

PUBLIC HEARING ON
BALBOA HORIZONS RECOVERY, LP
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
WEDNESDAY, DECEMBER 17, 2008

Reported by:
LAURA A. MILLSAP, RPR
CSR No. 9266

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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 4:15 p.m., on Wednesday, December 17, 2008,
before LAURA A. MILLSAP, RPR, Certified Shorthand
Reporter No. 9266.

1 APPEARANCES:

2
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1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, DECEMBER 17, 2008

2 4:00 P.M. - 4:15 P.M.

3
4 MR. ALLEN: Okay. Well, it's 4 o'clock, and
5 we're ready to proceed with the Balboa Horizons'
6 resolution adoption matter.

7 Did staff have any comments to make initially?

8 MR. KIFF: Yes, Mr. Allen. Today's meeting is
9 a continuation of two prior hearings. At the first
10 hearing, you took a fairly extensive public hearing on
11 the Balboa Horizons' application.

12 On the second meeting, which was last week, you
13 and staff and the Applicant discussed possible changes to
14 the conditions, the use conditions, and we also discussed
15 a little bit some of the text of the resolution.

16 At today's meeting, the intent is to possibly
17 go over some of those changes in final form, but staff
18 doesn't believe that you have a requirement to open the
19 public hearing again, because the aspects that are being
20 discussed have been addressed in a public setting before;
21 however, that determination can be up to you, Mr. Allen.

22 MR. ALLEN: Okay. Thank you. Let's start by
23 asking staff to just short form review the changes that
24 were made in the resolution from the previous draft that
25 was submitted.

1 MR. KIFF: Between Janet and I, we will do
2 that. So for you, Mr. Allen, and for members of the
3 public that are here, there is a document out front.
4 It's entitled "Resolution Number," and it's blank. The
5 number is blank.

6 And this is, in effect, a resolution that
7 Mr. Allen, if he decides to do so, if appropriate, to
8 sign, and that includes the conditions that we've talked
9 about the previous two meetings.

10 So that resolution -- I'm going to thumb
11 through some of the changes to it. This resolution was
12 also e-mailed out to everyone that's on my interested
13 parties list.

14 So the resolution starts with a number of
15 required findings that relate to two different chapters
16 of the Municipal Code. That's Chapter 20.91, as well as
17 Chapter 20.19A.

18 The first four findings relate to 20.91. And
19 those are, in essence, unchanged from last time. We did
20 maybe a couple of clarifying words there, and we
21 clarified, too, as to finding number five starts, that we
22 begin in finding five to discuss the required findings
23 from Section 20.91A.

24 There are, again, no significant changes to
25 those findings or to that aspect of the resolution until

1 you get into the conditions. And the conditions begin on
2 Exhibit A, page 8 of 12.

3 We did -- in Exhibit A, condition number five,
4 we did clarify the parking discussion we had at the last
5 meeting. And that includes the fact that the Operator
6 needs to provide three off-street or on-site parking
7 spaces for the use of the facility's staff and up to one
8 client at all times.

9 And that condition also dovetails into
10 condition number -- let me find it here -- 21. And that
11 condition has been rewritten again, in essence, to
12 reflect what we discussed last time. I'll just read
13 that. It says -- I'm going thumb down to it on your
14 screen, too, for those of you following with me.

15 21 is, "On-Street Parking. Clients and staff
16 of the facility are prohibited from parking on public
17 streets except for two on-street spaces, utilized
18 following notification to the City from the Operator and
19 following the purchase of two master parking permits by
20 the Operator from the City for such parking.

21 And then B, "In the event that the City issues
22 a use permit to a similarly-situated recovery home
23 operator that includes a condition like this one that's
24 more materially favorable, the Planning Director can
25 authorize to same conditions to Balboa Horizons." I

1 believe that's consistent with what we spoke about last
2 time.

3 Let's see if -- Janet, do you have ones that
4 jump out at you --

5 MS. BROWN: That's it.

6 MR. KIFF: -- as a potential change?

7 We believe those are the significant changes
8 from the last meeting.

9 MR. ALLEN: Okay. And we'll incorporate by
10 reference the Exhibit B, which is the Operating and
11 Management Plan.

12 I think one thing that I would like to address
13 for the record -- Ms. Oberman not here, I see, but
14 Mr. Mathena is -- but there's an e-mail that came in with
15 respect to the application of the overconcentration
16 criteria that are set forth in the new ordinance, and
17 reference is made to overconcentration in the resolution
18 itself.

19 And the notice made that this is the only
20 facility in this block, and that is a correct finding.
21 Assuming you interpret the "block" definition in the Code
22 correctly, which I think we are, by saying a block is
23 bounded by four streets so that it closes four corners,
24 and that is what happens here, and there is only one use
25 in that block.

1 The e-mail also addresses the concept that the
2 City or the Hearing Officer should adopt a plan. And it
3 appears to me, looking at the ordinance and the work
4 that's been done, that there's been a lot of work done on
5 the analysis of concentration.

6 But it also appears to me that the City's
7 intent is to apply the overconcentration issue on a
8 case-by-case basis, on a facility-by-facility basis,
9 rather than adopting a general plan applicable throughout
10 the City or even applicable to a given segment of the
11 City, like the peninsula in this instance.

12 So that's how I see the direction being given.
13 And so, therefore, that's how I would view the
14 concentration issues for this use and for any more that I
15 have the opportunity to be involved in.

16 With that, I wouldn't want to hold off on it.
17 If anybody needs to speak, we'd like to address this. I
18 think you should be given the opportunity to do so. I
19 think Mr. Kiff correctly described the differences in the
20 resolution from the time before, and everybody is on
21 record with their positions. But if somebody does feel
22 the need to speak, please do so.

23 (No audible response.)

24 MR. ALLEN: Okay. Hearing none and seeing
25 none, is there anything else from staff before we proceed

1 with the resolution action?

2 MR. KIFF: I do want to discuss something for
3 the record, and it includes a little bit of what you just
4 spoke about, Mr. Allen.

5 And in relation to Ms. Oberman's e-mail to us,
6 in the highlighted section -- actually, it's not
7 highlighted, but it's up on the screen, where it's
8 finding number one.

9 And among other things, we do talk about Balboa
10 Horizons being the only group residential use within the
11 block surrounded by West Balboa, 11th, 12th, and West
12 Bay, which is consistent with the APA standard for
13 permitting one or two such uses per block.

14 Now, just for the record, Ms. Oberman states
15 that we should looking at a different type of block,
16 indeed, a longer block, potentially one that -- remember
17 the Ordinance discusses a variety of lengths for blocks
18 in the City.

19 The Ordinance doesn't require you or -- you to
20 adopt that hard and fast line. And as such, I believe
21 the statement is correct that this is consistent. It's
22 not a literal interpretation of it, but -- or a hard and
23 fast interpretation of the APA standard, but it is
24 consistent with that standard.

25 Therefore, I do not believe that your adoption

1 of this resolution sets a precedent that would bind you
2 or another Hearing Officer to only look at this specific
3 block, the dimensions of this block, West Balboa, 11th,
4 12th, and West Bay, for every future at this session you
5 make. I just want it make that clear for the record.

6 MR. ALLEN: I totally agree with that. That
7 was my intent in commenting. And I think it has to be a
8 case-by-case basis the way this Ordinance is written.

9 And inasmuch as the City Council has not seen
10 fit to adopt a more precise standard, which is completely
11 understandable, they have the legislative ability to do
12 what they can within the law. And so that's where we
13 are.

14 All right. If there's nothing further, then
15 there's no vote to be taken here, because I'm the sole
16 acting person. And so, it is my position that this
17 resolution that's been presented with the changes that
18 are made today would be the action of the City for the
19 Balboa Horizons' use permit.

20 And so, therefore, we would adopt a resolution
21 of the Hearing Officer, Thomas W. Allen, designated by
22 the Council to conduct hearings, pursuant to Chapter
23 20.91A of the Newport Beach Municipal Code, approving use
24 permit number 2008-032 for a residential care facility
25 located at 1132 West Balboa Boulevard.

1 And that concludes the action, unless staff has
2 anything else?

3 MR. KIFF: No comments relating to that,
4 Mr. Allen, but just for the members of the audience,
5 Janet can correct me if I have this incorrectly stated,
6 that this resolution, now that it has been approved, has
7 a 14-days within which anyone can ask for an appeal to
8 the City Council.

9 I believe it's set up where a Council member
10 can call that up. If no one does call it up within 14
11 days, then Mr. Allen would actually execute the
12 resolution with his signature, and it would become final,
13 and it would become a use permit tied to the conditions
14 and tied to this property. Thanks.

15 MR. ALLEN: Okay. Thank you.

16 There's nothing further. We're adjourned.

17 (Ending time: 4:15 p.m.)
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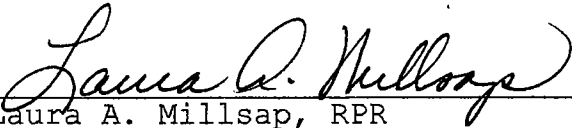
I, the undersigned, a Certified Shorthand Reporter for the State of California, do hereby certify:

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 30 2008



Laura A. Millsap, RPR
CSR No. 9266

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