

Attachment No. HO 3

**Administrative Record: May 20, 2008, to
April 14, 2009**

CITY OF NEWPORT BEACH OFFICE OF THE CITY ATTORNEY

DATE: April 10, 2009
TO: Honorable Mayor and City Council
FROM: David R. Hoff, City Attorney
Matter: Newport Coast Recovery Use Permit Appeal
(A09-00397)
RE: After Acquired Evidence



Staff has learned of issues related to the Newport Coast Recovery's operations since the close of the hearing before the Hearing Officer. They relate to treatment of minors at the facility in violation of Newport Coast Recovery's license. We have appended a copy of a memorandum from the Assistant City Manager as Attachment 5¹ summarizing the information that came into his possession. In addition, we have appended a redacted copy of a Newport Beach Police Department report as Attachment 6 detailing a contact with the facility related to the issue. We provided counsel for Appellant, Steve Polin, Esq., notice of this evidence via email dated April 9, 2009 and a copy of the Police report today. We are submitting the information to the Council for consideration of its relevance as it relates to the hearing of the appeal.

After acquired evidence is not part of the Hearing Record. It, therefore, is not relevant to your determination of the "substantial evidence" issue, which is determinative of the appeal that is before you. In order to be relevant to that issue, it had to be available to the Hearing Officer. By its nature, it was not, so you are faced with the question of what, if anything, to do with the evidence.

We do not have any explicit provisions in our ordinance that govern the issue of such evidence. The only guidance we have, therefore, is existing law through analogy. The provisions of Code of Civil Procedure section 1094.5 are helpful. Subdivision (e) of section 1094.5 provides that if you determine the evidence (1) could not have been produced at the hearing on the use permit through the exercise of reasonable diligence and (2) it is relevant to the issue that was before the Hearing Officer, then you may remand the matter to the hearing officer for consideration of the evidence in relationship to his decision. You cannot, however, use the evidence to support a substantive decision on the appeal since it was not part of the Hearing Record before the Hearing Officer.

We need your direction on what to do about this evidence. Your options are:

1. Determine findings (1) and/or (2) cannot be made, and thus, the evidence is not admissible on the issues at all and will not be considered; or

¹ We are using consecutive numbers from the Council Staff Report for numbering of the attachments.

2. Findings (1) and (2) can be made and the Hearing Officer needs to consider this evidence in the context of a decision on the merits of the application, and if so, remand the matter to the Hearing Officer for its consideration in making his decision on the substance of the application; or
3. Findings (1) and (2) can be made but the evidence is not necessary to the decision on the application and you will decide the appeal on its merits now, either granting the appeal and overturning the Hearing Officer's decision or overruling the appeal and affirming the Hearing Officer's decision, without considering the after acquired evidence.

DRH

Attachment 5 – Newport Coast Recovery (1216 West Balboa) Appeal – Recently Acquired Information, April 8, 2009

Attachment 6 – Employees Report, Newport Police Department, March 31, 2009

Cc: Steve Polin, Esq.
Chris Brancart, Esq.
Dave Kiff, Assistant City Manager
Kit Bobko, Special Counsel



CITY OF NEWPORT BEACH

MEMORANDUM

TO: David Hunt, City Attorney

FROM: Dave Kiff, Assistant City Manager
Kit Bobko, Special Counsel

DATE: April 8, 2009

RE: **Newport Coast Recovery (1216 West Balboa) Appeal – Recently Acquired Information**

The following is a partial summary of information to which Mr. Kiff can personally attest. On or about late March 2009, a mother who claimed to have a 17 year-old child in treatment at Newport Coast Recovery ("Appellant") for cocaine addiction contacted staff. The information staff received from the boy's mother was troubling, and casts doubt upon whether the Appellant can properly manage this treatment facility.

Among the troubling issues identified by staff:

- Appellants knowingly accepted two minor boys for treatment at Newport Coast Recovery in apparent violation of their license from ADP (ADP officials told the City on Friday, April 3, 2009 that there is no record of Newport Coast Recovery having an "adolescent waiver" authorizing Newport Coast to treat adolescents);
- There are allegations that one of the minors was instructed by Newport Coast Recovery Staff to lie about his age if asked;
- One of the minor boys was taken off-site in another resident's personal vehicle, where the minor relapsed. The minor boy was then removed from Appellant's facility and taken to a sober living facility in Costa Mesa without notifying the child's parents;
- When Newport Beach and Costa Mesa Police found the child, Newport Coast Recovery told the police that they would not take him back into their facility because he was a minor, effectively abandoning him. The boy's family is in Las Vegas, NV and Clovis, CA, and he had no means to get home;

The Municipal Code states the standard of review for this appeal "shall not be *de novo*," and that the "City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing." See NBMC §20.91A.040. The Code further states the City Council, acting as the appellate body, "may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include either specific issues to be considered or a direction for a *de novo* hearing." See NBMC §20.91A.040.

Staff notes the Code does not include any provisions (or prohibitions) regarding the newly produced evidence that, through the exercise of reasonable diligence, could not have been produced at the Use Permit hearing.

Because the Municipal Code prohibits the Council from conducting a *de novo* hearing, and because this newly acquired evidence bears directly upon the Applicant's ability to operate the facility, we recommend that:

1. Mr. Steven G. Polin, Appellant's counsel, be provided with this information and provided an opportunity to respond;
2. In light of the time required for the Appellant to respond, that the City Council be asked to remand this matter to the Hearing Officer pursuant to NBMC §20.91A.040 for further consideration of this "specific issue."
3. That the City Council be asked to require it be heard by some date certain, so that it can return for appeal promptly.

#

EMPLOYEES REPORT

Subject Newport Coast Recovery		DR Number 09-02894	
Date and Time Occurred 3-31-2009 1000	Location of Occurrence 1216 W. Balboa Blvd.		RD 13
To:(Rank, Name, Assignment, Division) Lt. Frizzell		Date and Time Reported 3-31-2009 1000	
Reportable Use of Force: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<p>W1: Eric McCoy (Program Director, Newport Coast Recovery) 11/18/1973 35yrs 1216 W. Balboa Blvd. Newport Beach, CA. 92661 949-723-3155 714-756-1300c</p> <p>On 03-31-2009 at approximately 1000 hours, Sgt. Mark Hamilton and I responded to 1216 W. Balboa (Newport Coast Recovery) in reference to reports that the facility was treating minor children in violation of their DSS license. The reporting party, Witness [redacted] alleged that she sent her minor son to the location for treatment. [redacted] states that her son was told to lie about his age due to the fact that minors were not permitted at the location. [redacted] filed a complaint with the City of Newport Beach, and we were requested to investigate.</p> <p>Upon arrival at the location, we contacted Program Director Eric McCoy. I asked McCoy if [redacted] was a resident of the facility and he stated "I cannot confirm or deny," that he is a resident of the facility. McCoy claimed all residents have confidentiality based upon medical privilege laws. We told McCoy that we were responding to a complaint that the facility was housing minor children, (under 18), for the purposes of medical treatment in violation of their DSS license. We asked McCoy if there were currently any residents under the age of 18 at his facility and he said "No, there are none here now." We asked McCoy if [redacted] had been a resident and he again stated that he could not confirm or deny any particular persons presence at the facility. McCoy stated he had been gone on vacation and just recently returned. McCoy did confirm that there had been minors in the facility while he was gone, but was unaware of who authorized their placement. McCoy stated the minors had since been removed from the facility and returned to their parents within the past week. McCoy was advised not to house any minors because it violated state policy regarding his particular treatment facility.</p>			
Supervisor Approving	ID No.	Reporting Officer(s)	ID No.
Date and Time Reproduced and Distributed	Clerk	Schuster	1277

Continuation Sheet

Page No. 2	Type of Report Employees Report	Booking No.	DR Number 09-02894
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On 03-31-2009 at approximately 1500 hours. Sgt. Hamilton and I responded back out to the Newport Coast Recovery at 1216 W. Balboa Blvd. We had received new information that the facility was still treating and housing minors contrary to what Wit McCoy had previously told us. We first contacted an unidentified male resident who claimed to live at the facility. We asked him if he knew of [REDACTED] (minor) and he said "yes". We asked the subject if [REDACTED] was current a resident at the facility and he said "yes". The subject went on to tell us that [REDACTED] was removed from the facility on Saturday (3-28-09) for disciplinary reasons. He said they moved [REDACTED] to a different facility in Costa Mesa. NFD

We then recontacted Wit McCoy and asked him about [REDACTED] McCoy confirmed [REDACTED] was removed from the facility and transferred to a Costa Mesa facility on Saturday. McCoy stated he had already attempted to contact the owner regarding the state violations regarding minors in the facility. McCoy said [REDACTED] was due to return today, but he has since stopped the process of return based upon our previous contact with him. [REDACTED]

It should also be noted that we responded to the facility twice and did not observe any residents that appeared to be under the age of 18. McCoy also stated that there were not "currently" any minors at the facility.

Supervisor Approving	ID No.	Reporting Officer(s) Schuster	ID No. 1277
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CITY OF NEWPORT BEACH OFFICE OF THE CITY ATTORNEY

DATE: April 7, 2009
TO: Honorable Mayor and City Council
FROM: David R. Hunt, City Attorney
RE: Newport Coast Recovery's Request for a Stay
Of Its Appeal of the Denial of Its Use Permit;
April 14, 2009 Agenda, Item No. 20.



As we were finalizing our staff report, we received a request from Newport Coast Recovery, LLC's ("Newport Coast Recovery") attorney, Steve Polin, Esq., requesting a stay of the appeal hearing in this matter. We attach an email chain dated April 7, 2009 along with a copy of Mr Polin's letter making that request as Attachment "A" for your review. As you can see from the email chain, we informed Mr. Polin the decision on whether to stay the appeal would need to be made by you on the night of the hearing.

On this issue, the history of this appeal is as follows:

- **February 4, 2009:** Hearing Officer's decision final.
- **February 11, 2009:** Newport Coast Recovery's initial "Appeal Notification" executed by Michael Newman on behalf of Newport Coast Recovery.
- **February 24, 2009:** Application to Appeal Decision of Hearing Officer filed by Applicant.
- **March 12, 2009:** Office of the City Attorney letter to Appellant re appeal hearing scheduled for Council March 24, 2009 agenda. (See, Attachment "B.")
- **March 18, 2009:** Staff recommends continuance of matter pursuant to request of Appellant's counsel, Steve Polin, Esq., to date certain of April 14, 2009.
- **March 24, 2009:** Matter originally scheduled for hearing on Council agenda and Council acts to continue matter to date certain of April 14, 2009, per staff's recommendation.
- **March 27, 2009:** Office of the City Attorney sends letter to Appellant's counsel informing him of continuance to date certain. (See Attachment "C".)
- **April 6, 2009:** Office of the City Attorney sends Appellant's counsel an email of that date re appeal hearing and staff report schedule. (See, Attachment "A.")
- **April 7, 2009:** Applicant's counsel submits request for stay of appeal hearing through email and letter of that date. (Attachment "A.")

We have informed Mr. Polin that we cannot make the decision regarding the stay request, but we will brief the Council on the request and the issue will be addressed at the outset of the hearing on April 14, 2009.

DRA

ATTACHMENT A

**Newport Coast Recovery's Request for a Stay on its
Appeal of Denial of its Use Permit**

04-07-09 email requesting for stay of appeal hearing

Hunt, David

From: Hunt, David
Sent: Tuesday, April 07, 2009 11:25 AM
To: 'spolin2@earthlink.net'; Kiff, Dave; Wolcott, Cathy; T. Peter Pierce
Cc: chris brancart; mnewman1960; paul.e.smith; dana mulhauser
Subject: RE: Newport Coast Recovery reasonable accommodation request

Mr. Polin,

Thank you for the clarification. I will present this request to the Council as I finalize my staff report today.

Yes, you have my permission to deal with Mr. Kiff in the submitting Newport Coast Recovery's request for a reasonable accommodation. Thank you for your sensitivity on this topic.

Sincerely,

David R. Hunt

City Attorney
City of Newport Beach
3300 Newport Blvd
Newport Beach, CA 92658-8915
(949) 644-3131
city.newport-beach.ca.us

From: spolin2@earthlink.net [mailto:spolin2@earthlink.net]
Sent: Tuesday, April 07, 2009 10:13 AM
To: Hunt, David; Kiff, Dave; Wolcott, Cathy; T. Peter Pierce
Cc: chris brancart; mnewman1960; paul.e.smith; dana mulhauser
Subject: RE: Newport Coast Recovery reasonable accommodation request

Mr. Hunt,

Thanks for your quick response to my letter. I understand it is not your decision to grant a continuance, but the City Council's. I also understand that you are not the person tasked with processing the requests for a reasonable accommodation. If I have your permission, may I contact Dave Kiff directly to facilitate the process to insure the request is properly submitted?

You are correct, Newport Coast is seeking a stay of the appeals before the City Council in order to process its request for a reasonable accommodation. In that regard, on behalf of Newport Coast Recovery, I am hereby waiving the requirement that all appeals to the City Council from the denial of a use permit be heard within 60 days.

I hope this answers your questions.

Steve Polin

Steven G. Polin
Law Office of Steven G. Polin
3034 Tennyson Street, NW
Washington, DC 20015
202-331-5848
202-537-2986(fax)
spolin2@earthlink.net

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----- Original Message -----

From: Hunt, David

To: spolin2@earthlink.net; Kiff, Dave; Wolcott, Cathy; T. Peter Pierce

Cc: chris brancart; mnewman1960; paul.e.smith; dana mulhauser

Sent: 4/7/2009 01:04:41 PM

Subject: RE: Newport Coast Recovery reasonable accommodation request

Mr. Polin,

Thank you for your communication. We will analyze the request to take the appeal off the Council's agenda.

Is this a request for continuance, stay, or withdrawal of the appeal? I think it is in the nature of a request for a stay, keeping the appellate rights alive, but seeking to have the issue of reasonable accommodation addressed before the appeal on the use permit determination? Am I correct? If that is the case, we will need a waiver by your client of the requirement that the Council decide the appeal within 60 days. Does your client so waive?

At this point, I do not believe I am in a position to grant such a request in light of our previous grant of a continuance of the appellate hearing, but I will, of course, present the request to the Council for consideration. Please clarify the request so I can accurately characterize it to the Council in my staff report. Thus the Council, as the appellate body, will address the issue of the request at the outset of the hearing scheduled on Tuesday, April 14, 2009 at 7:15 p.m.

I also would like to be sure you submit the request for a reasonable accommodation through appropriate channels. I am ethically walled off from the permitting process. I am not involved in the administrative proceedings at all. My role is limited to advising the Council as to appeals of hearing officer determinations, ordinance issues and litigation matters. So please, if you will, be sure to submit the application for the reasonable accommodation through appropriate channels. By copy of this email, I ask that Mr. Kiff facilitate that application process and give appropriate direction to you regarding the same.

Thank you for your attention to this matter.

Sincerely,

David R. Hunt

City Attorney

City of Newport Beach

3300 Newport Blvd

Newport Beach, CA 92658-8915

(949) 644-3131

city.newport-beach.ca.us

From: spolin2@earthlink.net [mailto:spolin2@earthlink.net]
Sent: Tuesday, April 07, 2009 9:31 AM
To: Hunt, David; Kiff, Dave; Wolcott, Cathy; T. Peter Pierce
Cc: chris brancart; mnewman1960; paul.e.smith; dana mulhauser
Subject: Newport Coast Recovery reasonable accommodation request

David,

Please find attached Newport Coast Recovery's request for a reasonable accommodation along with the cover letter addressing our position as to how this affects the City Council meeting scheduled for next week.

Thanks,

Steve

Steven G. Polin
Law Office of Steven G. Polin
3034 Tennyson Street, NW
Washington, DC 20015
202-331-5848
202-537-2986(fax)
spolin2@earthlink.net

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----- Original Message -----

From: Hunt, David
To: spolin2@earthlink.net
Sent: 4/6/2009 05:53:35 PM
Subject: FW: Newport Coast Recovery Appeal Hearing - April 14, 2009 (Newport Coast Recovery Use Permit Appeal; A09-00397)

From: Hunt, David
Sent: Monday, April 06, 2009 2:49 PM
To: Kit Bobko (PBobko@rwglaw.com); Steve Polin Esq. (spolin2@earthlink.net)
Cc: Peter Pierce T. (ppierce@rwglaw.com); Kiff, Dave
Subject: Newport Coast Recovery Appeal Hearing - April 14, 2009 (Newport Coast Recovery Use Permit Appeal; A09-00397)

Gentlemen,

As you know the appeal of Applicant Newport Coast Recovery is scheduled for hearing by the Newport Beach City Council on April 14, 2009. The hearing has been set for a time certain of 7:15 p.m. We will

complete whatever matter the Council is considering at 7:15 and proceed to the Appeal, regardless of where we are on the Agenda.

Our staff report will be routed to the Council on Wednesday, April 8, 2009. It must be in final form in the Clerk's office no later than noon on that date. If you wish to present anything in writing with the staff report, please have it to us no later than 10:00 a.m. on that date so it can be appended, copied, and routed. Of course you may route additional materials to the Council for their attention after that time. Please be aware, however, that the later the materials are submitted the less attention they can be given. The Council reserves the right to not consider substantial written materials submitted on the date of the actual hearing of the matter.

Please also be on notice that since this matter was continued once for three weeks at the request of Applicant's counsel, we intend to proceed on April 14, 2009, in order to honor the schedules of other interested parties and the Council and in order to proceed with the City's business in an appropriate and timely manner.

David R. Hunt

City Attorney

City of Newport Beach

3300 Newport Blvd

Newport Beach, CA 92658-8915

(949) 644-3131

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STEVEN G. POLIN, ESQ.
Attorney At Law

3034 TENNYSON ST. N.W.
WASHINGTON, D.C. 20015

TEL (202) 331-5848
FAX (202) 537-2986
SPOLIN2@EARTHLINK.NET

April 7, 2009

SENT VIA ELECTRONIC MEANS AND FIRST CLASS MAIL

David R. Hunt
City Attorney
City of Newport Beach
3300 Newport Blvd
Newport Beach, CA 92658-8915

RE: Newport Coast Recovery, LLP
Reasonable Accommodation Request

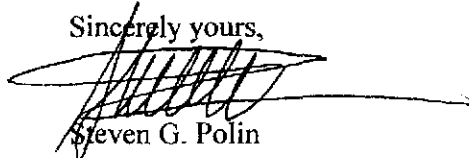
Dear Mr. Hunt,

Please find attached a request for a reasonable accommodation submitted pursuant to NBMC §20.98.020 on behalf of my client, Newport Coast Recovery, LLP.

Newport Coast Recovery believes that this reasonable accommodation request substantively affects the consideration of the City Council of its appeal from the denial of its application of the Use Permit in Appeal No. A09-00397, and if granted would render the appeal moot. Therefore, Newport Coast Recovery is requesting that Appeal No. A09-00397 be taken off the agenda of the City Council on April 14, 2009 so that its request for a reasonable accommodation can be processed by the City Staff. It is our position that since the City is currently in possession of all the necessary information necessary to process the request for a reasonable accommodation so that a hearing can be expeditiously scheduled before the Hearing Officer.

Thank you for your consideration of this request.

Sincerely yours,



Steven G. Polin

cc: Newport Coast Recovery, LLP
T. Peter Pierce
Christopher Brancart
Dave Kiff
Catherine Wolcott
Paul E. Smith
Dana Mulhauser

ATTACHMENT B

**Newport Coast Recovery's Request for a Stay on its
Appeal of Denial of its Use Permit**

03-12-09 letter to Appellant

March 12, 2009

**VIA FACSIMILIE (949) 673-3098 AND
U.S. REGULAR MAIL**

Mr. Michael Newman
Newport Coast Recovery
1216 W. Balboa Blvd.
Newport Beach, CA 92663

**RE: MARCH 24, 2009 APPEAL HEARING
OUR FILE NO: A09-00147**

Dear Mr. Newman:

This letter is to give notice that your appeal of the decision of a Hearing Officer, in which your application for Use Permit No. 2008-033, PA2008-104 was denied, is scheduled for hearing before the Newport Beach City Council at its regular meeting on March 24, 2009. A copy of the appeal filed with the City Clerk is enclosed. The City Council meeting will commence at 7:00 PM.

Staff reports regarding your appeal will be prepared and distributed by Wednesday, March 18, 2009. Council review of hearing officer decisions is limited to the administrative record of the hearing. If you have any additional correspondence you would like included as an attachment to the staff report, please provide it to my office before Wednesday, March 18.

Please contact my office at (949) 644-3131 if you have any questions.

Sincerely,

David R. Hunt
City Attorney

Encl.

cc: City Council, (w/Enc.)
Homer Bludau, City Manager (w/Enc.)

Appeal letter Newport Coast 03.11.09

ATTACHMENT C

**Newport Coast Recovery's Request for a Stay on its
Appeal of Denial of its Use Permit**

03-27-09 letter to Appellant



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

David R. Hunt, City Attorney

March 27, 2009

VIA FACSIMILE (202) 537-2986

Steven G. Polln, Esq.
3034 Tennyson Street, NW
Washington, DC 20015

RE: Newport Coast Recovery Use Permit Application Appeal
Matter No.: A09-00162

Dear Mr. Polln:

We are writing to confirm that the appeal of the Newport Coast Recovery application for a Use Permit is scheduled for hearing by the City Council of the City of Newport Beach at its April 14, 2009 meeting. The meeting will commence at 7:00pm and the matter is set for hearing for a time certain at 7:15pm; that will be the place and time for presenting your position with respect to the appeal.

The staff report in this matter must be finalized for routing no later than Tuesday, April 7, 2009. If you wish to have materials submitted to the Council along with the staff report please provide them to this office before close of business on that date.

Please note, this hearing date has been established pursuant to one request for continuance by the applicant/appellant, Newport Coast Recovery, and the City intends to move forward and act on the appeal on April 14, 2009 without further continuance.

Please feel free to contact our office if you have any questions or concerns.

Sincerely,

David R. Hunt
City Attorney
City of Newport Beach

CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT

Agenda Item No. 20
April 14, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Office of the City Attorney
David R. Hunt, City Attorney
949/644-3131 or dhunt@city.newport-beach.ca.us

SUBJECT: Appeal of Hearing Officer's Denial of Use Permit – 1216 West Balboa Blvd.
(Newport Coast Recovery, LLC)

ISSUE:

Did substantial evidence support the Hearing Officer's denial of Newport Coast Recovery, LLC's ("Newport Coast Recovery") application for a use permit, and, if not, what action should the City Council take pursuant to Newport Beach Municipal Code section 20.91A.040?

RECOMMENDATION:

We recommend the Council determine whether substantial evidence in the record supports the Hearing Officer's decision to deny Newport Coast Recovery's application for a use permit.

If the Council determines that substantial evidence supports the denial, the Council should sustain the decision of the Hearing Officer.

If the Council determines that substantial evidence in the record does not support the denial, the Council must then choose between one of three possible actions:

1. Reverse the Hearing Officer's decision and authorize the issuance of a Use Permit to Newport Coast Recovery at 1216 West Balboa Boulevard under such conditions the Council determines are appropriate based upon the evidence in the hearing record; or
2. Modify the Hearing Officer's decision denying a Use Permit to Newport Coast Recovery at 1216 West Balboa Boulevard based upon the evidence in the hearing record; or
3. Remand the matter to the Hearing Officer for further consideration, which remand shall include direction either to consider specific issues, or to conduct a *de novo* hearing on whether to grant, conditionally grant, or deny a Use Permit to Newport Coast Recovery at 1216 West Balboa Boulevard.

If the Council determines the Hearing Officer's findings are not supported by substantial evidence and directs action be taken based upon choosing one of the three options above, we recommend that a resolution be prepared setting out the determination of the Council and the findings supporting that determination and that the resolution be brought back to the Council for approval and adoption as the Council's final decision on the matter.

BACKGROUND:

Newport Beach Ordinance 2008-05 requires group residential uses that were in existence prior to February 22, 2008 and were not in conformity with the provisions of Ordinance 2008-05 to apply for, and receive, a Use Permit if they wished to remain in operation at their nonconforming location. (Newport Beach Municipal Code ("NBMC") section 20.91A.020) All existing group residential uses subject to this requirement must have either received a Use Permit by February 22, 2009 or be within the administrative process in order to remain in operation past that date. (NBMC section 20.62.090.) Newport Coast Recovery operates such a nonconforming use at 1216 W. Balboa Blvd. It applied for a Use Permit. The application was denied and an appeal of that denial was filed by the Applicant. That appeal is now before you for consideration and action.

1. Newport Coast Recovery's Use.

Newport Coast Recovery operates an alcohol or drug abuse recovery and treatment facility licensed by the state to treat up to 29 men at 1216 West Balboa Blvd. Newport Coast Recovery was operating this use at the time the City enacted Ordinance 2008-05.

The facility is located in a seven (7) unit apartment building that was constructed in 1949 when the property was zoned R-3. The property was reclassified from R-3 to R-2 zoning in 1989 along with other properties in the area via enactment of Ordinance 89-24. As a result, the subject structure is legal non-confirming and may continue at its location subject to the provisions of Chapter 20.62 of NBMC (Nonconforming Structures and Uses).

Newport Coast Recovery applied for a Use Permit within the time period required by Ordinance 2008-05.

2. Use Permit Application and Hearing.

Newport Coast Recovery originally submitted its application for a use permit on May 20, 2008. The application was not fully complete at the time of the original hearing of the application held on December 8, 2008. Staff recommended a continuance of the hearing to allow the applicant to complete the application. The Hearing Officer continued the hearing to January 12, 2008 after the taking of testimony.¹

The continued hearing went forward as scheduled on January 12, 2009. At that time the application was complete. Staff recommended that the Hearing Officer make each of the 11 required findings and grant the use permit subject to conditions that established strict operating standards and limited the facility's occupancy to 14 beds.

3. Hearing Officer Action.

¹ The full record of the proceedings at the Hearing Officer level is submitted to you as the "Hearing Record." Each page of the Hearing Record is numbered consecutively beginning with NCR 000001. References to the Hearing Record are denoted as "HR", with the bate stamp page number.

At the hearings, the Hearing Officer heard testimony from City staff, the applicant and the public. At the January 12, 2009 hearing, Mr. Allen denied the application and directed staff to prepare a Resolution of Denial of this Use Permit, stating that he could not make key findings relating to the preservation of the neighborhood's residential character and overconcentration (see discussion below).

A further hearing was held January 22, 2009 for the Hearing Officer to consider the proposed resolution supporting his denial of the application. (HR, NCR 00502.) The resolution, subject to finalized wording, was approved by the Hearing Officer at that hearing. (HR, NCR 00544- 00550.) The Resolution of Denial was then executed on February 4, 2009 (HR, NCCR and a copy of which is attached as Attachment "1."

The applicant filed this appeal of the Hearing Officer's denial pursuant to the provisions of NBMC Section 20.91A.040 in a timely fashion on February 11, 2009. A copy of the appeal is attached as Attachment "2."

4. Previous Council Agenda.

This appeal was originally noticed for hearing on the March 24, 2009 Council Agenda. Steve Polin, Esq., counsel for Appellant, requested a continuance of the matter due to an irreconcilable scheduling conflict. As a result, staff recommended a onetime continuance. The Council continued the hearing from March 24, 2009 to April 14, 2009. Staff gave notice of the continuance and of the fact that the matter would not be continued again.

DISCUSSION:

Appeals of Hearing Officer decisions on residential use permits are heard by the City Council. (NBMC Section 20.91A.040.) If appealed, the Council reviews the Hearing Officer's decision under a "substantial evidence" standard of review. If the Hearing Officer's decision is supported by substantial evidence, it must be sustained by the Council. If the Hearing Officer's decision is not supported by substantial evidence, the Council may reverse, modify and/or remand the matter to the Hearing Officer.

1. Was the Hearing Officer's Decision Supported by Substantial Evidence?

Appeals from decisions on residential use permit applications by Hearing Officers are unique under your Municipal Code. You are not given full authority to address the issues as you may choose "*de novo*." You are restricted to considering whether there is substantial evidence in the record of the proceeding that supports the Hearing Officer's determination. If there is substantial evidence, whether you agree with the determination or not, you must support the determination and deny the appeal. If there is not substantial evidence, then you cannot support the decision of the hearing officer and you should grant the appeal.

a. Unique Standard of Review

There are two different standards by which the Council makes decisions on appeals of use permit decisions under our Municipal Code, one for use permits in districts zoned for non-residential uses and one for districts zoned for residential uses such as this one.

(1) *For use permits in districts zoned for non-residential uses.*

NBMC Chapter 20.91 establishes procedures for approval, conditional approval or disapproval of use permits and variances in all areas of the City that are not zoned for residential use. Section 20.91.060 provides that decisions made by the Planning Commission are reviewed by the City Council on appeal, and that the procedures for such appeals are codified in NBMC Chapter 20.95. Chapter 20.95 states:

The public hearing on an appeal shall be conducted "de novo" in that the decision that has been appealed has no force or effect as of the date on which the appeal was filed. The appellate body is not bound by the decision that has been appealed or limited to the issues raised on appeal. The appellate body shall hear testimony of the appellant, the applicant, and any other interested party.

(NBMC Section 20.95.060(C).)

Therefore, the Council has acted as both the appellate body and the finder of fact in past hearings on appeals from decisions on use permits in areas zoned for commercial or industrial use. Public testimony and evidence not presented at the Planning Commission hearings has been properly presented to and considered by the Council in these *de novo* hearings.

(2) *For use permits in districts zoned for residential uses.*

When considering permits for uses conditionally permitted in *residential* districts such as this one, NBMC Chapter 20.91A establishes a different decision-making body and a distinctly different standard of appellate review by the Council. Applications for use permits in residential districts are reviewed and approved, conditionally approved or disapproved by a Hearing Officer rather than the Planning Commission, in accordance with the procedures set forth in Chapter 20.91A. Unlike appeals for use permits approved, conditionally approved or disapproved by the Planning Commission, NBMC section 20.91A.040 states:

Decisions of the Hearing Officer may be appealed to the City Council. *Notwithstanding Section 20.95.060, the standard of review shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing.* The City Council acting as the appellate body may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include either specific issues to be considered or a direction for a de novo hearing.

(NBMC Section 20.91A.040 [Italics added].)

When reviewing the decisions of a Hearing Officer, the Council is therefore required by NBMC section 20.91A.040 to apply the "substantial evidence test." This means that the Council shall uphold the decision of the Hearing Officer if there is substantial evidence in the hearing record as a whole to support the decision he made. Thus, the inquiry for the Council is whether the Hearing Officer abused his discretion when he denied the application for the permit.

While the concept of "abuse of discretion" is well defined in the law, it is a bit obtuse. In finding abuse of discretion, the City Council shall consider whether the Hearing Officer's action was arbitrary, capricious, in excess of his jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter of law. A prejudicial abuse of discretion is established if the Hearing Officer did not proceed in a manner required by law, or if his findings are not supported by substantial evidence in the record. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.)

City staff, the applicant and members of the public may make comments regarding this issue at the Council's hearing on the appeal. However, in making its determination the City Council is limited to a review of the hearing record from the proceedings below. It may neither substitute its views for those of the Hearing Officer, nor reweigh conflicting evidence presented to him. The decisions of the Hearing Officer are given substantial deference and are presumed correct. (*Id.*) The party seeking review (in this case, the applicant) bears the burden of showing that the Hearing Officer's decisions are not supported by substantial evidence in the record and the Council "must resolve reasonable doubts in favor of the administrative findings and determination." (*Id.*)

"Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." Such substantial evidence may include facts, and expert opinions supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence. (*Id.*) Although facts in the hearing record might lead the City Council to a conclusion different from the Hearing Officer's, the City Council may not overturn the Hearing Officer's decision on the grounds that an opposite conclusion based on the same set of facts would have been equally reasonable or more reasonable. It also may not weigh conflicting evidence and determine which side has the better argument. Instead, it must resolve all reasonable doubts in favor of the administrative finding and decision below. (*Berkeley Keep Jets Over the Bay Committee v. Board of Commissioners of the Port of Oakland* (2001) 91 Cal.App.4th 1344, 1356.)

In summary, the City Council may overturn the Hearing Officer's decision only if it finds that there are insufficient facts, or expert opinions supported by facts, in the hearing record to support the Hearing Officer's decision.

b. Discussion of Appellant's Specific Grounds for Appeal.

Appellant raises two areas of concern with the Hearing Officer's decision: (1) the asserted fact that Appellant "is the only 'Men's Only' primary care facility in Newport;" and (2) Appellant was essentially first in time on the Peninsula, and as such, it should not be responsible for the issues caused by concentration of this type of use in the neighborhood. The Council should consider these issues when analyzing the issue of substantial evidence supporting the Hearing Officer's decision.

c. Appropriate Relief.

Per NBMC Section 20.91A.040, the City Council may sustain, reverse or modify the decision of the Hearing Officer if it concludes that decision is not supported by substantial evidence. It may also remand the matter to the Hearing Officer for further consideration. If the City Council

remands the matter to the Hearing Officer, NBMC section 20.91A.040 requires that the Council either identify specific issues to be considered or direct that the Hearing Officer conduct a *de novo* hearing on the matter.

2. Environmental Review:

This application 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. The City Council's consideration of this Agenda Item does not require environmental review.

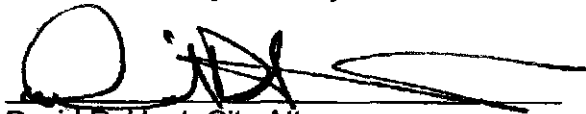
3. Public Notice:

This agenda item has been properly noticed as an appeal of a denial of a use permit application (published in the Daily Pilot and mailed to property owners within 300 feet of the subject property 10 days in advance of the hearing date) and in accordance with the Ralph M. Brown Act (72 hours in advance of the public meeting at which the City Council considers the item).

CONCLUSION:

Please determine whether the decision of the Hearing Officer should be sustained or reversed, modified, or reversed with conditions, or remanded for further consideration. If the Council reverses or modifies the Hearing Officer's decision, staff recommends that a resolution be prepared setting out and memorializing the Council's findings and conclusions, and will bring that resolution back for Council review, comment, and adoption at the first available meeting.

Submitted by:
Office of the City Attorney



David R. Hunt, City Attorney

Attachment 1: A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING WITH PREJUDICE USE PERMIT NO. 2008-033 TO ALLOW AN EXISTING GROUP RESIDENTIAL USE TO CONTINUE AT 1216 WEST BALBOA BOULEVARD, NEWPORT BEACH, CALIFORNIA (PA 2008-104)

Attachment 2: Appeal Notification; Application of Appeal Decision of the Hearing Officer

Attachment 3: Memorandum from Staff regarding Appeal of Hearing Officer Decision

Attachment 4: Hearing Record: Proceedings regarding Newport Coast Recovery, LLC, Application for Use Permit for 1216 West Balboa Boulevard, Newport Beach, California (UP 2008-033) (PA 2008-104)

ATTACHMENT 1

**Appeal of Hearing Officer's Denial of Use Permit
1216 West Balboa Blvd. (Newport Coast Recovery, LLP)**

***A RESOLUTION OF A HEARING OFFICER OF THE CITY OF
NEWPORT BEACH DENYING WITH PREJUDICE USE PERMIT
NO. 2008-033 TO ALLOW AN EXISTING GROUP RESIDENTIAL
USE TO CONTINUE AT 1216 WEST BALBOA BOULEVARD,
NEWPORT BEACH, CALIFORNIA (PA 2008-104)***

RESOLUTION NO. HO-2009-001

A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH DENYING WITH PREJUDICE USE PERMIT NO. 2008-033 TO ALLOW AN EXISTING GROUP RESIDENTIAL USE TO CONTINUE AT 1216 WEST BALBOA BOULEVARD, NEWPORT BEACH, CALIFORNIA (PA2008-104)

WHEREAS, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

WHEREAS, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

WHEREAS, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing group residential care facilities, except for state-licensed drug or alcohol treatment homes serving six or fewer clients and not operating integrally with other uses, must apply for use permits to remain in operation beyond February 2009; and

WHEREAS, in order to allow an existing group residential care facility to remain in operation, a Hearing Officer must find, following a noticed public hearing, that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met; and

WHEREAS, Newport Coast Recovery, located at 1216 West Balboa Boulevard ("Use Location") in Newport Beach, California is today a group residential care facility in an apartment complex housing seven units that is a state-licensed alcohol or drug residential treatment home for up to 29 persons (ADP License No. 300156AP); and

WHEREAS, Newport Coast Recovery ("Use") applied for Use Permit No. 2008-033 to continue its operations as an 18 bed facility under Ordinance No. 2008-05 within the applicable time period, and a noticed public hearing was held on Monday, December 8, 2008, at the Newport Beach City Council Chambers where public testimony was taken, including testimony from the applicant, and this hearing was continued to Monday, January 12, 2009, also at the Newport Beach City Council Chambers where more public testimony was received including testimony from the applicant; and

WHEREAS, both hearings were presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

WHEREAS, the Use Location is within the Nonstandard Subdivision Area as defined by Ordinance No. 2008-05; and

WHEREAS, proximate to the Use Location are the following uses referred to in NBMC §20.91A.060 (D):

1. Within 300 feet: Balboa Horizons Recovery Services (11 bed licensed treatment facility located at 1132 West Balboa Boulevard, with an approved use permit) is one block east of the Use Location, on the same side of the street.
2. Within 300 feet and across the street: Newport Elementary School for students in grades Kindergarden through 5th grade at located 1327 West Balboa Boulevard.
3. Within 750 feet: Christ Church's large (44 children capacity) state-licensed day care center located at 1400 West Balboa Boulevard.
4. Within 1250 feet: Outlets for alcoholic beverages are the American Legion Hall located at 215 W. 15th Street and Fry's Market located at 115 E. 15th Street.

NOW THEREFORE BE IT RESOLVED:

Section 1. That Finding No. 3 of NBMC §20.91.035 (A) can be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 3: 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 a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Findings A and B of the NBMC §20.91A.060 and as described in Section 2 below.

Section 2. That Findings A - C and Findings E - G of NBMC §20.91A.060 can be made for the following reasons:

NBMC §20.91A.060 Finding A: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:

1. No secondhand smoke can be detectable outside the property.

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 outside of the limits of the enclosed courtyard area is prohibited.

- 2. Operations of the facility must comply with state and local law, and the submitted management plan, including any modifications required by this Use Permit.**

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant 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.

- 3. A contact name and number must be provided to the City.**

Appropriate names and contact information numbers are provided within the application. Approval of a use permit for the facility would include a condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

- 4. No services requiring a license can be provided if the facility does not have a license for those services.**

The operation plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility.

- 5. 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.**

The facility is licensed for a maximum occupancy of 29 residents. The facility contains 9 bedrooms currently occupied by two persons per bedroom for a total of 18 residents. Approval of a use permit for the facility would include a condition of approval requiring the applicant to obtain an amended ADP license establishing a maximum resident occupancy in treatment of 14 persons, the equivalent of two persons per dwelling unit. This occupancy is consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050.

- 6. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**

Approval of a use permit for the facility would include a condition of approval requiring the applicant to consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification.

7. All individuals and entities involved in the facility's operation and ownership must be disclosed.

All employees and management personnel have been disclosed in the application documentation.

8. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

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 state violations associated with the facility's operations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010. While residents submitted evidence that the same operator managed an unlicensed adult recovery maintenance facility at 1219 West Balboa for a period of time, the City is not aware that this facility, which did not provide treatment onsite, was operated in violation of the law.

NBMC §20.91A.060 Finding B: 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 off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

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 if determined by the facility operator to be necessary (i.e. for use driving to and from work).

Newport Coast Recovery conducts regular family counseling sessions on weekends. Familial counseling for non-residents, while being an important part of the recovery of resident clients, can significantly impact on-street parking during busy weekends on the Balboa Peninsula. The use of on-street parking by

the facility on weekends impacts the availability of on-street parking for use by residents of the neighborhood.

This finding could be made if a condition of approval is made part of the Use Permit requiring the applicant to : (1) purchase 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) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles; (3) require that all on-site spaces remain permanently clear and open for parking; (4) require all staff members to use the on-site parking for personal cars and transport vans; and (5) regulate family counseling activities including prohibiting family members from using on-street parking when visiting the facility and requiring either the use of on-site parking by family members visiting the facility or the use by family members of alternative transportation modes to and from the facility.

NBMC §20.91A.060 Finding C: 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 lot 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 group 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 existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

NBMC §20.91A.060 Finding E: 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 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

than the narrower alley access at the rear of the building. Approval of a use permit would include a condition of approval restricting loading and unloading of transportation van passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double-parking in a traffic lane.

NBMC §20.91A.060 Finding F: 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.

NBMC §20.91A.060 Finding G: 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.

Section 3. That Findings Nos. 1, 2, and 4 of NBMC §20.91.035 (A) cannot be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 1: 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.

This proposed project is only partially 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 application for Use Permit 2008-033 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The intensity of the use, if limited to 14 residents housed in 9 bedrooms with 2 persons per bedroom, would be 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. However, the subject property's proximity to another residential care facility at 1132 West Balboa Boulevard, to a large state-licensed day care facility at 1400 West Balboa Boulevard, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is not in accord with all of the objectives of this code and the purposes of the district in which the site is located due to the proximity of the proposed use to another residential care facility at 1132 West Balboa Boulevard, to Newport Elementary School, to the large state-licensed day care facility, and to alcoholic beverage sales and service facilities; and therefore, this finding cannot be made.

NBMC §20.91.035 (A) Finding No. 2: 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. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in this location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Testimony by an adjacent neighbor and other area residents includes statements that residents at this facility have been disrespectful to others in the neighborhood, including playing music loudly despite frequent requests not to do so, littering, using profanity, and allowing excessive secondhand smoke to

permeate adjacent residences. From this testimony, it does not appear to the City staff that the operator can adequately control the facility's caseload of clients in a manner that allows the neighbors to have quiet enjoyment of their properties.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

NBMC §20.91.035 (A) Finding No. 4: 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 20.91A and conforms to all requirements of that Chapter.

This proposed project is only partially consistent with the purposes specified in Chapter 20.91A and does not conform to all the requirements of that Chapter. 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 application for Use Permit No. 2008-033 is in accord with the purpose and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The intended purpose of the code is to maintain the residential character of the neighborhood within which a facility is located, to reduce the potential for overconcentration of residential care facilities within a neighborhood, and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood and would result in an overconcentration of residential care facilities within the neighborhood.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300

Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between each side of Balboa Boulevard. However, the Hearing Officer can extend beyond smaller streets like 12th and 11th Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3.) to achieve a 617-foot block standard.

Within the 617-foot block where the proposed use is located there is already one 11 bed residential care facility (Balboa Horizons). The proposed use located at 1216 West Balboa Boulevard, within the same block as Balboa Horizons, would result in an overconcentration of residential care facilities within the neighborhood.

The subject property's proximity to another residential care facility at 1132 West Balboa, to a large state-licensed day care facility at 1400 West Balboa, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is only partially consistent with the purpose of the code and does not conform to all the requirements of Section 20.91A; and therefore, this finding cannot be made.

Section 4. That Finding D of NBMC §20.91A.060 cannot be made for the following reasons:

NBMC §20.91A.060 Finding D: 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:

1. 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;
2. 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

2. **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**
3. **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 subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard, and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

The subject property is proximate (within 1250 feet) to two outlets for alcoholic beverages (American Legion Hall at 215 15th Street and Fry's Market at 115 15th Street) both within walking distance from the facility which allows residents of the use convenient access to alcohol sales and service which can affect the ability of the use to fully operate as an alcohol rehabilitation facility.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates 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 Hearing Officer may establish a block length for the mid-Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between blocks on each side of Balboa. However, the Hearing Officer can extend beyond smaller streets like 12th and 11th Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3) to achieve a 617-foot standard.

The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood. Within the 617-foot block where this use is located there is already one 11 bed residential care facility (Balboa Horizons).

Section 5. The Hearing Officer hereby denies with prejudice Use Permit No. 2008-033.

Section 6. The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED this 4th day of February, 2009.

By: *Thomas W. Allen*
Thomas W. Allen, Hearing Officer

ATTEST:

Daniel L. Brown
City Clerk



ATTACHMENT 2

**Appeal of Hearing Officer's Denial of Use Permit
1216 West Balboa Blvd. (Newport Coast Recovery, LLP)**

***Appeal Notification; Application of Appeal Decision of the
Hearing Officer***



February 4, 2009

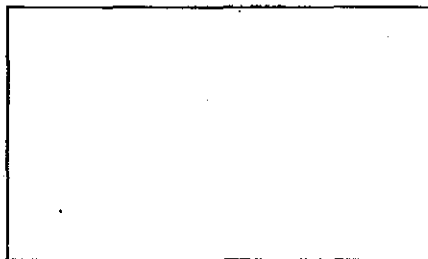
APPEAL NOTIFICATION

I, Michael Newman, owner or operator of Newport Coast Recovery
hereby file this appeal of the City of Newport Beach' Hearing Officer's decision on
02/04/09 relating to the facility noted above.


Signature

2/11/09
Date

Date Stamp



CITY OF NEWPORT BEACH

APPLICATION TO APPEAL DECISION OF THE HEARING OFFICER

Project No. PA PA 2008-104 Application No. _____

Name of Appellant Newport Coast Recovery Phone 949-673-3097

Site Address 1216 W. Balboa Blvd

Date of Hearing Officer's decision 1/12, 20 09

Name of Applicant Newport Coast Recovery for _____

(Description of application filed with Hearing Officer) _____

Reasons for Appeal ① Newport Coast Recovery is the only "MENS ONLY" primary care facility in Newport. OTHER FACILITIES require 30 days of primary care prior to entrance. ② Newport Coast was operating on the Peninsula prior to "ALL" of the other facilities, i.e. ... OCEAN Recovery, Balboa Horizons. The over-concentration followed us.

Signature of Appellant _____ Date 2/24/09

Received by _____ Fee received _____ Date _____

FOR OFFICE USE ONLY

Hearing Date An appeal shall be scheduled for a hearing before the City Council within sixty (60) days of the filing of the appeal unless both applicant and appellant or reviewing body consent to a later date (NBMC Sec. 20.95.060).

- NOTE: Please submit:
• 11x17 set of plans - 12 each
• One set of mailing labels (Avery 5960) for property owners within 300 ft. radius of subject property

APPEALS: Municipal Code Sec. 20.95
Appeal Fee: \$1,550.00 pursuant to City Council Resolution 2008-79

(Deposit funds with Cashier in Account #2700-5000)

Attachment 3



CITY OF NEWPORT BEACH

MEMORANDUM

TO: Mayor and Members of the City Council

FROM: Dave Kiff, Assistant City Manager
Janet Brown, Associate Planner

DATE: April 8, 2009

RE: **Newport Coast Recovery (1216 West Balboa) Appeal – Staff Analysis and Recommendation Regarding Hearing Officer's Decision**

The two of us were present and served as staff (along with contract planner Debby Linn) for Hearing Officer Tom Allen's decision on the Use Permit request by Newport Coast Recovery (1216 West Balboa). These hearings were held on December 8, 2008 and January 12, 2009. The hearing officer decided that the Use Permit be denied.

This memorandum includes: (I) a discussion of the Use Permit Hearings and the Hearing Officer's decision on January 12, 2009; and (II) staff's analysis of the two arguments made by the appellant in his appeal. On the first item, we conclude that there is substantial evidence in the record to support the Hearing Officer's decision. On the second item, we offer our responses to the appellant's arguments for the Council's consideration.

I. USE PERMIT HEARINGS AND HEARING OFFICER'S DECISION

In order for a hearing officer to issue a Use Permit to allow an existing group residential care facility to remain in operation, he or she must be able to make each one of eleven (11) findings following a noticed public hearing. He or she must find that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met. These findings are summarized in the Findings Chart at the end of this memorandum.

As shown in the Resolution of Denial (see Attachment 1 to the staff report), the hearing officer made seven (7) of the 11 required findings. This memorandum does not discuss those findings, because they are presented in the Resolution. The remaining four are discussed herein:

#1 – NBMC §20.91.035 (A) Finding No. 1: 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. HEARING OFFICER DETERMINATION: This finding cannot be made.

Discussion. The context that the Hearing Officer used in regards to this finding (that the proposed use is in accord with the objectives of this code) was the location of Newport Coast Recovery on the Peninsula. We gave him information to show that these uses, each of which are called out in NBMC §20.91A.060(D) are proximate to Newport Coast Recovery and could be affected by or affect the operation of the subject use:

- Within 300 feet: Balboa Horizons Recovery Services (11 bed licensed treatment facility located at 1132 West Balboa Boulevard, with an approved use permit) is one block east of the Use Location, on the same side of the street.
- Within 300 feet and across the street: Newport Elementary School for students from Kindergarten through 5th grade at located 1327 West Balboa Boulevard.
- Within 750 feet: Christ Church's large (44 children capacity) state-licensed day care center located at 1400 West Balboa Boulevard.
- Within 1250 feet: Outlets for alcoholic beverages are the American Legion Hall located at 215 W. 15th Street and Fry's Market located at 115 E. 15th Street.
- Within 500 feet: Ocean Recovery's Men's Facility (ADP-licensed for 22 persons, 1115 West Balboa). This facility is currently in the Use Permit process.
- Within 40 feet: Ocean Recovery's pending "6 and Under" ADP-licensed facility for women dually-diagnosed with eating disorders and alcohol or drug dependency at 1217 West Bay.

The Hearing Officer determined that 1216 West Balboa's proximity to Balboa Horizons, to Christ Church's state-licensed day care, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages made the use incompatible with the surrounding residential character of the neighborhood. Diagram A on Page 3 shows the proximity of other uses.

Staff believes that the information in the record is supportive of the Hearing Officer's determination that the proposed use would be incompatible with the surrounding residential character of the neighborhood, and therefore his determination that this first Finding could not be made is justified by the record.

#2 – NBMC §20.91.035 (A) Finding No. 2: 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. HEARING OFFICER DETERMINATION: This finding cannot be made.

Discussion. The Hearing Officer, as well as staff, viewed aspects of this Finding as being similar to Finding #1 above. As discussed in the Resolution of Denial, the City's 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. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in this location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Diagram A – Newport Coast Recovery’s Location Map



Neighbors and residents testified at the public hearings that:

- Traffic generated by this use is excessive (*Bacich, 12-08-08, at page 41, lines 15-18 – “I have been in the garage working, and in a 45-minute period, there [sic] was 18 vehicles that came up [to Appellant’s property]. And several of them were white vans, so they must have been picking up [residents] quite frequently”*); (*Bacich 01-12-09, Page 23, lines 24-25, page 24, lines 1-5 – “One Saturday, while we worked in the garage over there when we were turning tenants, we counted, I believe, 16 – I have it written down somewhere at home – 16 vehicles coming and going in a couple-hour period from the back alley [behind Appellant’s property]”*).
- The Applicant’s vehicles block alleyways and driveways (*Bacich, 12-08-08, Page 41, at lines 20-22 – And sometimes there would be multiple cars blocking the alleyway while people ran in and out. So the car transport is a factor”*); (*Schoonover, 12-08-08, Page 61, lines 7-11 – “They bring your vans over, drop off all their residents right in front of my house. The van also stops right in front of my property, which blocks my tenants from getting out of the garage, in and out”*).

- The Applicant uses the neighbors' trash cans when their own are full, and residents at the facility litter the neighborhood with cigarette butts (*Bacich, 12-08-08, Page 42, lines 10-16 – "They do have trash pick-up, but somehow we always seem to get cigarettes and different things in the trash cans of our tenants . . . [O]ne of the [sic] time we were working at our place, and opened up - - because all the trash cans were full, and one as full as the lasagna and probably a couple - - hundreds of cigarettes butts"*);
- The Applicant has a history of doing work without permits, jeopardizing the safety of residents and neighbors, particularly given the "zero lot lines" in this neighborhood (*Myers, 12-08-08, Page 56, lines 7-22 – "what they were doing is converting one of the garages into - - originally it was a gym. Now, I guess, it's a laundry room or whatever. But they were actually moving a gas pipe to a washer and dryer without the proper City permits. So that type of information, in addition to, you know, the smoking and everything else, and the proximity of our houses, gives me an extreme amount of uneasiness. Because there is a potential - - not potentiality, but there is a probability of fire, and it actually occurred at that facility"*);
- Profanity spoken by residents of NCR and profanity in music played loudly at NCR (*Myers, 12-08-08, Page 57, lines 10-12 – "I mentioned earlier about my two young kids, ages 9 and 7. Well, there's constant profanity that occurs from the facility"*); (*Myers, 01-12-09, Page 29, lines 5-9 -- "So our lot is, what, 30 by 90. So, 90-plus feet away, my house is shaking from this music. The music was full of profanity. I don't even know if it's rap. It was just hideous music and profanity and everything"*); (*Schoonover, 12-08-08, Page 61, line 25, Page 62, line 1 – "they use profanity all day long"*);
- Secondhand smoke (*Myers, 01-12-09, Pages 31, lines 21-25, Page 32, line 1-3*); (*Schoonover, 12-08-08, lines 12-14 – "Also, there's continuous, continuous smoking. I mean, there's clouds and clouds of cigarettes"*).
- Tenant Impacts. Additionally, the neighbor whose duplex abuts Appellants' complained that he had lost tenants because of the noise and profanity coming from Newport Coast Recovery. The loss imposed a direct financial burden on him. (*Myers, 12-08-08, Page 63, lines 5-7 – "I've lost tenants in my rental unit because of the proximity and the noise and profanity coming from this place. So I've had a financial burden"*).

The citations above refer to certified transcripts of the two hearings for Newport Coast Recovery, held December 8, 2008 and January 12, 2009.

From this testimony, it did not appear to the City staff that the operator can adequately control the facility's ADP-allocated caseload of clients (29) in a manner that allows the neighbors quiet use and enjoyment of their homes. While staff recommended that the Hearing Officer consider a condition limiting the client caseload to fourteen (14), the facility has been operating at this lower level (or below) for a significant period of time. Neighbors' testimony led the Hearing Officer to believe that, even at a lower bed count, the Applicant may not be capable of properly managing the facility.

Further, and as noted, the subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and engage in offensive and

disruptive behaviors incompatible with nearby school and daycare uses. In fact, one 35-year Newport Beach resident testified she believed the conditions in the neighborhood had deteriorated so substantially that she removed her children from Newport Beach Elementary. (*Deininger, 12-08-08, Page 44, lines 1-6* (“Mr. Allen: ‘You took your children out of Newport Elementary because of the conduct of the - -’ Ms. Deininger: ‘Because of the atmosphere there.’ Mr. Allen: ‘- - rehab facilities?’ Ms. Deininger: ‘Yes.’”). Staff believes the information in the record supports the Hearing Officer’s determination that the operator’s inability to effectively manage and control the proposed use would: (a) adversely impact the neighbors’ quiet use and enjoyment of their homes; as well as (b) negatively affect other nearby uses. Staff believes the Hearing Officer’s determination is justified by the record.

#3 – NBMC §20.91.035 (A) Finding No. 4: 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 20.91A and conforms to all requirements of that Chapter. HEARING OFFICER DETERMINATION: This finding cannot be made.

Discussion. The Hearing Officer’s discussion of this Finding centers on NBMC §20.91A.060 (D) again, similar to Finding #1. Staff concluded it was appropriate to apply the American Planning Association’s (“APA”) standard to this application. The APA Standard reads as follows:

“Finding #5. Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block. For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents’ normalization would be compromised. Such clustering would create a de facto social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood.

“Normalization and community integration require that persons with disabilities be absorbed into the neighborhood’s social structure. The existing social structure of a neighborhood can accommodate *no more than one or two group homes on a single block* (emphasis added). Neighborhoods seem to have a limited absorption capacity for servicedependent people that should not be exceeded. Social scientists note that this level exists, but they can’t quite determine a precise level. Writing about servicedependent populations in general, Jennifer Wolch notes, ‘At some level of concentration, a community may become saturated by services and populations and evolve into a servicedependent ghetto.’”

From the APA’s Policy Guide on Community Residences, September 22, 1997

The City has incorporated the APA Standard of “no more than one or two group homes on a single block” into NMBC §20.91A.060 (D)(3)).

The Hearing Officer’s next determination in this discussion was to figure out what constitutes a block. Newport Coast Recovery is located in the mid-Balboa Peninsula area which, as defined by NBMC §20.91A.060 (D)(2) is a part of the *Nonstandard Subdivision Area* characterized by properties with short setbacks and short blocks. Per NBMC §20.91A.060 (D)(2), the Hearing Officer can establish a block length for the mid-Balboa Peninsula area. He chose a median block length of 617 feet, as he was permitted to do per NBMC §20.91A.060 (D)(3).

While the NBMC defines a block as an area bounded on all sides by streets (NBMC §20.03.030), the Hearing Officer may use NBMC §20.91A.060 (D)(3) to extend a block beyond smaller streets like 12th and 11th Streets in an effort to “eliminate the differences in block lengths” to achieve a 617-foot block standard. He did so in this instance, as follows below.

During the hearing, the Hearing Officer noted that within the 617-foot block where the proposed use is located there is already one 11-bed residential care facility (Balboa Horizons). He then found that the proposed use located at 1216 West Balboa Boulevard, within the same extended 617’ block as Balboa Horizons, would result in an overconcentration of residential care facilities within the neighborhood. He used this information to direct staff to prepare a resolution that this overconcentration showed the proposed use was inconsistent with the purposes specified in Chapter 20.91A and would not conform to all requirements of that Chapter.

#4 – NBMC §20.91A.060 Finding D: 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:

- 1. 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;**
- 2. 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**
- 3. 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.**

Discussion. The Hearing Officer's interpretation of this fourth Finding mirrored that of the previous finding, and staff does not believe it necessary to restate the argument here. Staff believes that there is sufficient evidence in the record to conclude that the Hearing Officer's action to conclude that this Finding could not be made is justified by the record.

II – APPELLANT’S ASSERTIONS

The applicant, as represented by Mr. Mike Newman, owner of Newport Coast Recovery, has asserted the following in his appeal:

- That a reason to overturn the Use Permit denial is that “Newport Coast was operating on the Peninsula prior to ‘ALL’ of the other facilities (i.e. Ocean Recovery, Balboa Horizons). The overconcentration followed us.” Verbally, Mr. Newman further asserted that because Newport Coast Recovery’s Use Permit application was heard following an application for Balboa Horizons Recovery at 1132 West Balboa Boulevard, the approval of the Balboa Horizons Recovery use permit (11 persons, licensed treatment, women) caused the hearing officer to consider Newport Coast as the second recovery facility on a block that includes Balboa Horizons’ facility.

Discussion: The Ordinance does not discriminate against nor affirmatively benefit operations that have been in place longer than others. Mr. Newman’s application and that of Balboa Horizons were submitted at approximately the same time, but Balboa Horizons’ application was completed earlier than Mr. Newman’s application. Staff did not orchestrate the hearings to prejudice one applicant over another – staff scheduled use permit hearings when an application was deemed complete, and Balboa Horizons’ application was complete earlier than Newport Coast’s application.

- That denying a Use Permit to NCR would adversely impact treatment, because “Newport Coast Recovery is the only ‘men’s only’ primary care facility in Newport (Beach). Other facilities require 30 days of primary care prior to entrance.”

Discussion: This assertion is confusing to staff. Most “primary care” residential facilities provide what are called “non-medical detoxification services” in the first 30 days of recovery. Newport Coast Recovery’s ADP License classification is “RES”, not “RES-DETOX.” That leads staff to infer that State ADP has not classified Newport Coast Recovery as having met additional regulatory requirements required by ADP (Title 9, CCR, Section 10572(b)(1)) to provide non-medical detoxification services.

Assuming that NCR does provide “primary care” legally, the appellant’s assertion assumes a specific benefit to the disabled that is provided at Newport Coast Recovery versus other ADP-classified “RES-DETOX” or other primary care facilities nearby. These other facilities that are licensed to provide primary care and have, apparently, “met additional regulatory requirements,” include:

- Adelante Recovery (Corona del Mar)
- Connor Ranch (Huntington Beach)
- First House (Costa Mesa)
- Hoag Memorial Hospital’s Chemical Dependency Unit (Newport Beach)
- Miramar Recovery (Laguna Beach)
- Narconon Southern California (Newport Beach, albeit slated for abatement)
- Orange County Detox (Costa Mesa)
- Pat Moore Foundation (Costa Mesa)
- Pur Detox (Laguna Beach)
- The Mainstream Group (Dana Point)
- Dr. Willa’s House (San Clemente)

- South Coast (Dana Point)
- Spencer Recovery Centers (Laguna Beach)

The applicant is correct in part (if NCR is actually licensed to provide primary care [within the first 30 days of recovery]) that NCR's focus on male clients and its location in Newport Beach is fairly unique, as only three of the above-listed facilities (Orange County Detox in Costa Mesa, Dr. Willa's House in San Clemente, and The Mainstream Group in Dana Point/Capo Beach) are targeted towards men only.

However, the applicant has not provided the City with any specific treatment benefit provided at Newport Coast that is unavailable at other facilities, whether in Newport Beach, San Clemente, Dana Point/Capo Beach, or Costa Mesa. Therefore: (a) the applicant's statement that the use permit's denial adversely impacts treatment is not found to be supported by any evidence in the record; and (b) the City seeks clarification on whether NCR is providing non-medical detoxification services within the first 30 days of recovery that are fully permitted by ADP.

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FINDINGS CHART

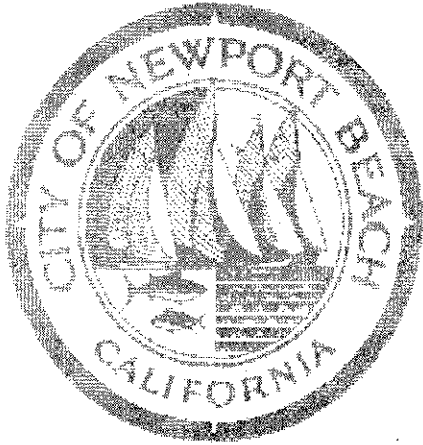
FINDINGS REQUIRED TO APPROVE A GROUP RESIDENTIAL USE PERMIT

NBMC Code Section	What the Finding Says, Generally
§20.91.035 – A.1.	The use's location is in accord with the objectives of the Code and the purposes of the district. Finding encompasses (1) whether this application is appropriate in this District; and (2) whether or not it will result in overconcentration.
§20.91.035 – A.2.	That the use and proposed conditions will allow the use to be consistent with the General Plan and not be detrimental to public health, safety, peace, morals, comfort, or welfare of persons residing in or adjacent to the neighborhood of the use, and won't be detrimental to the properties or improvements in the vicinity or to the general welfare of the City.
§20.91.035 – A.3.	That the proposed use complies with the provisions of the code.
§20.91.035 – A.4.	That the proposed use complies with Chapter 20.91A
§20.91A.060 - A	That the use conforms to Section 20.91A.050 relating to operations and management standards (smoking, licensure, residents per bedroom, etc.)
§20.91A.060 – B	Project includes sufficient on-site parking, traffic mitigated to a level of insignificance.
§20.91A.060 – C	Property and structures physically suited to accommodate the use.
§20.91A.060 – D	Use will be compatible with the character of the neighborhood and won't create an overconcentration of residential care uses.
§20.91A.060 – E	Buses and vans won't generate traffic substantially greater than that normally generated by residential activities in the surrounding area.
§20.91A.060 – F	Delivery of goods is made within compatible hours and won't adversely impact the neighborhood.
§20.91A.060 – G	Trash collection – commercial if necessary and done within hours that do not adversely impact the neighborhood.

ATTACHMENT 4

**Appeal of Hearing Officer's Denial of Use Permit
1216 West Balboa Blvd. (Newport Coast Recovery, LLP)**

Hearing Record: Proceedings regarding Newport Coast Recovery, LLC, Application for Use Permit for 1216 West Balboa Boulevard, Newport Beach, California (UP 2008-033) (PA 2008-104)



**Hearing Record: Proceedings regarding
Newport Coast Recovery, LLC.**

**Application for Use Permit for 1216 West
Balboa Boulevard, Newport Beach, CA**

(UP 2008-033) (PA 2008-104)

**NEWPORT COAST RECOVERY
ADMINISTRATIVE HEARING RECORD**

Bate Stamp Number	Description	Group Residential UP Hearing Date
NCR 00001 thru NCR 00002	Agenda	12-08-08
NCR 00003 thru NCR00080	Staff Report (w/ Exhibits 1-7)	12-08-08
NCR 00081 thru NCR 00098	Correspondence to Hearing Officer	12-08-08
NCR 00099 thru NCR 00107	Mr. Kiff's Power Point Presentation	12-08-08
NCR 00108 thru NCR 00221	Transcript	12-08-08
NCR 00222 thru NCR 00223	Agenda	01-12-09
NCR 00224 thru NCR 00390	Staff Report (w/ Exhibits 1-5)	01-12-09
NCR 00391 thru NCR 00400	Correspondence to Hearing Officer	01-12-09
NCR 00401 thru NCR 00409	Mr. Kiff's Power Point Presentation	01-12-09
NCR 00410 thru NCR 00500	Transcript	01-12-09
NCR 00501 thru NCR 00503	Agenda	01-22-09
NCR 00504 thru NCR 00510	Correspondence to Hearing Officer	01-22-09
NCR 00511 thru NCR 00520	Proposed Resolution	01-22-09

**NEWPORT COAST RECOVERY
ADMINISTRATIVE HEARING RECORD**

Bate Stamp Number	Description	Group Residential UP Hearing Date
NCR 00521 thru NCR 00531	Revised Resolution Presented at Hearing	01-22-09
NCR 00532 thru NCR 00539	Mr. Kiff's PowerPoint Presentation	01-22-09
NCR 00540 thru NCR 00568	Transcript	01-22-09
NCR 00569 thru NCR 00593	Signed, Final Resolution	02-04-09 (Note: Date Resolution Signed)

**GROUP RESIDENTIAL USE PERMIT HEARING (12/8/08):
AGENDA**

NCR 00001

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, 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 operate 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.

**GROUP RESIDENTIAL USE PERMIT HEARING (12/8/08):
STAFF REPORT (W/ EXHIBITS 1-7)**

NCR 00003

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

December 8, 2008
Agenda Item 1

TO: Thomas W. Allen, Hearing Officer

SUBJECT: Newport Coast Recovery, LLC
1216 W. Balboa Boulevard
• Use Permit, UP 2008-033 (PA2008-104)

APPLICANT: Newport Coast Recovery, LLC

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 operate 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 public hearing, staff recommends the Hearing Officer continue the public hearing on Use Permit 2008-033 to a date certain and direct the applicant to submit all required application materials to the City no later than 21 days prior to the scheduled hearing date.

NCR 00004

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

December 8, 2008
Agenda Item 1

TO: Thomas W. Allen, Hearing Officer

SUBJECT: Newport Coast Recovery, LLC
1216 W. Balboa Boulevard
• Use Permit, UP 2008-033 (PA2008-104)

APPLICANT: Newport Coast Recovery, LLC

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 operate 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 public hearing, staff recommends the Hearing Officer continue the public hearing on Use Permit 2008-033 to a date certain and direct the applicant to submit all required application materials to the City no later than 21 days prior to the scheduled hearing date.

NCR 00005

1

BACKGROUND

Ordinance 2008-05

In response to a rapidly increasing concentration of Group Residential Uses within the City and the negative secondary impacts these uses potentially can have on residential neighborhoods in which they are located, the City Council adopted Ordinance 2008-05 in January 2008. The ordinance identifies the following adverse impacts that typically accompany this type of use:

- Changes in the residential character of the neighborhood
- Noise
- Secondhand smoke
- Profanity and lewd speech
- Traffic congestion
- Excessive trash produced
- Excessive debris on surrounding sidewalks

The ordinance is intended to protect the integrity of the City's residential areas. The fundamental precept of the City's Zoning Code relative to residential zones is that individual dwelling units are intended for the occupancy and use of single housekeeping units. By adopting the ordinance, the City changed the way it regulates residential uses that are not single housekeeping units. Group living arrangements such as boarding houses, rooming houses, dormitories, fraternities and sororities, and other non-single housekeeping units were found to be incompatible with the nature and character of the City's residential districts. Residential care facilities such as sober living homes and licensed recovery facilities are not defined in the Newport Beach Municipal Code ("NBMC") as group residential uses and are potentially permitted in the City's residentially zoned areas.

The ordinance prohibits any new residential care facility that is not a single housekeeping unit from being located in the R-1, R-1.5 and R-2 Districts, and exempts only facilities that are licensed by the State of California's Department of Alcohol and Drug Programs ("ADP") for six or fewer residents which are not operated integrally with other facilities. Any proposed new facility that is not licensed by ADP for six or fewer residents and is not a single housekeeping unit must first obtain a use permit and can only be located in a Multi-Family Residential ("MFR") District.

Some existing group residential care facilities in the City became non-conforming uses after February 20, 2008, because they were not single housekeeping units and did not have use permits. All existing non-conforming group residential care facilities became subject to the ordinance's use permit process and were required to apply for a use permit by May 22, 2008, to continue operation.

Under the ordinance, Newport Coast Recovery, LLC became a nonconforming use. On May 20, 2008, Newport Coast Recovery, LLC submitted a use permit application to continue the operation of the existing residential care facility located at 1216 West Balboa Boulevard consistent with the requirements of Chapter 20.91 of the NBMC. A copy of the Newport Coast Recovery application as submitted is attached as Exhibit 1.

1216 West Balboa Boulevard

The existing structure is a seven (7) unit apartment building that was constructed in 1949, when the subject property was zoned R-3. The property was reclassified from R-3 to R-2 in 1989 (Ordinance 89-24) along with other properties in this area. As a result, the subject structure is a nonconforming structure, which may be continued subject to the provisions of Chapter 20.62 (Nonconforming Structures and Uses) of the NBMC.

DISCUSSION

Project Setting

The project site is located adjacent to and on the north side of West Balboa Boulevard between 12th Street and 13th Street, on the Balboa Peninsula. Balboa Boulevard provides primary access to the project site with secondary access provided from a rear public alley that also intersects with 12th Street and 13th Street.

As stated above, the project site is developed with an existing seven (7) unit residential apartment structure. 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.

Project Description

The proposed project is a request for approval of a Group Residential Use Permit to allow the operation of an existing residential care facility. The facility is operated by Newport Coast Recovery, LLC, 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 total occupancy of 29 persons.

Status of Application

The Group Residential Use Permit application submitted by Newport Coast Recovery, LLC was incomplete at the time the public hearing was scheduled and this report was prepared. The use of the project site is subject to abatement on February 20, 2009, pursuant to Ordinance 2008-05. By scheduling the application for a public hearing, the City was not deeming the application complete. The intent of scheduling this hearing is to provide the applicant with an opportunity to obtain approval of a use permit prior to February 20, 2009.

Since scheduling the public hearing, the applicant has made an effort to provide some of the required materials in support of the application for a use permit. Following in sequential order are staff's efforts to communicate with the applicant and process the application in order to deem it complete and schedule it for a public hearing.

On June 16, 2008, a "Notice of Incomplete Application" was sent to the applicant describing the materials required by the City in order for the application to be deemed complete and scheduled for a public hearing (Exhibit 2).

On August 4, 2008, the City sent a follow up letter (Exhibit 3) to the applicant informing the applicant that failure to obtain a use permit for the group residential use of the property would render the use non-conforming and subject to abatement by February 20, 2009. The letter also requested the required application materials described in the June 16, 2008, "Notice of Incomplete Application" be submitted by September 2, 2008. In response to this letter, staff received a telephone call from a representative of the applicant in which the caller requested an extension of time. The caller was directed to submit a written request to the City, but the City never received a written confirmation of the request for a time extension.

On October 23, 2008, staff contacted the applicant's representative by telephone regarding the status of the application and the anticipated schedule for submittal of the requested application materials. At that time the applicant's representative stated the required application filing fee would be submitted by the end of October 2008, and the remaining materials would be submitted by the first week of December 2008. Staff prepared an email correspondence to the applicant's representative summarizing the October 23, 2008, telephone conversation (Exhibit 4); however, staff did not receive a response to this correspondence.

On November 14, 2008, the applicant submitted the required application fee, and on November 25, 2008, the applicant submitted a portion of the required application materials in response to the "Notice of Incomplete Application" dated June 16, 2008. The additional materials received by the City from the applicant are included as Exhibit 5.

After reviewing the materials submitted, staff has determined that the application is still incomplete and that the following materials, as requested in the June 16, 2008, "Notice of Incomplete Application" remain to be submitted in order for staff to deem the application complete:

1. A signed affidavit from the property owner authorizing the submittal of the application for a Group Residential Use Permit.
2. A site plan that shows the facility's building footprint and property lines, property lines and building footprints on the parcels immediately adjacent to the subject property including notes as to the existing use on adjacent parcels.
3. A copy of a Preliminary Title Report that is less than 60 days old that identifies the legal description of the property.
4. The approximate times of departure and return of travel destinations indicated on the route maps submitted indicating the transit and travel routes that will be used to transport clients off-site.
5. A building diagram and floor plan of all rooms intended for residents' use identifying the number of residents per bedroom and the location and the number of beds for all residents, including the location of beds for infants and other non-ambulatory persons. Any rooms identified as bedrooms must comply with the definition of a bedroom pursuant to NBMC Section 20.03.030 and must be consistent with permitted floor plans on file with the City of Newport Beach Building Department.
6. A statement as to whether or not the facility disposes of medical and/or bio waste and, if so, a plan for disposal of these materials.

The Group Residential Use Permit Application also requires the submittal of a fire clearance from the Newport Beach Fire Marshal. In this case, the applicant provided a copy of the State ADP Form 850 dated January 6, 2004. Independent of the use permit application requirements, the Newport Beach Fire Marshal sent letters (Exhibit 6) to operators of residential care facilities with seven (7) or more clients in a single building in early and mid 2008. The Fire Marshal requested a comprehensive code analysis be prepared and submitted for the review of the facility in relation to Building and Fire Code provisions applicable to the Group R4 Occupancy Classification (*Group homes, licensed or unlicensed, providing treatment and/or recovery for more than 6 clients in a building*). To date, the applicant has not provided the Fire Marshal with the requested code analysis. Therefore, the Fire Marshal is unable to confirm that the structure is physically suited for the use.

Analysis

The application for Use Permit 2008-033 is incomplete at this time, and for this reason, staff is unable to prepare an analysis of the project proposal. The items remaining to be submitted are standard submittal requirements of a use permit application. The project background and status of the application are presented to the Hearing Officer in the event the Hearing Officer determines that action on the application is appropriate at this time.

The Hearing Officer is designated to approve, conditionally approve or disapprove the application. In order to approve or conditionally approve the application, the Hearing Officer must make the following findings:

1. 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.
2. 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.
3. 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.
4. 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. Operations must comply with state and local law, the submitted management plan, including any modifications required by this Use Permit.
 - c. A contact name and number be provided.
 - 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 2 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.
5. The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.
 6. The property and existing structures are physically suited to accommodate the use.
 7. 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.

8. 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.
9. 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.
10. 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.

Conclusion

As stated earlier in this report, use of the project site as a residential care facility may be subject to abatement by February 20, 2009. Pursuant to Section 20.62.090 of the NBMC, abatement proceedings for non-conforming residential care facilities may commence, unless the owner or occupant of the residential care facility has timely applied for a use permit or reasonable accommodation pursuant to the provisions of Ordinance 2005-08 (Chapter 20.91A or Chapter 20.98 of the NBMC) and is diligently pursuing that administrative process as determined by the Planning Director.

Staff recommends that the Hearing Officer continue the public hearing on Use Permit No. 2008-033 to a date certain and direct the applicant to submit all remaining required application materials to the City of Newport Beach Planning Department no later than 21 days prior to the scheduled public hearing. This should provide the applicant sufficient time to secure the remaining submittal items and submit them to the City.

Alternatives

The Hearing Officer may take one of the following alternative actions on the application:

1. Conditionally approve Use Permit 2008-033 pursuant to making the findings stated in this report, or
2. Deny Use Permit 2008-033 based on the information provided to date.

Concerns from Residents

The City Manager's Office has received correspondence (Exhibit 7) from a resident expressing concern regarding residential care facilities in his neighborhood. Specific issues raised are density, proximity of the residential care facility to Newport Elementary School, parking, and second-hand smoke.

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:

Submitted by:


Debby Linn
Consulting Planner


Dave Kiff
Assistant City Manager

EXHIBITS

1. Project application
2. June 16, 2008 Notice of Incomplete Application
3. August 4, 2008 Letter to Applicant
4. October 23, 2008 email correspondence
5. Materials submitted November 25, 2008
6. Correspondence from the Newport Beach Fire Marshal
7. Resident Correspondence

Exhibit No. 1
Project Application

NCR 00014 //

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NCR 00015

12

PA2008-104 for UP2008-033
1220 WEST BALBOA BOULEVARD
Newport Coast Recovery LLC

RECEIVED

MAY 20 2008

Office of the
City Manager

LAW OFFICES OF
KELLY S. JOHNSON
ATTORNEY AT LAW
180 NEWPORT CENTER DRIVE
SUITE 100
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949) 728-8014
FACSIMILE (949) 728-8050
EMAIL ksjsq@aol.com

May 20, 2008

David Kiff
Assistant City Manager
City of Newport Beach
Newport Beach City Hall
3300 Newport Blvd.
Newport Beach, CA 92663

By Hand-Delivery

Re: Conditional Use Permit Application - Newport Coast Recovery, LLC


Dear Dave:

Please find enclosed my client, Newport Coast Recovery, LLC's Application for a Conditional Use Permit, which is required by Ordinance Number 2008-5. However, until all the issues in determining whether the ordinance violates the Federal Fair Housing Act are resolved in the case of *Sober Living by the Sea, et al. v. City of Newport Beach, CA* Case No. 8:08-CV-00200-JVS-RNB and *Pacific Shores Properties, LLC, et al. v. City of Newport Beach, CA* Case No. 8:08-CV-00457-AG-PLA, my client reserves all rights, interests and remedies with respect to the provisions and application of Ordinance Number 2008-5.

Please contact me if you have any further questions with regard to the foregoing. Thank you.

Very truly yours,

LAW OFFICES OF KELLY S. JOHNSON


KELLY S. JOHNSON
KSJ:tp

Enclosure

cc. Newport Coast Recovery, LLC

NCR 00016

13

City of Newport Beach
GROUP RESIDENTIAL USES – USE PERMIT APPLICATION
STANDARD GROUP RESIDENTIAL USE PERMIT APPLICATION
(Form 100 – Revised March 2008)

1. APPLICANT/FACILITY PROGRAM INFORMATION

STEP 1: Completely fill out Form 150 (attached).

STEP 2: Fill out the following:

TYPE OF ORGANIZATION:

For Profit Nonprofit

Other, please explain: _____

PROPERTY OWNERSHIP:

Own Rent Lease Other (specify): _____

IS THE OPERATOR/MANAGER ALSO THE LESSEE OF THIS PROPERTY?

Yes No

If no, please explain: _____

IS THE APPLICANT OR PROGRAM OPERATOR PART OF A PARTNERSHIP, CORPORATION, FIRM, OR ASSOCIATION?

Yes No

If yes, please fill out and attach either Form 200C (if 200C, applicants must fill out Form 200D) or Form 200P, whichever is applicable.

2. PROPERTY OWNER INFORMATION

Hayes Properties, LLC

Name of Property Owner where facility is proposed (If Corporation, legal name of Corporation)

16882 Coral Cay Lane Huntington Beach 92649
(Mailing Address of Property Owner) (City/State) (Zip)

(949) 660-1150 _____
(Telephone) (Fax number)

(E-Mail address)

1220 West Balboa Blvd. 047-234-14
(Subject Property Address) Assessor's Parcel Number (APN)

NCR 00017

Street Address, City Type of Use Bed Capacity

Has this facility or your operations at this facility, ever been in violation of State or local law?

Yes X No

If Yes, please explain: _____

Facility #1

1219 W. Balboa Blvd., Newport Beach Transitional Care 4

Street Address, City Type of Use Bed Capacity

Has this facility or your operations at this facility, ever been in violation of State or local law?

Yes No

If Yes, please explain: _____

Facility #2

Street Address, City Type of Use Bed Capacity

Has this facility or your operations at this facility, ever been in violation of State or local law?

Yes No

If Yes, please explain: _____

Facility #3

Street Address, City Type of Use Bed Capacity

Has this facility or your operations at this facility, ever been in violation of State or local law?

Yes No

If Yes, please explain: _____

Facility #4

Street Address, City Type of Use Bed Capacity

Has this facility or your operations at this facility, ever been in violation of State or local law?

Yes No

If Yes, please explain: _____

5. **LOCATION MAP AND SIMILAR USES**

Provide a Location Map showing the location of the proposed use plus all known conditional uses within a three-block radius. Include the property addresses of the proposed use and known conditional uses. Please consult the Newport Beach Planning Department (949-844-3225) for nearby conditional uses.

6. **SITE PLAN**

Provide a Site Plan that shows the facility's building footprint and property lines. Include property lines and building footprints on immediately adjacent parcels. Note the uses (i.e. *single family use, group residential use, or other*) on adjacent parcels.

7. **LICENSE AND PERMIT HISTORY OF APPLICANT**

A. Per NBMC §20.91A.030(H), please summarize the license and permit history of each facility applicant or operator has managed, owned, or operated in the State of California within the last five (5) years which require either a license or a permit by the State or by a locality (attach additional sheets if necessary):

Newport Coast Recovery, LLC

Name of Facility

1216 W. Balboa Blvd.

(Facility Address)

Newport Beach

(City)

92861

(Zip)

Please describe the nature of the license or use permit, the issuing agency, its reference number (if applicable), and any enforcement actions by any agency against the license or use permit:

City of Newport Beach Business License

CA Dept. of Alcohol and Drug Program License and Certification

B. Has the applicant ever voluntarily surrendered, had a denial, suspension, or revocation of a residential license for an alcoholism or drug abuse recovery or treatment facility or a facility licensed by the California Department of Alcohol and Drug Programs (ADP) or the California Department of Social Services - Community Care Licensing?

Yes No

If yes, the date license was surrendered, denied, suspended, or revoked: _____

Reason for revocation, surrender, denial, or suspension: _____

C. Has the applicant ever voluntarily surrendered, had a denial, suspension, or revocation of a Use Permit or similar permit for a group residential use in this community or another community?

Yes No

If yes, the date Use Permit (or similar) was surrendered, denied, suspended, or revoked: _____

Reason for revocation, surrender, denial, or suspension: _____

D. Has the applicant ever voluntarily surrendered, had a denial, suspension or revocation of a certification by any public or private agency other than ADP or the California Department of Social Services-Community Care Licensing for a group residential use in this community or another community?

Yes No

If yes, the date Use Permit (or similar) was surrendered, denied, suspended, or revoked: _____

Reason for revocation, surrender, denial, or suspension: _____

8. NATURE AND CHARACTERISTICS OF PROPOSED USE

Per NBMC §20.91A.030(A-D), please provide the following information about each proposed facility (attach additional sheets if necessary). The components of this Section 8 (and other sections) comprise the *Operations and Management Plan* and *Rules of Conduct* envisioned by NBMC §20.91A.050.B:

A. TYPE OF ALCOHOL AND/OR OTHER DRUG RECOVERY OR TREATMENT SERVICES PROVIDED (for ADP-licensed facilities only -- check all that apply):

Non-Medical Detoxification

Group Sessions

One-on-One Sessions

Educational Sessions

Recovery or Treatment Planning

Other: _____

B. NUMBERS AND TYPES OF FACILITY USERS & STAFF:

TOTAL OCCUPANCY OF FACILITY (This is the maximum number of individuals who live at the facility and are approved by the fire safety inspector.) These individuals include the residents receiving recovery, treatment or detoxification services, children of the residents, and staff. Staff includes individuals who work for the applicant in exchange for either monetary or in-kind compensation (e.g., room and board). Total occupancy cannot be exceeded for any reason. _____

MAXIMUM REQUESTED ADULT RESIDENT CAPACITY OF THE FACILITY (The number of adult residents that receive recovery, treatment or detoxification services at any one time, which cannot be greater than the total occupancy shown above): _____

MAXIMUM NUMBER AND AGE RANGE OF DEPENDENT CHILDREN WHO ARE SUPERVISED BY THEIR PARENT(S) IN THE FACILITY. This includes temporary residing (i.e., overnight, weekend visits) of dependent children. (Since there must always be at least one adult being served, the maximum number of dependent children housed must be at least one less than the total occupancy, determined by the fire inspector, as shown above): _____

Are all clients who reside on-site disabled persons? _____

Number of staff who will reside on-site: _____

Maximum number of staff who will provide services during any one week to clients at the facility: _____

Provide the Facility Staffing Form shown as Form 400 to this Application.

Total number of employees of provider: _____

Please characterize the nature of staff services to the facility (i.e., nutritionists, massage therapists, counselors, maids, cooks, etc):

Maximum number of clients who will use the facility on any one day but reside elsewhere: _____

Maximum number of client visitors who will visit the facility during any one week: _____

Maximum number of others who will visit the facility during any one week: _____ Please explain:

C. BUILDING DIAGRAM/FLOOR PLAN

Include a Building Diagram showing all building(s) to be occupied, including a floor plan of all rooms intended for residents' use. Include the grounds showing buildings, setbacks, driveways, fences, storage areas, pools, gardens, recreational area and other spaces. All sketches shall show dimensions but need not be to scale. Identify the number of residents per bedroom and the location and the number of beds for all residents, including the location of beds for infants and other non-ambulatory persons. The Building Diagram supplied with this application must be accurate as to existing conditions in the building and must be consistent with the building plans currently on file with the Newport Beach Building Department for permitted construction.

D. DURATION OF TYPICAL CLIENT STAY IN FACILITY (In days): _____

If you wish, please explain:

E. IS THE FACILITY ACCESSIBLE TO INDIVIDUALS IN WHEELCHAIRS OR OTHER NONAMBULATORY CONDITIONS?

Yes No

NOTE: The Americans with Disabilities Act of 1990 (ADA) is a comprehensive federal anti-discrimination law for people with disabilities. The City reminds all providers of residential recovery facilities that discrimination against persons with disabilities is prohibited. Please contact Newport Beach's Building Department (949-844-3275) for specific ADA requirements that may apply to your facility.

F. ACTIVITY INFORMATION

Hours which facility will be in use:

15

NCR 00023

20

24/7 Other (please describe) _____

Will there be a curfew? If so, please note quiet hours:

10 p.m. – 8 a.m. Other (please describe) _____

Besides household activities, what types of care-related activities will occur on-site, and how many residents and non-residents (including staff and clients from other facilities) will attend?

"AA"-type meetings _____ Physical Fitness (gym, yoga, etc) _____
 ADP-Treatment (see 5A) _____ Other wellness (massage, etc) _____
 Meal preparation/delivery _____ Other: _____

Provide the Weekly Schedule of Services shown as Form 500 to this Application.

G. DELIVERY INFORMATION:

What types of deliveries will occur at the facility and how often (per day or per week – circle whichever is applicable) will they occur?

Laundry Services: _____ /day or week Trash disposal or recycling: _____ /day or week
 Meals: _____ /day or week Business products: _____ /day or week
 Correspondence, packages (other than USPS): _____ /day or week
 Medical Products/Medical Waste Pickup: _____ /day or week
 Other: _____ /day or week

H. TRANSPORTATION AND PARKING:

Will clients residing on-site be allowed to use personal vehicles and/or keep them on-site or nearby?

Yes No

If Yes, describe where clients will park personal vehicles (garage, carport, on-street location, other – if on-street, be specific about which streets)

If No, describe other modes of transportation that clients will use (bus, other transit, bicycle, other).

Please provide a **Route Map** showing transit and travel routes that will be used to transport clients off-site, showing destinations of travel and approximate times of departure and return.

Will staff serving the facility be allowed to drive personal vehicles to the site?

Yes No

If Yes, describe where staff will park personal vehicles (garage, carport, on-street location, other – if on-street, be specific about which streets)

NOTE: The City may not authorize on-street parking for clients or staff depending upon how impacted the facility's streets are.

I. MEDICAL AND BIO-WASTE

NBMC §6.04.120 (Health and Sanitation: Prohibited Materials) prohibits the disposal of certain medical waste or bio-waste into the City's refuse disposal system. Syringes, needles, urinalysis cups, and other waste must be disposed of in accordance with the NBMC and other applicable laws. If you are uncertain as to what wastes can be disposed of in the City's disposal system, contact the City's General Services Department at 949-644-3066.

Applicants who will be disposing medical waste or other bio-waste must provide a Disposal Plan for Medical and Bio-Waste showing how and where these wastes are disposed of (required by NBMC §20.91A.030.I).

Please attach the Disposal Plan if applicable.

J. RULES OF CONDUCT – GOOD NEIGHBOR PRINCIPLES

If you have them, please include any documents that describe rules of client conduct and/or *Good Neighbor Principles* that your facility's staff and clients will adhere to if the City issues a Use Permit for this facility.

The City of Newport Beach has developed *Good Neighbor Principles* for these uses (see the City's website under Group Residential Uses).

Please state whether you agree voluntarily to comply with the City's *Good Neighbor Principles*:

X Yes No

K. OTHER AVAILABLE CERTIFICATIONS

NBMC §20.91A.050.C.4 directs that applicants shall attain certification (or similar validation), where available, from a governmental agency or qualified non-profit organization. This includes:

- The Orange County Sheriff's Department's Orange County Adult Alcohol and Drug Sober Living Facilities Certification Program (see www.ocsd.org for more information or contact Certificate Coordinator Lt. Jeff Bardzik at 714-773-4523 or jbardzik@ocsd.org or Margo Grise at 714-773-4521 at mgrise@ocsd.org. This certification is required.
- The Orange County Sober Living Network (see http://www.soberhousing.net/orange_county.html or contact Grant McNiff at 714-875-2954. This certification is recommended.

You do not have to attain the OCSD certification to apply for a Use Permit, but we suggest that you attain the certification within a reasonable amount of time (twelve [12] months) following your application submittal. Should a Use Permit be issued, it may include a condition that certification be obtained within a stated time period. If you have attained this certification prior to applying for the Use Permit, verify here that you have attained this certification, and attach the verifying document from the certifying entity.

Orange County Adult Alcohol and Drug Sober Living Facilities Certification (required)

Orange County Sober Living Network (recommended)

Other (please describe) _____

L. SECONDHAND SMOKE LIMITATIONS

NBMC §20.91A.050.A directs that "no staff, clients, guests, or any other uses of the facility may smoke in an area from which the secondhand smoke may be detected on any parcel other than the parcel upon which the facility is located. Check and sign here to acknowledge this requirement and your use's adherence to it.

X I acknowledge that I will control secondhand smoke on my facility such that no secondhand smoke may be detected on any parcel other than the parcel upon which my facility is located.

Signature: _____

Date: _____

9. APPLICANT OBLIGATIONS

- A. The "owner of record" of the property or an authorized agent must sign this Application. Signing the application under Section 10 means that the applicant certifies, under penalty of perjury, that the information provided within the Application and its attachments is true and correct. Per NBMC §20.90.030.C, false statements are grounds for denial or revocation.
- B. The Applicant acknowledges that he or she must comply with all other Federal, State, and local laws and regulations relating to this use. The Applicant understands that a violation of Federal, State, and local laws and regulations is grounds for revocation of the Permit. The Applicant understands and acknowledges that it is against California law to provide treatment (as defined) in an unlicensed facility.
- C. If the City issues a Use Permit based on the information provided in this Application, the Applicant's signature below certifies his or her agreement to comply with the terms of the Use Permit. The Applicant understands and acknowledges that non-compliance with the terms of the Use Permit is grounds for revocation of the Permit.

Revocation of the Use Permit. NBMC §20.96.040.E provides that the City can revoke a Use Permit if:

- The permit was issued under erroneous information or misrepresentation; or
- The applicant made a false or misleading statement of material fact, or omitted a material fact; or
- The conditions of use or other regulations or laws have been violated; or
- There has been a discontinuance of use for 180 days or more.

10. AUTHORIZED SIGNATURE(S) OF APPLICANT

THE UNDERSIGNED ASSURES THAT THE INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT AND THAT THE APPLICANT HAS READ AND UNDERSTOOD HIS OR HER OBLIGATIONS UNDER ANY USE PERMIT ISSUED BASED ON THIS APPLICATION.

- A. If the applicant is a sole proprietor, the application shall be signed by the proprietor.
- B. If the applicant is a partnership, the application shall be signed by each partner.
- C. If the applicant is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or the individual legally responsible for representing the agency.

Exhibit No. 2
Notice of Incomplete Application
Dated June 16, 2008

NCR 00028

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CITY OF NEWPORT BEACH
PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92668
(949) 844-3200; FAX (949) 844-3229

June 16, 2008

Ms. Kelly S. Johnson
180 Newport Center Drive, Suite 100
Newport Beach, CA 92660

Dear Ms. Johnson:

Subject: **NOTICE OF INCOMPLETE APPLICATION**
Use Permit No. 2008-033
Property located at 1216 West Balboa Boulevard, Newport Beach, CA
(Newport Coast Recovery, LLC)

This letter serves as notification that the Planning Department is in receipt of your application submittal regarding the proposed Use Permit for property located at the above referenced address. Upon review of your submitted application, documents and exhibits, the application has been deemed incomplete. Please provide the following:

1. A signed affidavit from the property owner authorizing the submittal of the application for a Group Residential Use Permit.
2. A filing fee of \$2,200.00 as a deposit against which staff time spent processing the Use Permit application will be billed at an hourly rate of \$135.00 per hour.
3. A site plan that shows the facility's building footprint and property lines, property lines and building footprints on the parcels immediately adjacent to the subject property including notes as to the existing use on adjacent parcels.
4. A copy of a Preliminary Title Report or property profile that is less than 60 days old that identifies the legal description of the property.
5. Approved fire clearance from the Newport Beach Fire Marshal.
6. A route map indicating the transit and travel routes that will be used to transport clients off-site showing destinations of travel and approximate times of departure and return.
7. A copy of your State license or pending license application if your facility requires a State license.
8. A building diagram and floor plan of all rooms intended for residents' use identifying the number of residents per bedroom and the location and the number of beds for all residents, including the location of beds for infants and other non-ambulatory persons. Any rooms identified as bedrooms must comply with the definition of a bedroom pursuant to NBMC Section 20.03.030 and must be consistent with permitted floor plans on file with the City of Newport Beach Building Department.
9. Completed City of Newport Beach application Form 150 (administrator or director information).

NCR 00030

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10. Completed City of Newport Beach application Forms 200C or 200P and as applicable Form 200D (corporate identity).
11. A route map illustrating transit and travel routes that will be used to transport clients off-site, showing destinations of travel and approximate times of departure and return.
12. If the facility disposes of medical and/or bio waste, a plan for disposal of these materials is required.
13. City application Form 400 (facility staffing plan).
14. City application Form 500 (weekly activities schedule).
15. A written statement that this is your only facility, or if you operate more than one facility, submit evidence of the need by residents of Newport Beach for the capacity of the subject facility, based on published sources, per the requirements of NBMC Section 20.91.A.030.

In addition to the above the application must also include submittal of a location map showing all conditional uses within a three block radius of the subject property in order to be deemed complete. City staff will prepare this location map for your application using the City's GIS database and other information.

If you have any questions or need assistance, please do not hesitate to contact me at (562) 433-9444.

Sincerely,

By


Debby Ernst
Contract Planner

cc: KCNB Realty, LLC, Property Owner
J. Kappeler, Code Enforcement Division Manager

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Exhibit No. 3
Letter to Applicant
Dated August 4, 2008

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PLANNING DEPARTMENT

3300 Newport Boulevard, Building C, Newport Beach, CA 92663
(949) 644-3200 Fax: (949) 644-3229 website: www.city.newport-beach.ca.us

August 4, 2008

Ms. Kelly S. Johnson
180 Newport Center Drive, Suite 100
Newport Beach, CA 92660

Dear Ms. Johnson:

Subject: Property located at 1216 West Balboa Blvd.
Use Permit No. 2008-033

On June 16, 2008, the City of Newport Beach sent you notification of receipt of an application for a Group Residential Use Permit for the above referenced property. The letter advised that the application has been reviewed and is incomplete because various items required per Section 20.91A.030 of the Newport Beach Municipal Code (NBMC) were not included. Specifically, your application did not contain the following:

- A signed affidavit from the property owner authorizing the submittal of the application for a Group Residential Use Permit.
- A filing fee of \$2,200.00 as a deposit.
- A site plan that shows the facility's building footprint and property lines, property lines and building footprints on the parcels immediately adjacent to the subject property, including notes of the existing uses on the adjacent parcels.
- A copy of a Preliminary Title Report or property profile that is less than 60 days old that verifies the legal owner of the property.
- Approved fire clearance from the Newport Beach Fire Marshal.
- A route map showing the transit and travel routes used by the facility to transport clients off-site, showing probable destinations of travel and approximate times of departure and return.
- A copy of your State license or pending license application if your facility requires a State license.

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- A building diagram and floor plan of all rooms intended for residents' use identifying the number of residents per bedroom and the location and the number of beds for all residents.
- A completed Application Form 150 (administrator or director information).
- Completed Application Forms 200C or 200P, and as applicable, Form 200D (corporate identity).
- If the facility disposes of medical and/or bio waste, a plan for disposal of these materials. If the facility does not dispose of medical and/or bio waste, please provide a statement to that effect.
- A completed Application Form 400 (facility staffing plan).
- A completed Application Form 500 (weekly activities schedule).
- A written statement that this is your only facility. If you operate more than one facility, please submit evidence of the need by residents of Newport Beach for the capacity of the subject facility.

A copy of the June 16, 2008, letter is attached for your reference.

It has been more than a month since that correspondence, and as of this date, we have not received the items required to deem your application complete. We are unable to process your use permit application and schedule a public hearing until we receive these items. In the meantime, we are in the process of completing the location map of other similar uses, which will be sent to you for your information and placed in your use permit application file.

Please be advised that failure to obtain a use permit for the group residential use of the above referenced property shall render the use of property nonconforming. Nonconforming uses of property are subject to abatement, per Section 20.62.090 of the Newport Beach Municipal Code. Such abatement must occur (i.e. the use must cease) by the sooner of:

- February 20, 2009; or
- The date at which your lease expires to use the property. This is only applicable if the lease was entered into prior to December 7, 2007 (Section 20.62.090.A.2.a.ii)

Once the application is deemed complete, we will schedule a public hearing before a Hearing Officer. The Hearing Officer is designated to approve, conditionally approve or disapprove applications for a group residential use permit. The Hearing Officer's decision may be appealed to the City Council. The City Council can sustain, reverse, or modify the Hearing Officer's decision.

Notice of Incomplete Application
Use Permit No. 2008-033
Page 2


10. Completed City of Newport Beach application Forms 200C or 200P and as applicable Form 200D (corporate identity).
11. A route map illustrating transit and travel routes that will be used to transport clients off-site, showing destinations of travel and approximate times of departure and return.
12. If the facility disposes of medical and/or bio waste, a plan for disposal of these materials is required.
13. City application Form 400 (facility staffing plan).
14. City application Form 500 (weekly activities schedule).
15. A written statement that this is your only facility, or if you operate more than one facility, submit evidence of the need by residents of Newport Beach for the capacity of the subject facility, based on published sources, per the requirements of NEMC Section 20.91.A.030.

In addition to the above the application must also include submittal of a location map showing all conditional uses within a three block radius of the subject property in order to be deemed complete. City staff will prepare this location map for your application using the City's GIS database and other information.

If you have any questions or need assistance, please do not hesitate to contact me at (562) 433-9444.

Sincerely,

By


Debby Linn
Contract Planner

cc: KCNB Realty, LLC, Property Owner
J. Kappeler, Code Enforcement Division Manager

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Exhibit No. 4
E-Mail Correspondence
Dated October 23, 2008

NCR 00038

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Debby Linn

From: Debby Linn [linnassociates@verizon.net]
Sent: Thursday, October 23, 2008 10:28 AM
To: Kelly Johnson
Cc: Janet Brown
Subject: Newport Coast Recovery CUP

Dear Kelly,

Thanks for the call today. Per our conversation, I understand that you are currently working with your client toward addressing the outstanding items needed for the Conditional Use Permit (CUP) application for the group home located at 1216 W. Balboa Boulevard, and that you plan to submit the application filing fee by the end of October with the remaining required materials to be submitted by the first week of December. Please let me know if you need any assistance in your efforts to complete the CUP application.

Best Regards,

Debby

Debby Linn
Linn & Associates
826 Molino Avenue Long Beach, CA 90804

Phone (562) 433-9444 Fax (562) 433-7190

NCR 00040

10/23/2008

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NCR 00041

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Exhibit No. 5
Application Materials
Submitted November 25, 2008

NCR 00042

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Brown, Janet

From: Brown, Janet
Sent: Tuesday, November 25, 2008 6:21 PM
To: 'Debby Linn'
Subject: Newport Coast Recovery
Attachments: 20081125182209.pdf

Hi Debby,

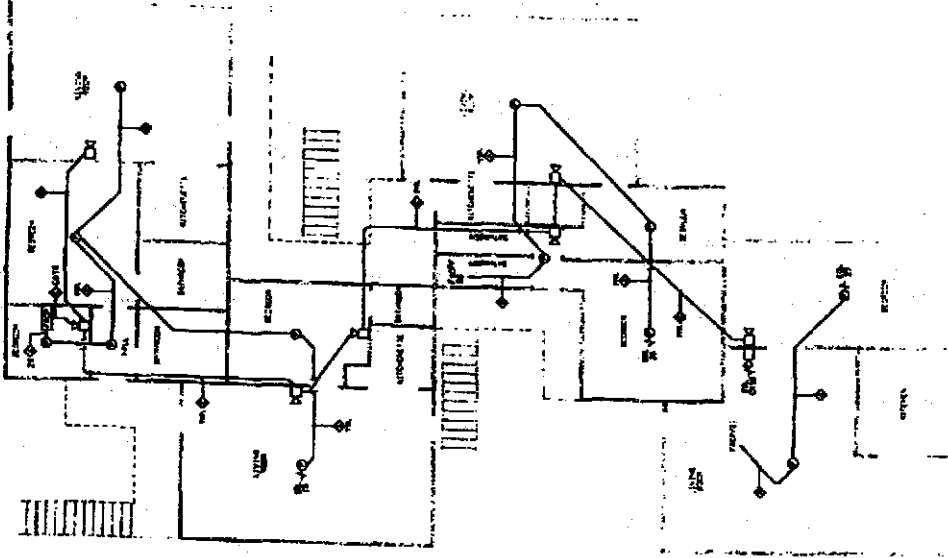
Attached are the items submitted today by Shannon Armand, Executive Assistant, for Newport Coast Recovery. Each item is numbered to correspond with the items listed in the June 16 letter of incompleteness.

I'll talk with you in the morning regarding your report.

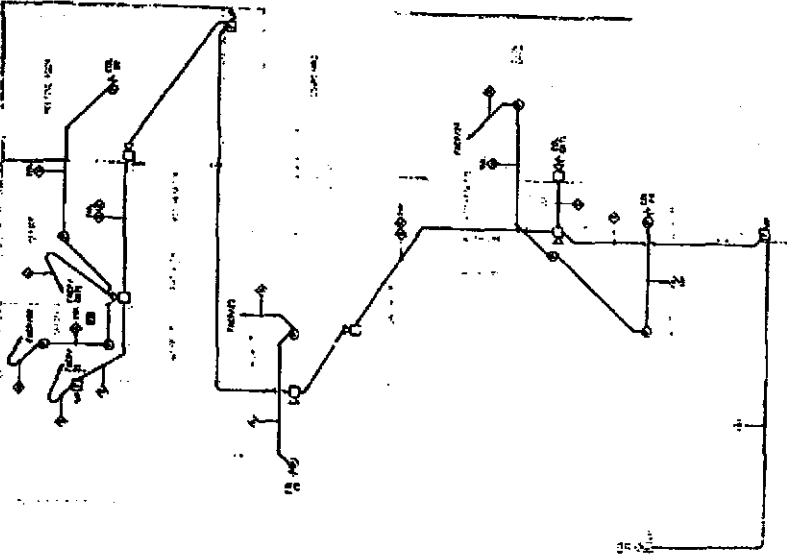
Janet Johnson Brown
Associate Planner
City of Newport Beach
(949) 644-3236
jbrown@city.newport-beach.ca.us

NO.	DATE	DESCRIPTION	BY
1	10/15/08	ISSUED FOR PERMITS	W. J. ...
2	10/15/08	ISSUED FOR PERMITS	W. J. ...
3	10/15/08	ISSUED FOR PERMITS	W. J. ...
4	10/15/08	ISSUED FOR PERMITS	W. J. ...
5	10/15/08	ISSUED FOR PERMITS	W. J. ...

#3



SECOND FLOOR PLAN



FIRST FLOOR PLAN

RECEIVED BY
PLANNING DEPARTMENT
NOV 25 2008
CITY OF NEWPORT BEACH

FIRE SAFETY INSPECTION REQUEST

See instructions on reverse.

STD. 800 (REV. 10-88)

AGENCY/CONTRACTOR'S NAME DEPT. Alcohol & Drug	TELEPHONE NUMBER (916) 322-2911	REQUEST DATE	PROGRAM
EVALUATOR'S NAME Not assigned	REGISTERING AGENCY/FACILITY NUMBER NOT ASSIGNED	REQUEST CODE 1A	

LICENSING AGENCY NAME AND ADDRESS	CODES	
	<input checked="" type="checkbox"/> ORIGINAL FIRE CLEARANCE <input type="checkbox"/> RENEWAL <input type="checkbox"/> LIFE SAFETY <input type="checkbox"/> CAPACITY CHANGE <input type="checkbox"/> OWNERSHIP CHANGE <input type="checkbox"/> ADDRESS CHANGE <input type="checkbox"/> NAME CHANGE <input type="checkbox"/> OTHER	

AMBULATORY		NONAMBULATORY		SEORIDEN		TOTAL CAPACITY
CAPACITY	PREVIOUS CAPACITY	CAPACITY	PREVIOUS CAPACITY	CAPACITY	PREVIOUS CAPACITY	
29	27					29

FACILITY NAME Newport Coast Recovery	LICENSING CATEGORY
STREET ADDRESS (Main Location) 1216 W. Balboa Blvd.	NUMBER OF BUILDINGS
CITY Newport Beach, CA 92661	RESTRAINT
FACILITY CONTACT PERSON'S NAME Richard Berlin (949) 723-3155	HOURS
SPECIAL CONDITIONS Cell: (949) 233-8200	
TOTAL CAPACITY INCLUDES STAFF & CLIENTS.	

TO BE COMPLETED BY INSPECTING AUTHORITY

FIRE AUTHORITY NAME AND ADDRESS CITY OF NEWPORT BEACH FIRE DEPARTMENT P.O. BOX 1768 NEWPORT BEACH, CA 92658-8915	CLEARANCE/DENIAL CODE		
	CODES <input checked="" type="checkbox"/> FIRE CLEARANCE GRANTED <input type="checkbox"/> FIRE CLEARANCE DENIED A. EXITS B. CONSTRUCTION C. FIRE ALARM D. SPRINKLERS E. HOUSEKEEPING F. SPECIAL HAZARD G. OTHER		
INSPECTOR'S NAME (Typed or Printed) Nadine Morris	TELEPHONE NUMBER (949) 644-3106	OWB NUMBER 30055	OCCUPANCY CLASS R-6.2
INSPECTION DATE 01-06-04	INSPECTOR'S SIGNATURE Nadine Morris		
EXPLANATION OF DENIAL OR LIST OF SPECIAL CONDITIONS			

29 TOTAL CAPACITY INCLUDES STAFF & CLIENTS.

#5

RECEIVED BY
PLANNING DEPARTMENT

NOV 25 2003

CITY OF NEWPORT BEACH

NCR 00046

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Directions to 4019 Westerly Pl, Ste 100, Newport Beach, CA 92660-2316

Directions to 4019 Westerly Pl, Ste 100, Newport Beach, CA 92660-2316 **YAHOO! LOCAL** Maps

Total Time: 18 mins, Total Distance: 7.51 miles

Amer Clinica



When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

RECEIVED BY
PLANNING DEPARTMENT

NOV 25 2008

CITY OF NEWPORT BEACH

#6 & #11

NCR 00047

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