

NEWPORT COAST RECOVERY - 12/8/2008

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

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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

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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.

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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.

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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

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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

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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.

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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

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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. OBERNY: 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.

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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.

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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.

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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?

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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

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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

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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?

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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

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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

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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

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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

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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,

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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.

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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.

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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.

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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.

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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.

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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

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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

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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

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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.

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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

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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

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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.

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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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NCR 00221

**GROUP RESIDENTIAL USE PERMIT HEARING (1/12/09):
AGENDA**

NCR 00222

City of Newport Beach
GROUP RESIDENTIAL USE PERMIT HEARING
AGENDA



This hearing is held in accordance with Newport Beach Municipal Code Chapter 20.91A (*Use Permits in Residential Districts*).

DATE: Monday, January 12, 2009 (continued from December 8, 2008)
TIME: 4:00 p.m. - 6:00 p.m. (Hearing must be concluded or continued by 6 p.m.)
LOCATION: Council Chambers, Newport Beach City Hall (3300 Newport Boulevard)
USE PERMIT No.: UP2008-033 (PA2008-104)
APPLICANT: Newport Coast Recovery, LLC
SUBJECT PROPERTY: 1216 West Balboa Boulevard, Newport Beach
HEARING OFFICER: Thomas W. Allen

PROJECT SUMMARY: An application requesting approval of a use permit to allow a residential care facility to continue its operations, but reduce the number of beds within, as an adult alcohol and/or drug abuse recovery treatment facility for males only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008.

AGENDA ACTION

1. Hearing convened (Hearing Officer)
2. Presentation of the application (Newport Beach city staff)
3. Applicant comments, if any
4. Public hearing opened (Hearing Officer)
 - Comments are limited to comments about the subject property's application and operations; and
 - Comments limited to three minutes, unless otherwise ordered by the Hearing Officer.
5. Public hearing closed (Hearing Officer).
6. Applicant may offer rebutting or clarifying comments (Applicant).
7. Hearing officer's questions of City staff or applicant.
8. Hearing Officer determination. Options include continuance, approval of a use permit with conditions or denial of the use permit. In the latter two cases, the Hearing Officer may instruct staff to prepare the Resolution for his signature.
9. Adjournment (Hearing Officer).

CEQA: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from CEQA's provisions.

APPEAL PERIOD: Use Permits do not become effective until 14 days after the date of approval, during which time the decision of the Hearing Office may be appealed to the City Council.

NCR 00223

**GROUP RESIDENTIAL USE PERMIT HEARING (1/12/09):
STAFF REPORT (W/ EXHIBITS 1-5)**

NCR 00224

**CITY OF NEWPORT BEACH
PLANNING DEPARTMENT STAFF REPORT**

January 12, 2009
Agenda Item 1

TO: Thomas W. Allen, Hearing Officer

SUBJECT: Newport Coast Recovery, L.P.
1216 West Balboa Boulevard
• Use Permit No. 2008-033 (PA2008-104)

APPLICANT: Newport Coast Recovery, L.P.

CONTACT: Janet Johnson Brown, Associate Planner
jbrown@city.newport-beach.ca.us
(949) 644-3236

PROJECT SUMMARY

An application for approval of a use permit to allow a residential care facility to continue its operations, but reduce the number of beds within, as an adult alcohol and/or drug abuse recovery and treatment facility for males only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008.

RECOMMENDATION

Staff recommends that the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the hearing, staff recommends that the Hearing Officer provide direction to staff to prepare a resolution to approve the use permit subject to the findings discussed in this staff report and the draft conditions of approval, which are attached as Exhibit 1.

BACKGROUND

On December 8, 2008, a public hearing was conducted on Use Permit No. 2008-033 to review the status of the Newport Coast Recovery application and to receive public testimony. At that time, staff was unable to provide a complete analysis of the proposed project because the applicant had submitted only a portion of the required application materials, and the application had been deemed incomplete by staff. A copy of the December 8, 2008, staff report is attached as Exhibit 2.

NCR 00225

In accordance with Section 20.91A.030 of the NBMC, an application for a use permit in a residential district is required to contain or identify the following information:

- Facility users
- Characteristics of the use
- Transportation and parking
- Location map and site plan
- Similar uses in the vicinity
- Applicant information including license and permit history
- Operations and management plan, including occupancy levels
- Similar operations owned or operated by the applicant.

At the public hearing the applicant discussed the status of completion of their application and the operations of the Newport Coast Recovery facility as summarized below.

- The applicant had hired an attorney to submit the completed application. The applicant was unaware that the attorney had not submitted all the required application materials until they were informed by the City of the scheduled public hearing. The applicant stated that they would now oversee the application and that all required application materials would be submitted to the City by December 12, 2008.
- The applicant took over operation of the recovery facility five years ago and has invested a significant sum of money into building upgrades and property cleanup in order to make the facility blend in with the neighborhood.
- The applicant has tried to be a good neighbor by limiting smoking to designated areas, prohibiting outside smoking, and by instituting quiet hours between 11:00 p.m. and 9:00 a.m. Residents of the facility are required to sweep outdoor areas and the front sidewalk, and to keep these areas free of cigarette butts.
- The facility owns and operates one van for client transport. Clients are not permitted to have their personal vehicles on-site during the first 30 days of treatment and are only allowed to have their personal vehicles on-site during the remaining 60 days of treatment if there is a valid reason, such as the need to drive to a job.
- The facility uses a private waste management company to empty a dumpster utilized by the facility twice a week.
- No police calls or complaints against the facility were made by the public in 2008.
- The applicant offered to reduce the ADP licensed bed count for the facility by twenty percent.

The public testimony submitted at the December 8, 2008, public hearing regarding Newport Coast Recovery is summarized below.

- The City should dismiss the Newport Coast Recovery application because it was not a complete application at the time of the public hearing.
- The facility is within 1,000 feet of Newport Elementary School. The proximity of the facility to the school is not in the best interests of the community. Weekend use of the Newport Elementary schoolyard by residents of the facility was reported as a concern. Neighborhood children use the schoolyard on weekends and parents think the residents of the facility should not be permitted to use the schoolyard.
- The facility has been cleaned up over the past five years, and is an improvement, but is still not well managed, and the facility functions like a fraternity house.
- Garages at the facility are used for purposes other than parking of vehicles.
- The use of the alley located to the rear of the facility for service vehicles is not a good idea due to the width of the alley.
- Visitors to the facility have to park on the street. This presents parking problems in the neighborhood, as on-street parking is limited throughout the Balboa Peninsula. The facility should be required to utilize parking permits for on-street parking.
- Vans drop residents in front of neighboring properties. This blocks access for other vehicles in the neighborhood and creates traffic problems.
- Tenants have moved from one rental property because of the facility's presence nearby.
- The facility needs to enforce regulations on outdoor smoking, curfews, and nighttime noise.
- Residents of the facility are on medication. Concern was expressed over what could happen if one of the residents "falls off" their medication.
- The facility's staff or residents have, in the past, used neighboring properties' trash bins or receptacles without the consent of the neighboring property owners.
- Concerns for personal safety were raised. Confrontations between facility residents and neighbors were reported.
- The property located across the street at 1219 West Balboa Boulevard is not licensed but has been used for off-site "sober living" services provided by Newport Coast Recovery from its facility located at 1216 West Balboa Boulevard.
- The facility should be required to comply with current fire codes.
- An ex-resident who went through the program at Newport Coast Recovery reported he had a successful rehabilitation experience as a result of his stay at the facility and is in favor of the application. Occupancy would be the same if the building was a rental property and the parking issues would be the same. Management needs to improve their administrative practice.

The Hearing Officer continued the public hearing on Use Permit No. 20 08-033 to January 12, 2008, and directed the applicant to provide the remaining necessary application materials to staff within 21 days prior to the January 12, 2008, public hearing date. The applicant submitted the additional required application materials on December 12, 2008, and submitted supplemental project information to the City on December 23, 2008, enabling staff to complete the analysis of the project. The complete project application package for Use Permit No. 2008-033 is attached as Exhibit 3.

DISCUSSION

Description of Project Operations

The subject facility located at 1216 West Balboa Boulevard is operated by Newport Coast Recovery, L.P., and is licensed by the State of California's Department of Alcohol and Drug Programs (ADP) to operate and maintain an adult residential alcohol and/or drug abuse/recovery or treatment facility for a total occupancy of 29 persons. The facility's ADP license restricts treatment services to male residents.

The property is owned by Hayes Properties, LLC. The Clinical Director of Newport Coast Recovery is Mr. John Felton who manages the facility. The facility owners do not operate any other similar facility in the City of Newport Beach, and there are no known records of code violations related to the property or operators.

Current Use of the Building. The residential care facility operates in a two-story building containing 7 individual residential dwelling units, which are utilized as follows:

Current Uses at 1216 West Balboa Boulevard			
	Bedrooms	Beds/ Room	Beds/ Unit
Lower Level			
Office Unit	N/A	N/A	
Res Unit 1	1	2	2
Res Unit 2	2	2	4
Upper Level			
Res Unit 3	2	2	4
Res Unit 4	1	2	2
Res Unit 5	2	2	4
Res Unit 6	1	2	2
Total Units = 7 (includes office unit)			
Total Bedrooms = 9			
Total Beds = 18			

Although the facility has an ADP license to operate 29 resident beds, the applicant has applied for a Use Permit for an 18-resident bed facility which represents a reduction of

38 percent from the licensed resident beds the facility may currently operate. However, staff is recommending that the facility be approved to operate with a maximum of 14 resident beds for reasons discussed in the analysis section of this report.

Parking. The project site contains six off-street parking spaces two of which are located in a carport area and four of which are located in a garage, however, the garage area is currently being used as a recreational room for residents of the facility. Use of the garage as a recreational room is a prohibited use. All garages must be available for parking. The NBMC parking requirement for residential group homes is one parking space per three beds. If the facility's maximum resident occupancy is reduced to 14 persons, the facility will have the capacity to provide adequate off-street parking to meet the parking requirements of the NBMC and accommodate parking for family group counseling sessions on-site.

Staffing. The residential facility is staffed by eight employees. Five of these are full-time employees. The residential facility staff additional adverse parking impacts and includes a clinical director, program director, case managers, therapists, administrative office staff, night managers, and night staff. Staff members do not reside on the premises.

Client Stays. The typical client stay is a 90-day residency divided into three phases. During Phase 1, the first 30 days of client residency, clients are not permitted to have their personal vehicles on-site and are not permitted to leave the facility independently. During Phase 2, the second 30 days of residency, and Phase 3, the final 30 days of residency, clients are permitted to have their personal vehicles on-site and are permitted to leave the facility independently to attend off-site meetings or for recreational purposes.

Curfew and Quiet Hours. The facility maintains a curfew hour for residents of 10:00 p.m. on weeknights and 11:00 p.m. on weekends. Facility regulations include mandatory quiet hours on the premises between the hours of 10:00 p.m. and 8:00 a.m., every day of the week. Quiet hours mean that no sound is permitted to be audible beyond the perimeter of the facility except in an emergency. Staff recommends that the curfew hour on weekends be changed to 10:00 p.m., to be consistent with the mandatory quiet hours and has included a condition of approval requiring that operational rules of the facility be revised to reflect a 10:00 curfew hour every day of the week.

Smoking. Smoking is restricted to a designated area of the facility located within a courtyard which is enclosed on all sides by walls but is open to the sky. Smoking in any other areas of the facility or outside is prohibited.

Treatment Services. Treatment services provided on-site include individual counseling, group counseling, educational sessions, family group sessions, and physical therapy. Family group counseling as part of the clients' treatment/recovery is conducted on

weekends at the facility. Approximately three to four family members attend a two-hour group educational session at one time to learn about alcoholism and drug addiction. Family members park in either the on-site carports or in metered parking spaces on West Balboa Boulevard. Additional treatment services are provided off-site at the following locations in the City of Newport Beach:

- The Newport Beach Alano Club located at 414 32nd Street;
- The medical offices of Dr. Rudolph located at 901 Dover Drive, Suite 404; and
- The Amen Clinic located at 4019 Westery Place, Suite 100.

Transportation: A van owned and operated by Newport Coast Recovery provides transportation for residents between the off-site service facilities and Newport Coast Recovery. Van routes and schedules are attached as Exhibit 4 and are described below:

1. On Tuesday, Saturday, and Sunday evenings between the hours of 7:00 p.m. and 8:30 p.m. van service is provided to and from the Alano Club for weekly meetings. The van route follows Balboa Boulevard westerly from the facility, then north on Newport Boulevard to the Alano Club. The return route follows Newport Boulevard south from the Alano Club then east on Balboa Boulevard to the facility.
2. Approximately one to four times a week, depending on appointment times, van service is provided during the day from the facility to medical offices. The van route follows Balboa Boulevard westerly, then north on Newport Boulevard, then east on Dover Drive to the doctor's office. The return route follows Dover Drive west to Newport Boulevard, then south on Newport Boulevard, and then east on Balboa Boulevard to the facility.
3. Van service is provided up to four times a month during the day to and from the Amen Clinic. Travel times vary depending upon appointment times. The van route follows Balboa Boulevard westerly to Newport Boulevard, north along Newport Boulevard, then east on Westery Place to the Amen Clinic. The return route follows Westery Place to Newport Boulevard, then south on Newport Boulevard, and east on Balboa Boulevard to the facility.
4. Van service is provided to a nearby supermarket on Sundays between the hours of 12:00 p.m. and 2:30 p.m. The van route follows West Balboa Boulevard to the Albertson's Supermarket located at 3100 West Balboa Boulevard and returns from the supermarket easterly along West Balboa Boulevard to the facility.
5. Van service is provided to the YMCA on Mondays, Wednesdays, and Fridays between the hours of 2:45 p.m. and 4:15 p.m. The van route follows West Balboa Boulevard to Newport Boulevard then north on Newport Boulevard, then

east on University Drive to the YMCA. The return route follows University Drive west to Newport Boulevard, then south on Newport Boulevard to Balboa Boulevard, and then east on Balboa Boulevard to the facility.

Analysis

The project site is located within an established residential area with a variety of rental and owner-occupied properties consisting of two- and three-unit structures. In addition to the residential uses in the immediate vicinity, Newport Elementary School is located on the south side of West Balboa Boulevard, between 13th Street and 14th Street. Two church properties and a pre-school are also located in close proximity to the property site, with one church located on the south side of West Balboa Boulevard at 15th Street, and the other church and pre-school located on the north side of West Balboa at 14th Street. Facilities licensed to sell or serve alcohol located within three blocks of the project site include the American Legion Hall located at 215 15th Street and Fry's market located at 115 15th Street.

Other existing or pending residential group home facilities operating within the vicinity of the project site include:

- Balboa Horizons Recovery Services (1132 West Balboa Boulevard). ADP-licensed for eleven (11) residents. Received conditional use permit in December 2009.
- Ocean Recovery (1115 West Balboa Boulevard). ADP-licensed for 22 residents. Use permit application submitted. The application for a use permit for Ocean Recovery is scheduled for a public hearing in January 2009.
- Ocean Recovery (1217 West Bay Avenue). An ADP license is pending for this "6 and Under" facility for women who are dually-diagnosed with eating disorders and alcohol or drug dependency. This facility is currently preliminarily exempt from City regulation per US District Court Judge James Selna's injunction of May 2008.

Newport Coast Recovery is the only residential care facility currently operating within the specific block which measures approximately 400 feet in length and is bounded by West Balboa Boulevard, 12th Street, 13th Street, and West Bay Avenue.

Within a three block radius of the subject property, two residential care facilities have been either closed or are under abatement order. These facilities are located at 1129 West Balboa Boulevard and at 1219 West Balboa Boulevard. The locations of other operational residential care facilities, as well as facilities that have been closed or are under order of abatement within the immediate vicinity of the project site, are illustrated on the Location Maps, Exhibit 5.

Staff believes, in light of the fact that a six-bed facility located in the same block will likely be approved and operating, that there is a potential that the block could become institutionalized if the Newport Coast Recovery application for 18 resident beds is approved and that the residential character of the block should be maintained. As an alternative to the project proposal, staff recommends that the resident occupancy of Newport Coast Recovery be limited to 14 resident beds in order for the facility to be more consistent with the residential character of the neighborhood. This is equivalent to a typical multi-family building occupancy of two persons per unit and represents a reduction of 50 percent in the facility's permitted number of beds.

Within the block occupied by Newport Coast Recovery, a total of 20 beds would be in operation versus 35 beds as a result of the Newport Coast Recovery applicant amending their ADP license for the facility to reduce its licensed maximum occupancy from 29 to 14 residents. Assuming the Newport Coast Recovery use permit application for 14 beds is approved, the six-bed small residential care facility is issued a license to operate, and all the other above listed use permit applications for group home facilities are approved for continuing operation, there would be a total of 53 residential care facility beds within the area containing the subject property and a three block radius surrounding the subject property. Establishing a maximum of 14 resident beds for the facility could serve to mitigate the potential for institutionalization of the 1200 block of West Balboa Boulevard. The proposed reduction in resident beds would allow the facility to comply with on-site parking requirements for the additional vehicles used by family members of residents attending the family group counseling sessions.

In accordance with Section 20.91A.060 of the NBMC, the Hearing Officer shall make certain findings before approving or conditionally approving an application for a use permit in a residential district. The findings required in order to approve or conditionally approve the application are listed and discussed below.

1. **Finding:** That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.

The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed use is in accord with the objectives and requirements of Chapter 20.91A because an application has been filed to secure approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District, pursuant to Chapter 20.91A of the NBMC. The intensity of the use with 14 residents is consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District. Newport Coast Recovery is the only residential care facility located within the block abutted by West Balboa Boulevard on the south, 11th Street on the west, 12th Street on the east, and West Bay Avenue on the north.

The American Planning Association (APA) defines a suitable standard for such uses as being no more than one or two such uses per block. The location of the proposed use is consistent with this standard.

2. **Finding: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. A use permit conditioned to regulate the use and operational characteristics of this facility is consistent with this policy. The continued use of the subject property as a residential care facility will be subject to conditions of approval requiring that the facility be operated in a manner that will ensure that the operation of the facility will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

The intensity of the use with 14 residents is consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District. Current operational standards and proposed operational standards to be used by the facility in the future will be implemented through the adoption of conditions of approval attached to this use permit action. As part of the approval of this use permit staff recommends a condition of approval requiring the applicant to amend their ADP license to reduce the maximum number of allowed residents from 29 to 14.

3. **Finding: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.**

The facility, as conditioned through the use permit, will comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Finding No. 5 below.

4. **Finding: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91.A and conforms to all requirements of that Chapter.**

The proposed use is a non-conforming use as specified in Chapter 20.91.A of the NBMC and an application for a use permit for to continue the use has been filed by Newport Coast Recovery, the project applicant, consistent with the requirements of Chapter 20.91. Approval of Use Permit No. 2008-033 includes conditions of approval requiring the continued use of the subject property as a residential care facility to be operated in a manner that will restrict the potential for secondhand smoke impacts to neighboring properties, will ensure that contact information for the facility is available at all times, maximum resident occupancy of the facility will be limited to 14 residents equivalent to two persons per dwelling unit, the facility will operate pursuant to the terms of the license issued to the facility by ADP, other certifications, as appropriate will be obtained by the facility, and the names of all owners of the facility will be available to the City.

5. **Finding: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:**

- a. **No secondhand smoke can be detectable outside the property.**
- b. **Facility must comply with state and local law, and the submitted management plan, including any modifications required by this Use Permit.**
- c. **A contact name and number must be provided to the City**
- d. **No services requiring a license can be provided if the facility does not have a license for those services.**
- e. **There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**
- f. **If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**
- g. **All individuals and entities involved in the facility's operation and ownership must be disclosed.**
- h. **No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

The use conforms to the standards set forth in Section 20.91A.050, as follows.

- a. The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outdoors is prohibited. The applicant has agreed to control secondhand smoke on the property by continuing to enforce this regulation and as a condition of approval of this use permit.
- b. The operations of this facility are in compliance with the State ADP license, and as conditioned, the facility will comply with the management practices approved with this application on file with the City. The applicant is required to obtain an amended State ADP license to allow a maximum of 14 residents (or other number as determined by the Hearing Officer). Within 60 days of the issuance of a use permit, the applicant will confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP License and any future ADP License.
- c. Appropriate names and contact information numbers are provided within the application and, as a condition of approval of this application, the appropriate "after hours" names and contact information numbers will be provided to the City.
- d. The operation plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility.
- e. The facility is licensed for a maximum occupancy of 29 residents. The facility contains nine bedrooms currently occupied by two persons per bedroom for a total of 18 residents. As a condition of approval, the applicant is required to obtain an amended ADP license establishing a maximum resident occupancy in treatment of 14 persons, the equivalent of two persons per dwelling unit. Residents may be housed within six residential dwelling units with no more than two beds per bedroom in each dwelling unit of the facility designated for residents' use. This occupancy is consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050.
- f. As a condition of approval of this use permit, the applicant will consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification. In the event that the applicant deems such certification inapplicable to this treatment use, the applicant shall prepare a letter so stating these facts and submit the letter to the City within 60 days of the issuance of a use permit.

- g. All employees and management personnel have been disclosed in the application documentation.
 - h. According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of code violations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010.
6. **Finding: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.**

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six parking spaces for 14 beds, and therefore, would meet the NBMC requirements for off-street parking for 14 beds and would accommodate parking for family counseling sessions as noted below. As a condition of approval, the applicant is required to make available and maintain all areas designed for parking, including the existing four-car garage, for parking purposes. Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility. As part of the approval of this use permit staff recommends a condition of approval that: (1) requires the purchase of one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restricts to a maximum of three the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles.

Visitors may park on the portions of West Balboa Boulevard where parking is located adjacent to both the sidewalk and the center median. A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is conducted in front of the facility along Balboa Boulevard. As part of the approval of this use permit staff recommends a condition of approval that restricts loading and unloading of van passengers to be conducted within open parking spaces along Balboa Boulevard, and van drivers will be prohibited from stopping or double parking in a traffic lane.

Staff is concerned about on-street parking associated with Newport Coast Recovery's regular family counseling sessions on weekends. Familial counseling for non-residents, while arguably an important part of the recovery of resident

clients, can significantly impact on-street parking during busy weekends on the Balboa Peninsula. To reduce these impacts, staff proposes a condition that reduces the facility's maximum permitted resident beds from 29 to 14, and limits familial counseling on-site where on-street parking is utilized to Sundays between 9:00 a.m. and 12 Noon. In the event that the applicant seeks familial counseling during other times of day, the applicant must either provide on-site parking in a manner that does not result in the placement of resident cars on the street in order to accommodate non-resident use of the carport or garage, or shuttle non-resident family members to the location by van from a location off of the Balboa Peninsula.

7. **Finding: The property and existing structures are physically suited to accommodate the use.**

The building is similar to many other residential structures along West Balboa Boulevard constructed on a parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

8. **Finding: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:**

- a. **The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;**

- b. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
- c. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

The project site is located within an established residential area with a variety of rental and owner-occupied properties consisting of two-and three-unit structures. In addition to the residential uses in the immediate vicinity, Newport Elementary School is located across Balboa Boulevard from this facility, approximately 300 feet away between 13th Street and 14th Street. The City has not received any complaints from representatives of Newport Elementary School or the Newport-Mesa Unified School District regarding the proximity of the facility to the school during the period that the facility has been operated by Newport Coast Recovery. Facilities licensed to sell or serve alcohol located within three blocks of the project site include the American Legion Hall, located at 215 15th Street and Fry's market, located at 115 15th Street.

Newport Coast Recovery is the only residential care facility currently operating within the block which measures approximately 400 feet in length and is bounded by West Balboa Boulevard, 12th Street, 13th Street, and West Bay Avenue. As previously discussed, Ocean Recovery has proposed a six-bed facility located

approximately 30 feet from the Newport Coast Recovery facility. The six-bed facility is proposed for 1217 West Bay Avenue and would become operable following approval of an ADP license. Because of a May 2008 preliminary injunction issued by U.S. District Court Judge James Selna, the Ocean Recovery six-bed facility is currently exempt from the City's implementation of Ordinance No. 2008-05. Ordinance No. 2008-05 included a provision that "integral facilities" (when one facility operator regulates more than one small ADP licensed facility as an integrated network) are subject to Ordinance No. 2008-05, however, Judge Selna enjoined the City from enforcing this provision of the ordinance.

Ordinance No. 2008-05 provides that the proximity of other group residential uses within the vicinity of the project application be evaluated and provides that the APA standard may be used in the evaluation. The evaluation may take into account the actual presence of a facility like the one planned for 1217 West Bay Avenue, however, the provisions of Ordinance No. 2008-05 are not interpreted to allow the Hearing Officer to deny a proposed group residential use permit application based on an expectation that a future ADP licensed, "Six and Under," resident facility is pending approval nearby.

In addition to the Newport Coast Recovery facility, there are two other residential care facility uses located within a three-block radius of the subject property. A use permit application was approved December 8, 2008, for Balboa Horizons, an 11-bed licensed treatment home located at 1132 West Balboa Boulevard. A use permit for Ocean Recovery's 22-bed licensed residential care facility located at 1115 West Balboa Boulevard is under review and pending a public hearing.

Within the block occupied by Newport Coast Recovery a total of 20 beds could be in operation if the six-bed Ocean Recovery facility is opened at 1217 West Bay Avenue and the proposed Newport Coast Recovery application for 14 beds is approved, versus a total of 35 beds if Newport Coast Recovery were to be approved with its current ADP licensed 29 beds. Given the potential for a "Six and Under" resident facility to be operating within the same block as Newport Coast Recovery, it is reasonable to limit the maximum number of resident beds at the facility to 14 in order for the facility to be more compatible with the residential character of the neighborhood. A maximum of 14 beds is equivalent to a residential occupancy for the facility of two persons per dwelling unit which is consistent with population intensity for a property within an R-2 District. Staff believes it is reasonable to limit the facility's resident beds to 14 in order to avoid the potential for the institutionalization of this specific block of West Balboa Boulevard, in light of the fact that the nearby six-bed facility will likely be approved and operable and to avoid additional adverse parking impacts.

The excellent physical condition of the subject property and its current and conditioned operational characteristics and standards contribute to making the facility a compatible use with the surrounding neighborhood.

9. **Finding: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.**

A facility van provides transportation for the residents (and possibly to non-resident family members, if such a condition is approved) on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and unloading is at the West Balboa Boulevard frontage that is less congested than the narrower alley access at the rear of the building. A condition of approval is included requiring the loading and unloading of the transportation van passengers to occur only in open parking spaces on West Balboa Boulevard, and prohibiting the van drivers from stopping or double-parking in a traffic lane.

10. **Finding: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

11. **Finding: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 9:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Summary

The Newport Coast Recovery facility, as conditioned, will adhere to the development and operational standards as established in Title 20, Section 20.91A.A-F, of the Municipal Code, as outlined above. In addition, the findings required under Section 20.91A.060 of the NBMC can be made and are supported by the facts outlined above.

Appropriate conditions of approval have been recommended as described in the draft conditions of approval, Exhibit 1, which include limiting the facility's maximum number of

permitted resident treatment beds to 14, incorporating specific operational standards for the facility, and providing for an on-going review of facility compliance review in the future. As part of the approval of this use permit, staff recommends a condition of approval that the operations of the facility be reviewed within six months of the date of approval of this use permit, and then annually thereafter to identify whether the facility is complying with the conditions of approval of the use permit. At any time of review by the City, the use permit may be amended, or upon a finding of failure to comply with the conditions of approval, may be revoked. The City may also revoke, modify, or amend this use permit if it determines the conditions under which this facility is being operated or maintained are detrimental to the public health, safety, peace, morals, comfort, or general welfare of the community, or if the facility is materially injurious to property or improvements in the vicinity, or if the facility is operated or maintained so as to constitute a public nuisance.

Alternatives

As an alternative to the staff recommendation, the Hearing Office may either:

1. Direct staff to prepare a resolution denying the use permit application based on an inability to make the required findings; or
2. Direct staff to prepare a resolution to approve the use permit application subject to amended or modified conditions of approval.

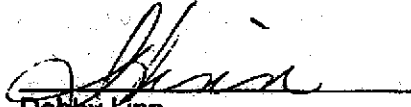
Environmental Review

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

Public Notice

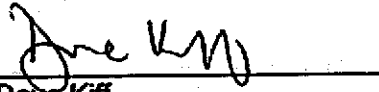
Notice of this hearing was published in the Daily Pilot, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:



Debby Linn
Consulting Planner

Submitted by:



Dave Kiff
Assistant City Manager

EXHIBITS

1. Draft Conditions of Approval
2. December 8, 2008 Staff Report Including Initial Application Submittal Items
3. Complete Project Application
4. Location Map
5. Van Transportation Routes

Exhibit No. 1
Draft Conditions of Approval

NCR 00243

EXHIBIT "1"

DRAFT CONDITIONS OF APPROVAL

USE PERMIT NO. 2008-033

NEWPORT COAST RECOVERY SERVICES, LP

1. **Governmental Referrals.** The operator of Newport Coast Recovery, LP, hereinafter referred to as "Operator," shall not provide any services to any client or house any client who has been referred or caused to be referred to Newport Coast Recovery's facility by any governmental agency, including but not limited to probationers or parolees, due to the limitations that Section 509.9 of the California Building Code places on Group I and R occupancies.
2. **Medical Waste.** Any and all medical waste generated through the operation of the facility shall be disposed of in accordance with the City of Newport Beach's Municipal Code, all other laws and best industry standards and practices.
3. **Trash & Trash Enclosures.** Operator shall comply with City code provisions pertaining to trash enclosures, and if directed by the Planning Director, shall secure and maintain commercial bin service at the subject property.
4. **Smoking and Tobacco Products.** Operator shall contain secondhand smoke generated by patients, clients, customers and staff by designating and maintaining a smoking area that is interior to the facility located in a courtyard area surrounded on all sides by walls and open to the sky. In addition, Operator will not allow clients, staff, or residents to litter cigarette butts on the ground, floor, deck, sidewalk, gutter, boardwalk or street. Operator's administrators and managers shall actively enforce, on the City's behalf, the City's prohibition on clients' tobacco use on beaches, boardwalks, and piers (NBMC §11.08.080), including when Operator's clients are at "AA" meetings.
5. **Off-Street Parking, and Loading and Unloading.** Operator shall provide six off-street parking spaces for the use of the facility's staff, visitors and residents at all times. Operator shall ensure that the parking spaces located on-site shall remain open and clear of any and all obstructions at all times, and used for parking or deliveries.

Loading and unloading of passengers of the facility's transportation van shall occur only in open parking spaces on West Balboa Boulevard. The van driver is strictly prohibited from stopping or double-parking in a traffic lane to load and unload passengers. In addition:

- Client drivers shall respect all City rules regarding parking and/or stopping and waiting to load residents. Client transport vehicles shall not block adjacent alleys or street ends.

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- Client drivers shall not leave vehicles in reverse gear if reverse has an audible back-up warning sound.
 - Client drivers shall speak to residents at a level protective of neighborhood peace, cognizant of the hour, to avoid waking neighbors.
6. **Hotline.** Operator shall establish, provide public notice of and operate a hotline for receiving inquiries and/or complaints in reference to its operation of its facility. The phone number need not be staffed 24 hours a day seven days a week, but callers should be responded to within 24-hours of their call.
 7. **Quiet Hours.** Operator shall apply the Quiet Hours of 10:00 p.m. to 8:00 a.m. daily to the facility. During these Quiet Hours, all residents will be inside except during emergencies. Quiet means no sound is audible beyond the perimeter of the facility except in a demonstrable emergency.
 8. **Curfew.** Operator shall amend the rules of operation changing the curfew hour for the facility from 11:00 p.m. to 10:00 p.m. on weekends and shall provide evidence of such change to the City. The Operator shall enforce a curfew of 10:00 p.m. daily for the facility.
 9. **Route Plans.** Operator shall adhere to the Route Plans for transport of its staff, residents, clients, and customers that are included in the Operation and Management Plan. Short-term interruptions, such as medical emergencies or street maintenance, which are beyond Operator's control, are allowable modifications to the Route Plans.
 10. **Deliveries.** Any deliveries to the facility shall only be made between 8:00 a.m. and 5:00 p.m. on weekdays and not at all on Saturdays or Sundays, unless urgently necessary. In addition, delivery vehicles may not block the alley.
 11. **Stakeholder Group.** Upon invitation by the City, Operator shall participate in the activities of any stakeholder committee or group established by the City to address complaints and concerns of residents of the City regarding the operation of Residential Care Facilities in the City.
 12. **Facility Beds, Persons per Bedroom.** The Operator shall not allow more than 14 clients to be housed at this facility at any one time. At no time shall the Operator house more than two clients in any bedroom of the facility.
 13. **State Licensing, Treatment, and Occupancy (if licensed).** The Operator shall amend the facility's existing State ADP License Number 300156AP, which expires on January 1, 2010, to reduce the maximum permitted Treatment/Recovery Capacity for residents from 29 to 14. All occupancies at the subject property shall comply with the State ADP License Number 300156AP, as amended, which expires on January 1, 2010, and any successor license offering the same treatment services. Operator shall maintain ADP licensing throughout the duration of this use permit.

14. **Family Counseling.** In the event that Operator provides counseling or educational sessions to family members of persons housed at the facility, all of the following conditions apply:
 - A. The counseling or educational sessions shall be expressly authorized within the facility's ADP license;
 - B. In no case shall the facility provide counseling or educational sessions to persons who do not have a relative receiving in-patient treatment at the facility.
 - C. Family counseling or educational sessions requiring the use of on-street parking shall only be conducted at the facility on Sundays between 9:00 a.m. and 12:00 noon.
 - D. Family counseling or educational sessions conducted on weekends at times other than Sundays between the hours of 9:00 a.m. and 12:00 noon shall be provided on-site parking at the facility or shuttle services between the facility and a location off of the Balboa Peninsula.
14. **Building and Zoning.** Operator recognizes that subject property has specific setbacks from the side yards, front yard, and/or back yard per the City's Building and Zoning Codes. Operator will keep these setbacks clear of obstruction, including building obstruction. The orderly storage of trash cans is acceptable in setbacks.
15. **Staffing.** Operator will have enough staff to appropriately and responsibly manage the facility, and shall limit the staff to no more than five staff members on-site at any one time, so as to avoid overwhelming the facility's neighborhood with cars, shuttles, trash cans, or other aspects of a high-staff commercial use in a residential neighborhood.
16. **Nuisances.** The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regards to any of these issues, Operator shall correct the violation within seven days or contact the City directly to negotiate a mutually-agreeable timeline.
17. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property. Profanity expressed at a level heard by neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.
18. **Noise.** Operator shall strictly adhere to the City's noise standards (NBMC §10.26.025; 10.26.030). Operator shall be responsible for minimizing clapping, stomping, or other noises at meetings or gatherings at the subject property, consistent with NBMC §10.26.030.
19. **Beaches and Other Common Gathering Areas.** Operator's use of the beaches for meetings, prayer, conversation, or other gatherings shall show due respect to non-resident visitors, residents, and other beachgoers, thus allowing them to take full enjoyment of the beach. Operator shall not conduct business on the beach (per NBMC §10.08.030).

20. **Services to Facility's Clients or Residents.** Operator will use industry's best practices to ensure that the facility's clients or residents stay in recovery (including scheduled substance testing, random substance testing, and required counseling). Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.
21. **Federal, State and Local Laws.** Operator shall comply with all federal, state, and local laws. The issuance of this use permit shall not constitute a waiver of the requirements of any federal, state or local law, including the requirements of the California Building Code.
22. **On-Street Parking.** Clients and staff of the Newport Coast Recovery facility are prohibited from parking on public streets in Newport Beach, except for three on-street spaces, utilized following notification to the City from Newport Coast Recovery and following the purchase of three master parking permits by the Operator from the City for such parking;
23. **Grant of Use Permit.** Use Permit No. 2008-033 is granted to Newport Coast Recovery, LP to operate an adult alcohol and/or drug abuse recovery treatment facility for males only, and all clients of the facility shall be classified as disabled, as that term is defined by Federal and State fair housing laws. The Operator shall execute an affidavit declaring that all clients receiving services from this Facility are disabled persons.
24. **Compliance with Conditions of Approval.** Any changes in operational characteristics, including but not limited to the following, shall require an amendment to this use permit or issuance of a new use permit:
 - a. Modification, expiration without renewal, or loss of ADP license.
 - b. Increase in number of resident clients.
 - c. Increase in on-site staffing.
 - d. Increase in physical capacity of facility including number of beds, number of bedrooms, floor area of facility, etc.
 - e. Change in the Operation and Management Plan.
 - f. Request for amendment to any condition or conditions of approval.
 - g. Change in property ownership in a manner that causes the majority of the property to be owned by a person or entity not identified in the Use Permit or its application.
 - h. Alteration and/or loss of approved on-site parking.