But real easy to throw  
8 innuendo in here and false statements, and we have to try  
9 to explain our way out of it.

10 Again, I would be happy to work with anyone in  
11 the City outside, concerned citizens, as I've tried to,  
12 to try to make this thing work. We're not there trying  
13 to cause problems. It is what it is now. We'll try to  
14 rectify anything we can.

15 MR. ALLEN: Okay. Thanks.

16 MS. OBERMAN: May I ask a question, Mr. Newman,  
17 please?

18 MR. ALLEN: Why don't you come up and ask the  
19 question to me and sees if he hears it, and he can  
20 respond.

21 MS. OBERMAN: Okay. I apologize. I apologize,  
22 sir. Denys Oberman.

23 On the application, there is a statement that  
24 was made that says there is a "transitional facility"  
25 that's in the application located at 1219 West Balboa.

1 Mr. Newman did tell me, and I'm open to admit it and  
2 happy to admit it, he did tell me that he was closing  
3 down the facility, and that's why I said past tense.  
4 However, I note it in the application.

5 MR. ALLEN: You said you wanted to ask him a  
6 question --

7 MS. OBERMAN: Yes.

8 MR. ALLEN: -- so state the question.

9 MS. OBERMAN: The question is, is there a  
10 facility or is there not at 1219 that he operates? If it  
11 is not, why is it in the application? Thank you, sir.

12 MR. ALLEN: Mr. Newman, would you quickly  
13 respond to that, please?

14 MR. NEWMAN: Certainly.

15 There is no operation there. And the  
16 application asked if you've operated any facilities other  
17 than the one you have in the past so many years, and --

18 MR. KIFF: Five.

19 MR. NEWMAN: -- in the past five years. So  
20 rather than being dishonest and say no, we absolutely put  
21 it down. And Denys knows we closed it down, because I  
22 met with Ms. Oberman over six months ago and told her it  
23 had been closed.

24 MR. ALLEN: Okay. Thanks.

25 All right. Let's return to staff here again.

1 Mr. Kiff, do you have some comments to make?

2 MR. KIFF: I do, Mr. Allen, and understanding  
3 the lateness of the hour, I don't want to take too many  
4 folks' time.

5 I wanted to talk a little bit about why we set  
6 the hearing based on an incomplete application. And  
7 actually, whenever anyone comes in for a use permit  
8 application, what -- usually they are coming in because  
9 he they want to open something and start some activity.  
10 So they are anxious to complete the application.

11 This is not the case with the use permits for  
12 existing uses in residential zones. Had we anticipated  
13 this kind of activity before -- sorry -- this kind of  
14 maybe I'll get my application and information in soon or  
15 maybe I won't, we would have put a deadline in the  
16 ordinance.

17 We didn't put in a deadline in the ordinance  
18 except the abatement deadline, and that's February of  
19 2009. So everyone is under a deadline to get their  
20 information in and have their hearing.

21 We felt that, at a staff level, it would be an  
22 encouragement to the various applications -- applicants  
23 who have not turned in their information to actually set  
24 the hearing, so there is a deadline before the February  
25 deadline to at least give them due process.

1           So this has been completely consistent with  
2 what we do with other permit applications. Give someone  
3 time to get their application in, hold the hearing, and  
4 if the application isn't there, they are not getting a  
5 use permit. They may get a continuance or a denial. So,  
6 hoping that addresses some of the questions in the  
7 audience about that.

8           Also, someone raised an issue of, well, are  
9 they operating without a license or without a business  
10 license, and that would never otherwise be allowed? I  
11 think Mr. Sigalos spoke of that.

12           Newport Coast Recovery does have a license. It  
13 has a license from State ADP. It also got a clearance  
14 from the fire department about probably four years ago to  
15 allow them to file for their application.

16           Now, another gentleman, I think it was  
17 Mr. Myers, raised the question, well, why does ADP  
18 allow -- he didn't ask it quite this way, but let me tell  
19 you something that ADP does.

20           The State accepts an old fire clearance, as old  
21 as it could be, because the fire clearance form that the  
22 State provides does not have an expiration date on it.  
23 They don't allow us to change the form to add an  
24 expiration date.

25           So, therefore, folks who operate a recovery

1 facility like Mr. Newman -- and I'm not targeting him  
2 specifically because it's commonplace -- is to file an  
3 old fire clearance based on older fire codes with a  
4 renewal.

5 I wish the State wouldn't do that. I wish the  
6 State would say you need to check in with your current  
7 codes and your current operations and get an update. The  
8 State doesn't do that. That's something we may work on  
9 legislatively, but that's the practice as it is today.

10 Finally, unless you had any other questions,  
11 Mr. Allen, I wanted to start about the school proximity  
12 issue that you addressed. In our ordinance, we did not  
13 put in a hard and fast distancing from schools. And we  
14 did that for a specific reason; that to do so would be  
15 facially discriminatory against persons in recovery.

16 What we did do is we allowed the Hearing  
17 Officer to look at the proximity to a school and to look  
18 at the proximity of other uses, and use that in your  
19 decision-making process to decide whether or not that  
20 this -- this use is an appropriate one in that area. But  
21 this isn't a hard and fast distance in the ordinance.

22 There is a hard and fast distance in the Sober  
23 Living by the Sea settlement, because they voluntarily  
24 agreed to it. They also voluntarily agreed not to  
25 challenge the ordinance on a facial basis.

1           So when someone volunteers take that  
2 distancing, we're happy to accept it. But we did not put  
3 that in the ordinance for a specific reason. And this  
4 ordinance is, therefore, held up in court for, what,  
5 we're already into December, so a good ten months of very  
6 tough legal challenges precisely because we didn't adopt  
7 anything that was facially discriminatory.

8           So with that, Mr. Allen, unless you had any  
9 other questions, those are at least my initial notes.

10           I'm sorry. I conclude, just in kicking this  
11 back to you, that we do recommend a continuance. We do  
12 recommend a hard and fast time line by which Mr. Newman  
13 should provide this information, because we want to be  
14 completely fair and give him every opportunity to provide  
15 a complete application in advance of the abatement  
16 deadline, so he can have that fair hearing.

17           And when that information is complete, the City  
18 staff may make a different recommendation, whether it is  
19 to approve or do deny that application. But because we  
20 don't have the information in front of us, we think a  
21 continuance is best.

22           MR. ALLEN: Were you going to have -- discuss  
23 anything about the fire issue and the permitting beyond  
24 what you've already mentioned?

25           MR. KIFF: I can a little bit. I mentioned how

1 Mr. Newman has a complete and signed fire clearance that  
2 ADP accepts, and -- meaning that the State recognizes  
3 that as local clearance for this facility, the same  
4 building. It has not been all altered since that time.

5 Our legal Counsel and our Fire Marshal have  
6 talked long and hard about that, and we believe that that  
7 clearance is something that stands on its own. It stands  
8 outside the use permit process.

9 There's nothing in the ordinance that says that  
10 the mere fact that a 29-bed operation is coming  
11 in -- that's operating right now and comes in and gets a  
12 use permit to remain in operations, that nothing about  
13 the use changed that would trigger a new code  
14 requirement, a new review by the Fire Marshal.

15 Our application, unfortunately, does have a  
16 section in there for a fire clearance. That it needed  
17 for new applicants. We can apply this for someone coming  
18 in new. They have to get current with the current fire  
19 codes.

20 Someone who is an existing facility that has an  
21 existing State clearance acceptable to the State, we  
22 cannot step in, when their use didn't change, and require  
23 them to do something that we wouldn't require of any  
24 other business and any other homeowner.

25 For instance, if you're a homeowner in town

1 today, the fire codes may change every two years or every  
2 four years. We don't go to every home in the City and  
3 say, "You know what? The fire code's changed. You've  
4 got to now install sprinklers, for instance, even though  
5 your use didn't change." So we are trying to be  
6 consistent with that interpretation citywide.

7 MR. ALLEN: That seemed particularly relevant  
8 in as much as I heard Mr. Myers say he's on a zero lot  
9 line, which means he's built onto the zero lot line,  
10 which is -- anyway, we'll have to look at that part of  
11 it.

12 UNIDENTIFIED SPEAKER: What about building  
13 permits and lack of them?

14 MR. KIFF: Let me address that question.

15 No matter who you are in town today, if you are  
16 doing work without a permit and we find out about it, we  
17 do a couple things.

18 One, we will notify you, and typically we'll do  
19 a stop work order. You do have an opportunity to remedy  
20 that. You have an opportunity to come in and get the  
21 stop work order lifted by filing for the appropriate  
22 permit. Some cases, ripping out the work. We don't  
23 require that universally, though. That depends on the  
24 building official's decision. And oftentimes, you're  
25 required to pay a fee that is, what, twice the cost of

1 the permit.

2 And again, attempting to apply that ordinance,  
3 that practice, across every use, including group homes,  
4 to be consistent, to be non-discriminatory, Mr. Newman  
5 has that same opportunity, and imagine did when he did  
6 work without a permit.

7 He is entitled to come in and get that fixed.  
8 If that means, again, paying a fine, lifting the stop  
9 work order, that's what he'd indeed have to do. The same  
10 thing we'd allow for anybody, any resident, any business  
11 in town.

12 UNIDENTIFIED SPEAKER: -- (inaudible) fire  
13 inspection?

14 MR. ALLEN: I don't think we need to get into a  
15 debate. It sounds like a separate issue that needs to be  
16 worked on, but not in this context.

17 MR. KIFF: I will try to answer one more time.  
18 Mr. Newman's use did not change; therefore, we cannot  
19 require an additional fire inspection up to current  
20 codes.

21 MR. ALLEN: Thank you.

22 UNIDENTIFIED SPEAKER: What happened to the  
23 fire code speaker last week?

24 MR. KIFF: I can talk about that in another  
25 format -- form.

1 UNIDENTIFIED SPEAKER: Would that apply to  
2 Balboa Recovery?

3 MR. KIFF: If you don't mind, Mr. Allen, I'm  
4 happy to address that, too.

5 There is an assertion that our current Fire  
6 Marshal has made that previous fire clearances may, we  
7 don't know for sure, but may have been issued in error.  
8 The interpretation is very challenging, as the Fire  
9 Marshal stated at the Balboa Horizons hearing; that Fire  
10 Marshals up and down the State have misinterpreted this.

11 So the question for us -- but it's outside of  
12 the use permit process, because we legally cannot  
13 interject it in the use permit process.

14 The question for us will be, do we go back to  
15 any use that was issued an inappropriate fire clearance  
16 and attempt to give them an opportunity to remedy. The  
17 situation by bringing their building up to code, or to  
18 cease the use that is otherwise prohibited without  
19 current -- without the proper codes.

20 We will make that decision outside of the use  
21 permit process. It may or may not apply to Mr. Newman's  
22 facility. It may or may not apply to Balboa Horizons.  
23 We cannot interject it into the use permit process,  
24 however.

25 MR. ALLEN: So there has been a change in

1 interpretations since the last hearing?

2 MR. KIFF: That's correct, Mr. Allen. In  
3 conference with legal Counsel, they believe that this  
4 should be separate entirely from the use permit process,  
5 and the City Attorney and Special Counsel agreed on  
6 that.

7 MR. ALLEN: That flows with me, too, from a  
8 legal standpoint.

9 Okay. At this point, my decision is to follow  
10 the staff recommendation and continue this matter. I  
11 don't believe that the timing is right to deny this, and  
12 I don't think the timing is right to approve it. Clearly  
13 we can't approve it.

14 I would like, to the extent possible, to get  
15 further input from staff to the extent they feel they can  
16 on both the overconcentration issue at this location and  
17 the proximity to the school, and I will, myself, work on  
18 that some more in the interim.

19 It's a compelling issue. It's the reason that  
20 so many people are here, and the reason there's been so  
21 much consternation in this community over these uses, and  
22 we need to look at this one hard. It's my observation at  
23 this point.

24 Having said that, I think we need to move  
25 forward as quickly to get a continuance date, and I

1 believe Ms. Brown indicated in the staff report that  
2 there's a 21-day lag time from the time that the  
3 information is submitted before we can set the hearing.

4 But can you kind of clarify that a little bit,  
5 so we get a feel here for how we can do time-wise?

6 MS. BROWN: Yes, Mr. Allen, thank you.

7 Staff would like the information in 21 days in  
8 advance of the hearing to allow us adequate time to  
9 review the contents of the application and prepare a  
10 comprehensive analysis and make recommendations to you,  
11 the Hearing Officer.

12 MR. ALLEN: So that being the case, Mr. Newman  
13 has indicated that he can get that information in by the  
14 end of this week; is that correct?

15 MR. NEWMAN: Yes, sir.

16 MR. ALLEN: So the end of this week is the  
17 12th, and there's going to be some give and take after  
18 the 12th.

19 Mr. Kiff, I'll bet you're looking at the  
20 calendar up there that's pretty convenient.

21 MR. KIFF: We do have our official Council  
22 calendar up there. Sorry the audience can't see it.  
23 It's just the next three month,  
24 including -- sorry -- including the current one.

25 So conceivably we can set this hearing for that

1 week that most folks return from the holidays, assuming  
2 our planning staff has adequate time. So, I'm looking to  
3 Janet and Debbie, and if the week of -- and to the  
4 Hearing Officer, because obviously you would want to  
5 continue with this case -- from January 5 through 9,  
6 versus January 12 through 16.

7 MR. ALLEN: I have availability during that  
8 time, so --

9 MR. KIFF: Okay.

10 MR. ALLEN: -- that's fine.

11 MR. KIFF: I'm hearing Debbie say because of  
12 noticing that it's probably more appropriate to try it  
13 the week of 12th through the 16th. There's a Council  
14 meeting on the 13th, so conceivably we can do it on  
15 Monday the 12th. This room would be available at that  
16 time.

17 MR. ALLEN: I guess the Applicant, are you in  
18 town, Mr. Newman?

19 MR. NEWMAN: I will be here.

20 MR. KIFF: So that would be, if your calendar  
21 works, Mr. Allen, at 4 o'clock, this same location on  
22 January 12th.

23 MR. ALLEN: Would we have -- would we have the  
24 two-hour limit? Not that I'm anticipating we would have  
25 to go beyond that, but we will want to put a wrap on this

1 application at that time, and if we need to go a little  
2 bit longer, do you think we could?

3 MR. KIFF: It looks like the room is available  
4 that night, if that calendar is correct.

5 MR. ALLEN: We'll make that an order; that this  
6 use permit for Newport Coast Recovery is continued until  
7 January 12th, same location, at 4 p.m.

8 And we'll preserve all the testimony that's  
9 been given. It's been strong and compelling and easily  
10 understood I think. And so it's a case of having it in  
11 our minds and on paper. We have a Court Reporter here  
12 taking it all down, which is a very distinct advantage,  
13 because that means it's permanent for us.

14 So those of you that can't make that hearing,  
15 you can rest assured that at least your testimony tonight  
16 will be considered, and it's not that far away that we  
17 won't forget it.

18 So with that, is there any other comments or  
19 need for a continuation of this hearing?

20 MR. KIFF: Mr. Allen, very briefly. A reminder  
21 to the public from the Kramer Center and the Balboa  
22 Horizons' Part 2 hearing is this Wednesday at 4 o'clock,  
23 in this same location.

24 MR. ALLEN: All right. Thank you.

25 With that, we'll adjourn.

(Ending time: 5:50 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: DEC 22 2008

  
\_\_\_\_\_  
Laura A. Millsap, RPR  
CSR No. 9266

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