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PUBLIC HEARING ON
OCEAN RECOVERY, LLC
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
THURSDAY, MAY 7, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 5:46 p.m., on Thursday, May 7, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

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LAWYER'S NOTES

[illegible]

1 NEWPORT BEACH, CALIFORNIA; THURSDAY, MAY 7, 2009

2 4:00 P.M. - 5:46 P.M.

3
4 MR. ALLEN: Good afternoon. We'll open the
5 hearing on the Use Permit 2008-3 -- -30, excuse me, for
6 Ocean Recovery at 1115 West Balboa Boulevard. I'm Thomas
7 W. Allen, Hearing Officer, appointed by the City to
8 conduct these hearings. I'm a former city attorney and
9 only doing hearing work these days.

10 This matter was first heard on February 12,
11 2009. And at that time, as most of you recall that were
12 here, we took extensive testimony. And after
13 consideration and then agreement between staff and the
14 Applicant and myself, as the Hearing Officer, we
15 continued the matter to August the 12, 2009.

16 And then a neighboring property owner of the
17 facility appealed that to the City Council. And after
18 the hearing, the City Council rendered a determination
19 that, in fact, that continuance to August the 12th, 2009,
20 constituted a decision, and that it was abuse of
21 discretion to make a decision, because the City did not
22 make provision for temporary Use Permits by their Code.

23 And on that basis, remanded the matter to the
24 Hearing Officer with instructions to make a prompt
25 decision and to consider, on the merits and request,

1 whether false and misleading statements had been made,
2 and then to include in any approval that was granted the
3 City's smoking regulations. So the City Council's
4 determination that a decision was made and to remand it
5 to the Hearing Officer for a prompt decision is why we're
6 here today.

7 We've looked -- I've looked carefully at the
8 decision of the City Council. And my first impression
9 was that it was intended that the City Council's decision
10 was that I would simply take the transcript from the
11 first hearing, review it, and render a decision based
12 upon the evidence presented at that hearing.

13 However, on further reflection and input from
14 staff and legal Counsel, it's clear to me that it's more
15 appropriate for us to go forward with this hearing today
16 as a public hearing in the nature of a continuation of
17 the previous hearing that was conducted. It's as if it's
18 August 12th of 2009, and we're hearing the matter once
19 again for final decision. So that's the nature of the
20 process as I see it today.

21 The focus, from my perspective, needn't nearly
22 be as much on the conditions that occurred prior to
23 February 12, but rather what's occurred between February
24 and now that may make this permit more appropriate for
25 approval or make it less likely that it should be

1 approved because things have not gotten any better or
2 they have gotten worse. I don't know. So that's the
3 purpose of today's hearing.

4 Whatever decision I make will be based upon the
5 record in the former hearing, the City Council hearing
6 and the record we make today. So it will be a
7 comprehensive determination based on all the information.

8 Having said that, does anybody -- do Counsel
9 from the City or the Applicant have any concerns or
10 further input with respect to that approach to this
11 matter?

12 All right. Good. Let's proceed, then, with
13 the continuation of the former hearing, and let me look
14 at the agenda to make sure I didn't skip something
15 already.

16 I don't believe so. So, then, if the staff
17 would go forward with their presentation as to Item A in
18 the agenda, we'll proceed from there.

19 Thank you.

20 MR. KIFF: Yes, sir, Mr. Allen. I apologize.
21 There's only a few new people in the audience that
22 haven't seen the introduction to the hearing process,
23 so -- but I will remind you all of that.

24 This is a Use Permit hearing under Ordinance
25 2008-05. I'm going to talk a little bit more about that

1 when I'm done. Debbie Linn, who is with our Planning
2 Department, will talk a little bit more about the
3 specific application.

4 When we're done with our presentation, the
5 Applicant has an opportunity to come up and speak, and
6 that time is unlimited. Then the Hearing Officer opens
7 the public hearing, and the public generally has three
8 minutes, unless the Hearing Officer determines otherwise.
9 Then the public hearing is closed, and the Applicant can
10 return to rebut or clarify comments made.

11 There's an opportunity for questions between
12 the Hearing Officer and the Applicant or to City staff,
13 and then the Hearing Officer can make a determination.
14 The alternatives are to approve this with conditions, to
15 deny it, or to continue the hearing to a date certain.

16 So I'm going to talk a little bit again about
17 what this is. It's -- this is a Hearing Officer, and an
18 Ordinance that was effective February 22nd of last year.
19 And that Ordinance said that most existing group
20 residential uses, like the one today, had to apply for a
21 Use Permit to stay in operations by May 22nd of last
22 year.

23 Then the Hearing Officer has an opportunity to
24 make the determination on that application. And that
25 decision can be appealed to the City Council. The City

1 Council's decision cannot be appealed, but the Applicant
2 can, again, request another type of hearing called
3 reasonable accommodation. This is provided under Federal
4 law.

5 Remember that the type of housing provided is
6 housing provided to a protected class of individuals
7 under Federal law. They are entitled, then, to
8 reasonable accommodation under the Fair Housing Amendment
9 Act of 1998.

10 Those reasonable accommodation hearings go
11 before a Hearing Officer. We've had them here in this
12 setting. And can also be appealed to the City Council.
13 So arguably, you can think of it as a four-step process.

14 This Ordinance does exempt one type of home
15 from the Use Permit process, and than an ADP licensed
16 treatment home housing six or fewer persons and which
17 doesn't operate integrally with other facilities.

18 Now, as Tom Allen noted, this hearing is
19 slightly different. This was remanded back to the
20 Hearing Officer after a 6-to-1 vote of the City Council.
21 The City Council asked that the Hearing Officer consider
22 this item and make a prompt decision based on the merits.

23 The Council said, in considering the merits,
24 that the Hearing Officer should review whether "false or
25 misleading statements" have been made, and then consider

1 including the smoking regulations consistent with the
2 Ordinance as one of the conditions of a Use Permit if
3 it's granted.

4 So this hearing is intended to allow the
5 Applicant, staff and the public to discuss actions or
6 issues that arose between February 12th and today, and
7 testimony unrelated to that time period is respectfully
8 discouraged. Obviously, you can say what you want, but
9 I'll offer that note.

10 So I'll next turn it over to Debbie Linn
11 briefly to talk specifically about this application.

12 MS. LINN: Thank you. I just to add to the
13 information that's been presented already, this is a Use
14 application -- Use Permit application that is a continued
15 public hearing.

16 It is an application for the continued
17 operation of -- the Applicant requesting a continued
18 operation of the facility, which is currently licensed
19 for 22 beds. One of our recommendations is that the bed
20 count be reduced to 18 beds if the condition is
21 acceptable and if the permit is approved.

22 And staff, in re-evaluating the project and the
23 application, have made the determination that all of the
24 11 required findings for the Use Permit could be made if
25 conditions of approval were included with the Use Permit

1 approval.

2 With that, I would just close by saying we are
3 recommending approval based on the findings that we've
4 discussed in the staff report, and we're available for
5 questions.

6 MR. KIFF: And I'd like to go over some of
7 those conditions, if you agree, Mr. Allen. They are
8 available to the public, I believe, outside on the table
9 and were posted on the Web site. The conditions are
10 important to staff's recommendation.

11 We'll come back to this slide. This is a
12 proximity issue. So I'm going to talk both about the
13 conditions and about what staff believes is the analysis
14 appropriate for the Hearing Officer to make. Obviously,
15 the Hearing Officer can make whatever analysis you
16 choose.

17 So this is a condition proposed regarding
18 smoking, and it does reflect what the City's Ordinance
19 says, which the bottom line of the City's ordinance is
20 that you can't smoke such that secondhand smoke can be
21 detected on any partial other than the partial in which
22 you're smoking.

23 The operator has proposed a use which we're
24 amenable to, which would limit smoking to a designated
25 smoking area within the facility, inside it, and equipped

1 with an air filter and a smoke containment device, and
2 prohibit smoking outside of the facility.

3 And the standard language here is to address
4 neighbor complaints relating to secondhand smoke and to
5 not litter cigarette butts, et cetera, and, of course, to
6 assist the City, which is a challenging thing to do, in
7 enforcing the City's prohibition on tobacco use on beach,
8 boardwalks and piers.

9 Another condition that was an important issue
10 last time was involving off-street parking. You can see
11 the condition up on the screen that the operator shall
12 provide six off-street parking spaces for the use of the
13 facility. These conditions apply -- that client
14 residents are not permitted to have vehicles during their
15 stay.

16 The on-site parking garages shall be kept clear
17 and available for parking. I would note that we're
18 agreeing that "clear and available for parking" includes
19 potentially using one of those garages for smoking. This
20 is a concession that we believe is important in light of
21 the importance of reducing secondhand smoke.

22 For the use of on-street parking, we've limited
23 that to the text there, that the operator would purchase
24 three master parking permits, and that those garages in
25 part two were also made available for staff, in light of

1 the fact that the clients won't have them. And that the
2 visitors or staff parking won't operate more than three
3 on-street parking spaces, and that bus transit is
4 encouraged.

5 The next condition -- next aspect of the
6 condition involves van loading and unloading. This is
7 our standard condition. But just so the folks in the
8 audience who haven't seen it, can read it.

9 And the jump to the assembly use issue.
10 Assembly uses will be prohibited if they involve people
11 from outside of the facility. Now, staff members and
12 family members of staff members are exempted from that;
13 however, this is an attempt to apply a condition that
14 stops alumni, people from other recovery facilities,
15 and -- from coming to this facility in a manner that
16 impacts the neighborhood.

17 So this condition would be applied to the use,
18 if approved, including prohibition of, for instance, an
19 AA-type meeting for groups who don't reside there.

20 I do want to make a note on item eight, if you
21 have the application in front of you. Staff has
22 rethought the whole concept of a curfew, because it's not
23 the curfew that is so important to the use here. It is
24 more the quiet hours, the .9. And we're not going to be
25 able to enforce, nor do we want to enforce whether or not

1 someone's home inside the building before 10 o'clock. We
2 just can't do that.

3 But we believe it is more appropriate and
4 certainly more neighborhood impactful to enforce quiet
5 hours, which are more extensive than the curfew. Those
6 are from 9 p.m. to 8 a.m.

7 Quiet hours mean -- quiet means no noise,
8 including music, television and voices would be audible
9 beyond the parameter of the building, except in an
10 emergency.

11 I'm summarizing some conditions here. One has
12 to do with Building Codes. We discussed how some of the
13 classification associated with the California Building
14 Code is not appropriate, per se, to restate here. It
15 just is what it is. That's Item 16.

16 Number 17 is staffing. I had this conversation
17 with the operator. The City is not concerned, per se,
18 that there is a qualified counselor on-site at all times,
19 who shall be a certified addiction specialist. So you
20 can see where I've proposed striking out that language.

21 But we are concerned that the facility is
22 staffed with qualified on-site managers, in other words,
23 who can control the noise, the smoking, all the things
24 that are in the house rules.

25 We don't have an ability to enforce whether or

1 not someone has an appropriate license within -- as a
2 certified addiction specialist, or that they are
3 providing proper counseling at the time. That is the
4 State's purview. However, we want someone on-site who is
5 qualified to make sure that the house rules are attended
6 to and that the conditions in this Use Permit are
7 attended to.

8 Item 18 involves nuisances. This is a
9 clarification that a resident brought up to me, and I
10 think it's an important one. We're not trying to make
11 Ocean Recovery do anything more than any other use in
12 town would do, any other resident in town.

13 And that you correct the violation generally
14 within seven days, or the City is often amenable to a
15 remediation plan that's different from seven days
16 if -- it's varies.

17 An example of this, one would be if, gosh, you
18 know, I have to paint the building light blue, and the
19 color of light blue paint comes in paint store in two
20 weeks, not one week. That's something where we give
21 someone a break on that.

22 The language previously was that the City and
23 the operator would negotiate a mutually agreed-upon time
24 line, and this resident was correct. We don't allow the
25 Applicant to withhold that agreement and potentially

1 negate this condition.

2 Just for the public's benefit, just Item 19, is
3 our typical prohibition about the tolerance of rude
4 behavior, lewd speech or profanity.

5 I'm proposing a change in 22 about services to
6 the facilities, clients or residents that -- in effect,
7 the most important language is in the first two
8 sentences. The rest of it is more related to State
9 licensure, and the City is unable to effectively enforce
10 State licensure issues. We will certainly work with the
11 State to make sure the State enforces that.

12 And then finally, the last conditions here
13 is -- the last condition here involves the side property
14 wall on the eastern side of the property. So I think of
15 the side closer to Peninsula Point. This condition is
16 added from last time, Mr. Allen.

17 And it says that the Applicant would increase
18 the height of that wall, except within the front yard
19 set-back, up to 6 feet in height, and that landscaping
20 screening material be added.

21 And this limits and reduces, if not eliminates,
22 the interaction between the property on the east side of
23 1115 West Balboa and this property. And then the City
24 Manager would have the ability to review and approve the
25 construction and make sure that's esthetically

1 appropriate for that area.

2 So with that, Mr. Allen, that's an outline of
3 staff's proposed changes to the conditions that were
4 listed in the document you have before you. The changes
5 and the strike-outs are only in this PowerPoint, but I
6 hope it's explanatory, and we can refer back to them if
7 you need to. I believe they are relatively minor.

8 And then, as we move next to the Applicant's
9 presentation, I would like, as you're thinking about your
10 decision -- if it's helpful to you, I've done an analysis
11 based, in part, on what I provided on the Web site in
12 Exhibit 5 that discusses what I think, what staff thinks
13 are the key issues for you to consider involving the
14 definition of a block, and involving the APA standard,
15 and how your previous actions to establish a 617-foot
16 block length would impact this application.

17 So with that, I'll conclude with the
18 opportunity maybe to come back later.

19 MR. ALLEN: Thank you. Is that it from staff
20 for the moment?

21 MR. KIFF: Yes, sir.

22 MR. ALLEN: All right. Would the Applicant
23 like to come forward and make an initial presentation
24 here?

25 MR. O'CONNOR: Good afternoon, Mr. Allen,

1 staff. My name is a Sean O'Connor, and I'm an attorney
2 from Sheppard, Mullin, Richter & Hampton. And I
3 represent Ocean Recovery. Along with me today is Jim
4 McCloskey. He is Ocean Recovery's Chief Executive
5 Officer and President.

6 I was encouraged to hear your approach today,
7 Mr. Allen, in that you plan to primarily focus on what's
8 occurred between February 12th and now, because my
9 approach and my brief presentation today is very similar
10 to that.

11 If I could go to the next slide, please.

12 I'm not going spend much time on this slide at
13 all, because this was covered in the last hearing. But
14 just very briefly, to give you a little bit of
15 background -- and again, this was fleshed out, I
16 acknowledge, on February 12th.

17 Ocean Recovery is a small hands-on operation.
18 It currently only has two facilities. Of course, the
19 other facility was approved at the February 12th hearing.
20 It has a stellar reputation within the industry. It's a
21 reputation that Ocean Recovery takes pride in very much.

22 And it also takes pride in the fact that before
23 February of this year, there were very few complaints
24 regarding the operation of Ocean Recovery. We think
25 that's significant. Because up until literally just days

1 before the February 12, 2009, hearing --

2 MR. ALLEN: I'm sorry, Mr. O'Connor. I failed
3 to mention at the beginning, as I normally do, please
4 turn off the cell phones. It's very intrusive to this
5 organization.

6 MR. O'CONNOR: I think I was on the previous
7 screen. Just addressing the fact, Mr. Allen, that we do
8 take pride in the fact that there were very few
9 complaints before February 2009. And, indeed, it was
10 just in the days leading up to that February 12th hearing
11 that, for relatively the first time, we received a number
12 of complaints from the neighbors.

13 I think it's also significant that since
14 February, there has also been relatively few complaints
15 regarding our operations. To me, that says one of two
16 things. It says either, number one, that, as we believed
17 and as we discussed at the February hearing, we were
18 being blamed by some of the problems from other
19 operators.

20 As you well know, there was an operator whose
21 facility has since been abated just two doors down from
22 us. We believe that perhaps some of the problems being
23 attributed to us were actually caused by that other
24 operator. That's one possibility.

25 Another possibility for the relatively few

1 complaints between February and now is that we've made
2 some changes. We've listened to what the complaints
3 were, and we've addressed that. And I'll explain that in
4 the next slide.

5 Mr. Kiff was good enough to arm me with this.

6 MR. KIFF: There you go.

7 MR. O'CONNOR: The complaints that were made at
8 that February 12th hearing largely fell into four
9 categories. I think that it's fair to say that by far
10 and away the biggest concern from the residents and the
11 neighbors had to do with the smoking, secondhand smoke,
12 and we heard a lot of testimony about that.

13 Probably the second biggest complaint had to do
14 with profanity. Noise was also discussed at the February
15 12th hearing, as was an inappropriate contact with
16 neighbors.

17 The question then becomes, what, if anything,
18 did Ocean Recovery do about those complaints? Again, we
19 believed that we were being blamed for some problems that
20 weren't caused by our clients but were, in fact, caused
21 by clients of another operator.

22 Nevertheless, we took these complaints to
23 heart, and we tried to come up with a way to improve what
24 we felt was already an excellent operation by very
25 seriously considering these complaints and seeing what we

1 could do to make our operations even better.

2 Toward that end, we solicited the input of City
3 staff. I think City staff will tell you that we've been
4 exceedingly cooperative, not only since February but
5 before then, in trying to find a solution that worked.

6 We solicited the input of our neighbors. In
7 fact, Mr. McCloskey has consistently gone to the
8 neighbors, made himself available. We went to the
9 neighbors and told them that we're planning to come up
10 with new rules, and invited their comment and input into
11 these new rules.

12 And lastly -- I'm going to spend a fair amount
13 of time on this -- we created what I'll call a role
14 model, Good Neighbor Rules. These Good Neighbor Rules
15 are in the packet of information. I think they are
16 referred alternatively by City staff as house rules that
17 they are requiring as a condition of approval.

18 I can tell you that we spent a lot of time. We
19 poured hours and hours into this issue to look at the
20 core complaints that we heard at the February 12th
21 hearing, and figure out what we could do to address those
22 complaints. And to the extent there weren't any
23 problems, let's try to stop those issues right now.

24 I'm going address just a few of the Good
25 Neighbor Rules that go to the core issues. And these are

1 the core complaints that we heard at the February 12th
2 hearing.

3 Again, I think smoking was probably the biggest
4 complaint. You'll recall that there was testimony that
5 one of the biggest complaints from the neighbors was that
6 there were weekly barbeques where there were 30 to 40
7 people who were outside smoking, and the smoke went over
8 to the neighbor's houses.

9 We have done a couple of things to address
10 that. One is there is no more neighbor barbeques. And
11 as we'll see in a minute, that situation could never
12 happen again. These Good Neighbor Rules are all
13 specifically addressed at the smoking issue. The first
14 rule here prohibits smoking around the building.

15 The second Good Neighbor Rule here -- and I
16 don't know why it did that, if that was me, even. There
17 we go. Back to a different color.

18 When we looked very carefully at what we could
19 do about the secondhand smoke issue, and we spend a lot
20 of time talking with staff about this. And our first
21 proposal -- and we thought that this would be
22 satisfactory -- was we would reduce the number of smokers
23 at any one time to four people. That is quite a bit
24 different than what was occurring beforehand.

25 We believe that, in fact, there was perhaps an

1 exaggeration of the amount of smokers, but we do
2 acknowledge that we had a number of smokers, and I don't
3 blame the neighbors to the extent that there was
4 secondhand smoke getting over their houses. I wouldn't
5 like that either. So we tried to come up with a scenario
6 that would reduce that.

7 Our first effort here was to say to the extent
8 that there's anyone smoking -- and again, one of our
9 rules, too, is that we discourage our clients from
10 smoking, but we're going to limit it to four people in a
11 designated area.

12 The last rule here deals with the trash and the
13 litter associated with cigarette butts. We wanted to
14 have something in place. And again, we have managers
15 on-site 24 hours a day, 7 days a week that are intimately
16 familiar with all these Good Neighbor Rules and are
17 enforcing these rules.

18 So we wanted to have something in place that
19 made our clients specifically aware that this is an issue
20 of concern to the neighbors, and that this is a rule, so
21 you need to comply with this rule and not litter.

22 And then we went one significant step further.
23 And in discussions with staff, staff said to us
24 repeatedly, "It would be great if you could come up with
25 a solution to the smoking problem. This is the biggest

1 complaint. Going down to four people is a good step in
2 that direction, but can you think of anything else?"

3 I spent a significant amount of time, as
4 Mr. McClosky did, online trying to figure out if there
5 were any smoke ventilators that would work in the outdoor
6 setting to get rid of the smoke. We concluded that
7 there's really nothing that works in the outdoor arena
8 that would be satisfactory.

9 So we came up with the idea of we'll eliminate
10 smoking altogether outside in the patio area, where our
11 clients currently do their smoking. And we'll require
12 them to do all their smoking in one of our garages. And
13 we're going to have a smoke ventilation machine that
14 takes care of the smoke there.

15 The bottom line is, is that there will be no
16 smokers in our patio area, no more smokers outdoors,
17 which should eliminate entirely the one issue, which was
18 the biggest complaint from our neighbors. Now, this is
19 something that we will agree to do. And we worked with
20 staff in coming up with this solution.

21 Frankly, from our standpoint, it's not as good
22 a situation from our clients' perspective, because it's
23 not as enjoyable to be forced into a garage as opposed to
24 sit outside and get a cigarette break. But we understand
25 that this was a huge issue of concern to our immediate

1 neighbors, and we frankly put their concerns ahead of
2 those of our clients' on this particular issue.

3 The next issue that we heard some testimony
4 about on February 12th was profanity. And we have a Good
5 Neighbor Rule specifically in place that addresses this.
6 And again, we have an on-site manager, 24 hours a day, 7
7 days a week, that are enforcing all Good Neighbor Rules,
8 including this one.

9 Noise was another issue that we heard some
10 testimony about on February 12th. We actually have a
11 couple more Good Neighbor Rules that probably fall into
12 that category as well. But we spent a lot of time trying
13 to figure out what we can do to make sure that there is
14 no noise that would unreasonably interfere with the
15 enjoyment of our neighbors, and we came up with these
16 five Good Neighbor Rules.

17 We have a pretty aggressive quiet atmosphere.
18 9 p.m. -- after 9 p.m., head phones must be used. TV's
19 will be turned off between the hours of 8 a.m. and 5
20 p.m., so there's no TV's during the day. We have curfew
21 hours. These are self-imposed.

22 But again, fairly aggressive rules here
23 regarding what our clients can and can't do. We have
24 lights out at 11 p.m., Sunday through Thursday, and
25 midnight on Friday and Saturday.

1 And then this last one is what I was referring
2 to as a pretty aggressive Good Neighbor Rule that we've
3 implemented here, and that's a quiet time from 9 p.m. to
4 8 a.m. So that will become one of our good neighbors
5 rules, and I believe, again, that's one of the house
6 rules that staff referred to in staff report.

7 Contact with neighbors. Very briefly here.
8 But there was some concern that our clients were engaging
9 in age-inappropriate conversations with some people. We
10 heard some limited testimony about that. We didn't
11 really know what to do. It's one of those situations
12 where we believed that a fairly innocent conversation
13 could have been interpreted incorrectly.

14 So to try to nip that in the bud, we have this
15 rule now that tells our clients they should refrain from
16 engaging in conversation with the neighbor, unless that
17 neighbor initiates the conversation. So we hope that
18 that addresses that concern as well.

19 I wanted to emphasize this point, and that is
20 that Ocean Recovery's approach to the Ordinance and this
21 entire Use Permit process has been long. It's been
22 expensive for my client. The legal fees have added up.
23 It's been frustrated at times, but it's something that we
24 did.

25 And it's something that we did despite our very

1 strong belief -- and I dealt with Mr. Bobko's office on
2 this issue -- that the Ordinance, if really tested in
3 this process, is likely unlawful. But rather than
4 challenge this in a lawsuit, Mr. McClosky and I have
5 spent considerable time talking about what is the
6 preferred approach.

7 And at some level, even though we believed that
8 the Ordinance in this process goes too far, and perhaps
9 just steps ever so slightly beyond what is actually
10 legal, it does a good job.

11 And I think that the residents of this City
12 should be thankful for the fact that it has an Ordinance
13 in place right now that provides them probably -- and I
14 don't know even know if I need to qualify -- more
15 protection than any other city in the State of
16 California.

17 And we welcomed much of what we saw in that
18 Ordinance, because we felt that there were probably some
19 operators in the Peninsula that had no business being an
20 operator in the Peninsula.

21 And we saw this Ordinance, and we said to
22 ourselves, "We're good operator. Yes, it will be long.
23 Yes, it may be frustrating. Yes, it will be expensive.
24 But we're going to comply with this process. And we're
25 going to go through it, and we're going to prove to the

1 City that we're a good operator."

2 And we've adopted that approach, and I think
3 City staff will confirm that, and we've gone through this
4 process. We've incurred the fees. We spent the time.
5 We've listened to the concerns of your neighbors. I'm
6 sure that the neighbors are still not happy. And I will
7 admit that if I lived next door to any operator, even a
8 good one, I'd probably wouldn't like it.

9 But as you know, and as staff knows, there are
10 laws that come into play that afford protections to uses
11 such as this, and we've tried to balance that and to
12 become the best neighbors we can, and I think that we've
13 succeeded.

14 I think that we've made fairly dramatic
15 improvements to what we believe was already a good
16 operation back in February. We've spent considerable
17 time with these good neighbors rules, and I think that
18 now, we're an even better neighbor.

19 You should know that if you were to follow
20 staff's recommendation, we would not consider this a win.
21 The staff recommendation, as you know, imposes
22 considerable conditions on us that will make our
23 operation more expensive, more time consuming, perhaps
24 most dramatically, it results in a bed count reduction
25 from 22 to 18 that will reduce the profitability of us.

1 But even though we wouldn't consider this a
2 win, I think this is something that, in the spirit of
3 cooperation that we've tried to show throughout this
4 process, hopefully we can live with. And for that
5 reason, I would strongly urge you to follow staff's
6 recommendation and grant the Use Permit application.

7 Mr. McClosky is also here. I think
8 Mr. McCloskey's role will be primarily to address
9 anything that we hear from any of the neighbors at this
10 time, unless Mr. McCloskey had anything at this time?

11 MR. MC CLOSKEY: No.

12 MR. O'CONNOR: If you have any questions, I'm
13 certainly happy to entertain them.

14 MR. ALLEN: I'd like to address that garage use
15 as a smoking facility. Mr. Kiff left me with the
16 impression that the use of it as a smoking facility would
17 eliminate its opportunity to be used as a parking space.

18 Is that how you're viewing it?

19 MR. MC CLOSKEY: I would probably answer that
20 possibly.

21 MR. ALLEN: If you need to answer it, then
22 maybe you should come up.

23 If you're going to answer it, then also
24 address -- oh, I lost my train of thought. Sorry. Go
25 ahead.

1 MR. MC CLOSKEY: Well, I guess I
2 would -- again, this is Jim McCloskey for the record.

3 I would venture to answer that possibly,
4 because I think we could make it structure -- the garage
5 is large enough where we could have it also work as a
6 garage and a smoking facility. So at this point in time,
7 I'm hopeful that we'll be able to accommodate both those
8 issues into one, so the answer is different.

9 MR. ALLEN: I was interested -- without passing
10 judgment on what you might or might not do, it just
11 seemed to me that if it became exclusively a smoking
12 facility instead of a parking facility, it would become
13 an assembly room. And whether that's good or bad, I'm
14 not sure either, but --

15 MR. MC CLOSKEY: Yeah. Our garage will not be
16 assembly rooms. In fact, the garages there have been
17 cleared out.

18 MR. ALLEN: Okay. That's a point. The garages
19 are now completely cleared out and available for parking?

20 MR. MC CLOSKEY: Correct.

21 MR. ALLEN: Okay. Good. Thanks. All right.

22 Let's see, that's the only question I have of
23 you. Thanks.

24 MR. O'CONNOR: Anything else of me, Mr. Allen?

25 MR. ALLEN: I don't think so at the moment. I

1 want to go to a staff question for just a moment.

2 I'm curious. With respect to Condition 18,
3 that's one that's entitled "Nuisances," -- and I didn't
4 see the opportunity to inquire about this before and wish
5 I had -- does this City actually have on its books
6 property maintenance standards as some cites do?

7 MR. KIFF: Yes, we do. They are fairly
8 elaborate. They are in Title 14.

9 MR. ALLEN: Wouldn't they be applicable -- I'm
10 sure -- or have you considered how you might integrate
11 those standards into part of this, or does that --

12 MR. KIFF: Well, yes, Mr. Allen. Arguably,
13 Condition 18 is duplicative of the Municipal Code. We
14 have the right now to go to any facility, any home,
15 single-family, otherwise, apartments, and enforce our
16 nuisance codes, and we do have that now.

17 I think it's appropriate to clarify that in
18 this condition. Indeed, the scheduled
19 proposed -- although it allows the operator to come in
20 and try to argue the merits of a longer term, the
21 schedule proposed here is actually shorter than our
22 ordinary nuisance code, which usually we give 14 days.
23 This is seven.

24 MR. ALLEN: Okay. That's -- and I was looking
25 at my paper while you were going over Condition 8, the

1 curfew. Did you just strike that entirely from the
2 conditions?

3 MR. KIFF: Yes, Mr. Allen. I did propose
4 striking that from the conditions. I'm happy that Ocean
5 Recovery is proposing enforcing it on its own.

6 But as noted to you, one of the things I do is,
7 in my current job is I oversee Code Enforcement. And I
8 can't for the life of me figure out how I'm going to keep
9 Code Enforcement enforcing basically a door check with a
10 client. And it's much more important, I think, to the
11 neighborhood and to the residents nearby that it be
12 "quiet hours" instead of a "curfew."

13 MR. ALLEN: Okay. All right. I don't have
14 anything else.

15 Does staff have anything else before we open
16 the public hearing?

17 MR. KIFF: No, sir.

18 MR. ALLEN: All right. Then let's please open
19 the public hearing, and we'll follow the usual rule of
20 three minutes and wrap it up when we ask, please.

21 And to the extent you can, I'd sure rather hear
22 about what's been going on since February than what
23 occurred before, not because I'm not interested in what
24 occurred before, but what occurred before was really well
25 documented in testimony at the hearings and in a lot of

1 written material.

2 So with that, let's comment. Mr. Lopez is
3 first, apparently.

4 MR. LOPEZ: So, yeah, Paul Lopez, 1125 1/2 half
5 West Balboa Boulevard, neighbor of 1115.

6 So Mr. Kiff and Mr. Allen -- and Mr. Allen has
7 indicated that the records is quite clear in regards to
8 the public's feedback on this facility and this
9 application. I think there's a group of us who live in
10 close proximity to the facility that thought it should
11 have been denied back on February 12th.

12 The issue -- and to clarify Counsel's
13 comment -- is not that there's a sober living facility in
14 our neighborhood or next to my residence. But it has to
15 do with having a poorly managed facility next door to me
16 and in our neighborhood. And I think that the record
17 shows that there was very specific examples brought
18 forth, pictures, letters, that really kind of documents
19 that fact.

20 So, Mr. Allen, you asked what's changed over
21 the last three months? One very big issue, an issue that
22 I had brought up with Mr. Kiff early on after the
23 February 12th hearing, is that they are not operating
24 anywhere close to 18 beds, okay? I don't know what the
25 number is, and I don't know if Mr. McCloskey is prepared

1 to tell us what the average has been over the last three
2 months, but it's not at 18.

3 And one evidence of that fact is that they are
4 using one van to transport their folks back and forth,
5 and 18 people don't fit in one van. So if we go back to
6 the prior record, they have -- the record is clear that
7 they have not effectively managed 22 residents, whatever
8 their average was before.

9 So coming in here and talking about all these
10 things that have changed, and managing it at a much lower
11 count, which I would assume is probably six or eight, or
12 something like that, isn't fair and really kind of a
13 little bit preposterous as it comes to your question
14 asking, what's changed over the last three months? They
15 do it with much less density.

16 But having that with six or eight people, I've
17 gone on record that the movement back of residents back
18 into the hallway near the garage, all it's done is
19 funneled secondhand smoke towards my facility and down
20 the hallway.

21 Improper behavior. There was a letter that was
22 given to Mr. Kiff from Colleen Darling, who is here
23 today. It doesn't appear to have made it part of the
24 public record, where there was some improper behavior
25 with a husband and wife looking to rent the facility in

1 the front. I think Mr. Kiff has that.

2 No full-time supervision. Back to the same
3 issue. He indicated that there is. Mr. McCloskey and I
4 met to talk about his good neighbor policies.
5 Mr. McCloskey did not know the name of the full-time
6 supervisor. So I don't know who's verified that there
7 is, in deed, one on-site, with the exception of a
8 emergency situation.

9 There are still residents with cars, okay?
10 There's out-of-state license plates parked right in front
11 of the facility. I park my car out in front of the
12 facility. I see them come and go. They are jumping out
13 the car, walking in the facility, walking out of the
14 facility to their cars. So if it's not them or
15 residents, maybe Mr. McCloskey can tell us who it is.

16 And parking still is an issue. The van doesn't
17 even fit in the garages. And there's cars being parked
18 on the garage with very few cars parked in it.

19 I believe past performance -- and I'll wrap up
20 here -- I believe past performance is a greater predictor
21 of what's going to happen in the future. So here we are
22 three months. Facility is probably quieter, lowered
23 density.

24 And so what we're going to do is take promises
25 of how this facility is going to be operated in the

1 future, when we have provided you with five years of
2 documentation of things that we've observed as neighbors.

3 It was to -- this process was to reduce
4 overconcentration and minimize the neighborhood impact of
5 these facilities, including the 1115. I have two
6 facilities within 100 feet of my residence. This one is
7 5 feet away, or whatever that property line is, and I
8 have one across the street at 1129.

9 I know that we're using APA standards, and the
10 City's adopted that to define a block of 670 feet. But
11 the reality of the matter is I have two within 100 feet
12 of my residence. And I also understand that you have the
13 ability to interpret that block -- the interpretation the
14 way that you see fit.

15 So from my perspective, I've got
16 overconcentration. I've got two facilities that close,
17 regardless of what ADP or APA says about being 670 feet.
18 I've got two within 100.

19 And then I think the record is quite clear that
20 the management, not the physical location of the
21 facility, the management of the facility has created a
22 negative impact to neighbors.

23 And finally, I think it was characterized in
24 Counsel's -- I don't know -- letter to Dave basically
25 saying a small group of well-organized folks have made

1 all this noise and all the complaints. That small group
2 of organized folks happens to be collectively the
3 neighbors of this facility, okay? So who best to comment
4 on what's going on over there?

5 So I urge you to deny the application. Thank
6 you.

7 MS. DARLING: I'm Colleen Darling, and I'm the
8 owner of the property at 1113, which is directly impacted
9 by 1115.

10 I would like to make a comment that when the
11 drawings and things get done for this wall, that I have a
12 chance to make a comment on them? I do have a background
13 in this, and I would like to be part of that process
14 before it's fully approved.

15 Another comment, I did hear what Paul said
16 about the number of people. I don't know how many are
17 there, but I've been staying at the house off and on, and
18 I've seen maybe eight people. And when I was there on
19 April 20th, it was 9:30 at night. I put my kids to bed,
20 and there was four guys outside smoking.

21 And then one guy came up and went upstairs. So
22 I just said, "Hey, would you make sure you keep it down?"
23 Not that it was loud, but I didn't want it starting. And
24 one guy just look at me like I was an idiot, just one of
25 the tenants or whoever was staying there. So I see it,

1 I'm there.

2 I'm going to be there this weekend. I'm going
3 see what happens, not that I'm looking to, say, call the
4 police on everything. You did bring that up, like, why
5 didn't you hear anything before? We really didn't even
6 know we have had the opportunity. So now that we do have
7 the opportunity, we have been writing and documenting
8 everything.

9 I do have the note that I sent to Dave and
10 copied Jim from a couple week ago when the
11 tenant -- prospective tenant went up there. And you'd
12 like that, I can give you that.

13 And basically what happened is he went there at
14 7:45 in the morning with his -- it was a fiance to look
15 at the house. When he walked up there, there was four
16 guys smoking. And by 8 o'clock, he said there was six to
17 eight guys out there.

18 His fiance is very pretty, and the guys looked
19 her up and down like a piece of meat, and his exact
20 words, he goes, "It was really gnarly with those guys
21 there." He goes, "I wouldn't feel safe living there with
22 a 14-year-old daughter, and I would never leave them in
23 the house." Plus, you have the second floor that has
24 direct vision right into the house.

25 So with that, I ask you to deny the permit.

1 Should I leave that with you?

2 MR. KIFF: Sure.

3 MR. ALLEN: Yes.

4 MR. MATHENA: Larry Mathena. Good to see you
5 all.

6 Couple of different points. Number one, I
7 think you've heard some of the response relative to
8 what's happening in this interim period since the
9 February hearing. Just a simple observation.

10 Effectively, you put these folks on probation.
11 If they didn't dramatically improve, they would be too
12 stupid to ever get a license, you know, number one.

13 Number two, they have dramatically cut down
14 their occupancy. There aren't that many people there.

15 Number three, they are still having issues come
16 up, as you've heard and as you've seen on the record.

17 So this sort of charade of "We're reducing
18 our -- we're going to be a good citizens,"
19 it's -- doesn't exist in the record.

20 Switching gears on a couple of different
21 points, number one -- and I've submitted this -- based on
22 the evidence presented here, as well as the evidence
23 presented in the Balboa Recovery Hearings, I sincerely
24 believe that you have an existence of an integral
25 facility.

1 I also believe that you have no justification,
2 looking at the existing Federal injunction, that allows
3 you to affirmatively exercise a power that you don't
4 possess in the existence of an integral facility.

5 You're not allowed -- you don't have a variance
6 right. You don't have any sort of grander power to
7 affirmatively say, "I can give you a permit for an
8 integral facility that is not an MFR zone," period. And
9 the Federal injunction purely relates to small licensed
10 facilities, none of which are applicable in this case.

11 So I don't see how you got that power. If you
12 do have that power -- I just want to get one last
13 point -- and I don't have enough, but it's simple, and
14 it's a straight forward, and I'll give Mr. Kiff one.

15 Your job is to apply the law fairly, and it's
16 to apply the law fairly and rationally, not just on
17 behalf the Applicant, but also on behalf of the citizens
18 of Newport Beach as a whole.

19 In the first picture, you see me standing in
20 front of Newport Coast Recovery, which is at 1216 West
21 Balboa. The picture was taken from me standing in front
22 of the approved Balboa Horizon's facility at 1132. You
23 can't make out the sign I'm saying, but it says "Newport
24 too close." You made the determination denying Newport
25 Coast a permit, that the Newport Coast permit -- Newport

1 Coast was too close applying the APA rules.

2 The second picture is taken from the same
3 location of me in front of the 1115 facility seeking an
4 application now. You, Hearing Officer Allen, have the
5 power under the law, you have a factual record, you have
6 logic, you have fairness, you have rationality.

7 And if, in fact, you have a set of pictures
8 screaming at you that if you decide that Newport Coast,
9 based on its proximity to Balboa Horizons, shouldn't have
10 a Use Permit, that this facility shouldn't either.

11 You have a record of interblock activity that
12 exists for these facilities that didn't even exist in
13 Newport Coast. You have a basis to apply the law
14 consistently, and I really hope you do.

15 MR. ALLEN: I'm just not taking up any more of
16 your time, or are you?

17 MR. MATHENA: My time is gone.

18 MR. ALLEN: Tell me about that last thing that
19 did you here, which is primarily consisting of Judge
20 Selna's opinion. I haven't had the opportunity to read
21 it, because I just got it --

22 MR. MATHENA: I apologize. I only got
23 back -- I actually encouraged the City to explain to me
24 why the integral facility rules should not be applied
25 outside of the specific facts very clear in Judge Selna's

1 hearing and judgment.

2 And I, despite asking, didn't get a good
3 answer, which sort of forced me to say, "Hey, if an
4 injunction limits you to small licensed facilities and
5 saying you can't apply these rules there, it doesn't
6 apply anywhere else."

7 And in particular, and the thing I really
8 struggled with, is it's one thing to sort of say in a
9 discretionary sense, "I'm not going to choose to exercise
10 the power I have." I accept that in a discretionary
11 sense.

12 But if you don't have a power over you saying
13 you can't -- you need to pretend this rule isn't here, I
14 don't know how can you exercise a power that, under the
15 Ordinance, doesn't exist. You don't have the power under
16 the Ordinance in the case of an integral facility to
17 grant a Use Permit outside of an MFR zone.

18 MR. ALLEN: Just so I understand, what facility
19 is this integral with?

20 MR. MATHENA: It's integral with a facility of
21 Mr. Cullen's, and, in fact, I left my notes back there,
22 but it's an eight-person unlicensed facility.

23 MR. ALLEN: You mean the referral business that
24 was discussed earlier?

25 MR. MATHENA: Uh-huh.

1 MR. ALLEN: Okay. Thanks.

2 MR. MATHENA: Thank you.

3 MR. ALLEN: Who's next?

4 MS. CURRAN: My name is Laura Curran. I live
5 in Corona Del Mar.

6 So why do I come to hearings about properties
7 in the Peninsula? First of all, I think, as residents,
8 it's important to stay abreast of what's going on. But
9 also there's a precedent being set here. I'm really
10 concerned about this concession about a smoking garage,
11 about using the garage for smoking.

12 And I'm concerned, because there are facilities
13 in Corona Del Mar and other residence areas which are
14 currently using their garages for smoking on an ongoing
15 basis. And there is -- you're setting a precedence. Are
16 you negating the conditions set, first of all, on page
17 11, which calls for use of all six on-site garage spaces.

18 Second of all, you know -- in 2005, I sat here
19 until 2 in the morning when Counsel revised the
20 ordinances for parking for Corona Del Mar and eliminated
21 the ability for people in R2 units who only had a
22 single -- who only had one parking space per unit to
23 convert these units. So they essentially said, "We're
24 really, really focused on having two spaces per unit and
25 having full utilization of the garage as garages."

1 So I come to the hearing, and now I hear that,
2 in discussion with staff, that there has been a
3 concession made to accommodate more residents and to
4 allow them to have fewer parking spaces available, okay?

5 And there is -- even what is even more
6 disturbing is that it's not in the staff report. I mean,
7 unless it's there, and I can find, but I haven't been
8 able to find it.

9 Whereas in 2005, when the Code was changed, it
10 was in the Planning Commission hearing. It was at City
11 Council. And that was a change where they changed the
12 rules related to parking, and I have people who sat here
13 and had a chance to comment on it.

14 That was a 6-1 decision of Council, and Leslie
15 Daigle is the only person who voted against it. So you
16 are offering them a concession which clearly goes against
17 the intent of Council related to parking.

18 Even more concerning, it's not in the staff
19 report. So how, as the resident, would I even know if I
20 were reading this report that this parking issue is
21 coming up? Then you're setting a precedence.

22 There are operators who are currently violating
23 garage usage codes. And only one of the few avenues that
24 residents have who are currently experiencing smoke when
25 they go into the alley is to say, "Look, enforce the same

1 codes related to garages that you enforce related to me
2 as a resident, okay?"

3 So, you know, if you're going to provide this
4 concession, those are generally put into codes or put
5 into place through a variance. They should apply for a
6 variance. They should go in front of the Planning
7 Commission, and if there's any issues, it will go in
8 front of City Council, just like in a variance, because
9 that's what you're offering them here.

10 So I think -- and finally, page 12, calls for
11 fire extinguisher and smoke detectors, and that all
12 smoking should be inside the facility. I don't see this
13 as part of the facility and fire extinguishers and smoke
14 detectors being called for.

15 And finally, five spaces would be 15 people.
16 So let's do the math, like we do in all other finance
17 reports, and let's say, "If you've going to be five
18 spaces generally available, let's have 15 people." And
19 again, let's have the same rules for everyone in the
20 City.

21 Thank you.

22 MR. ALLEN: Thank you.

23 MS. OBERMAN: Good afternoon, Denys Oberman,
24 resident.

25 I wanted to comment on overconcentration and

1 the objective mandate and we feel the responsibility of
2 overconcentration. The reason this Ordinance came about
3 is because there was no regulation, no enforcement of any
4 of the Codes relative to this particular use. And I just
5 wanted to remind you and also to remind the staff and the
6 City's Counsel of this.

7 The reason the Ordinance came about is because
8 the people in the community had been suffering from
9 impacts of some, which have been reported for as much as
10 a decade from various operators individually and
11 collectively from overconcentration in the Peninsula and
12 the surrounding Newport Beach area.

13 So, we have a situation where overconcentration
14 is something that is recognized by clinical experts in
15 the recovery industry profession business, as well as the
16 Federal courts, that it's detrimental both to the
17 disabled individuals seeking recovery and the neighbors.
18 So we have a situation where we've got a mitigation or
19 remedial requirement.

20 Mr. Allen, you have already made the statement
21 that you recognize that in the prior hearings to be a
22 mandate of this City, and we appreciate that. So
23 something has to be done. This area, this central
24 Peninsula proximate to the school, residential area, is
25 overconcentrated, and it is institutionalized.

1 And the only way that there's going to be
2 satisfactory remediation is if there is some application
3 of a remedy, and we need a reduction in the number of
4 facilities so as to eliminate an institutionalized state
5 and protect public health and safety.

6 The games that we're playing now, and I really
7 believe that they are games, about whether a block is
8 defined as 617 feet or 400 feet or 700 feet, the blocks
9 in this area are 300 to 400 feet in length. The
10 densities are exceptional.

11 Had the conditional review process been applied
12 by the City in the first place, and had it been applied
13 fairly and with planning principles in mind, this use
14 would probably not have been there for the simple reason
15 that, A, it is a large use with particular operating
16 characteristics that are not like the characteristics of
17 normal residential areas;

18 B, because it's in close proximity, 6 feet, to
19 the surrounding residential uses;

20 And C, because of close proximity to the
21 school.

22 So there has to be an action to eliminate
23 overconcentration that's to protect everyone's civil
24 rights. That's my one request.

25 The second request I have, Mr. Allen, is there

1 has been a very elusive nature of the management of this
2 operation. And we would like -- we request that you find
3 out -- and there is a representation as to who the 24-7
4 manager is of this operation.

5 We appreciate, you know, the concern that Jim
6 McCloskey and Kevin Cullen have had. We see Kevin Cullen
7 frequently running in and out of that area. Kevin
8 Cullen -- I'm almost done, so please bear with me.

9 Kevin Cullen obviously plays a role as a key
10 member of management and, from what we can tell, the only
11 member of management that is ever around to oversee these
12 operations.

13 We appreciate that, Kevin. When you are there,
14 we do see you. You're obviously concerned.

15 Kevin also -- Kevin has this responsibility,
16 clearly, and he is an employee of this establishment. He
17 also is the operator of a three-facility -- what we
18 believe to be an integral operation. But anyway, even if
19 it weren't, a three-facility operation.

20 So Mr. Allen, we need to know who is the
21 manager of this facility? Who is the 24-7 manager? This
22 is a large facility. It is not a sober living home where
23 people have gone more than halfway. It was a residential
24 care and treatment facility, and it does need to have
25 somebody that is a qualified professional.

1 We beg to disagree. So we want to know who
2 that is. Because, to date, there's no one. And we feel
3 the City has a responsibility to have that individual
4 named and some edification that that individual is
5 properly qualified.

6 And we ask that this be denied or be denied
7 subject to more severe -- be approved, if it is approved,
8 subject to additional conditions.

9 Thank you. I'd like an answer today. Thank
10 you.

11 MS. VERDUGO: Christine Verdugo, former
12 resident at 1113 west Balboa.

13 I'll start out by staying I had to break my
14 lease early in order to move out of the home that's next
15 door to the facility here due to multiple reasons that
16 have already been stated in the letter previously.

17 I did receive the e-mail with the copy of the
18 rules that were created with hours and hours of work by
19 Mr. McCloskey's attorney. And I will say that within
20 hours of receiving that e-mail, I could go down that list
21 and every one was broken within hours of receiving that
22 e-mail, between the noise, the profanity, the quiet time,
23 the parking in the streets, the feeling of discomfort
24 with confrontational people around.

25 So I would like to say initially that quiet

1 time was not taken seriously, and there were a couple of
2 nights in a row right after that where we could hear
3 tenants coming home at 1 and 2 o'clock in the morning,
4 which is right outside the master bedroom.

5 I even heard conversations "Brandon, make sure
6 Brandon unlocks your bike for the meeting tomorrow
7 morning." Okay, what does that mean? His tenants don't
8 go to meetings, or they do? Whose is Brandon? Why would
9 Brandon have to unlock somebody's bike for a meeting the
10 next day?

11 Parking down the street still continues. I
12 would concur with what Paul Lopez said about the
13 out-of-state license plates. I still see people parking
14 there and go into the facility. The van is constantly
15 parked in front loading and unloading multiple people.

16 We still see that from our new residence down
17 the street. My daughter was in the kitchen and could see
18 out the front window. "There goes the people across the
19 street loading, you know." So there is no alley loading
20 and unloading. It doesn't exist.

21 Also, Colleen does not know this, but I live
22 close now. I moved down the street, but I can still see
23 the facility. And so I saw a potential tenant pull over
24 in a beige Navigator, husband and wife, or man and woman,
25 and a lady got out of car, and I saw one of his tenants

1 walk up and start chatting with the woman.

2 And I thought, you know, these are not clean
3 cut kind of people that are walking up to you. So he's
4 starts chatting with her about the house that's for rent,
5 and blah, blah, blah, you know. They left, obviously,
6 they didn't rent it. I don't know why. But she's had
7 other issues with people coming to see the facility that
8 have felt uncomfortable there.

9 Okay. So -- and I just want to make a comment
10 about everyone has discussing their feeling about safety
11 and being looked at uncomfortably and being around
12 multiple groups of people. I realize they are a
13 protected class, but what about the protection of
14 everybody out here who has discussed to you about not
15 feeling comfortable in our own neighborhood that, you
16 know, we have that right as well?

17 So that's all. Thank you.

18 MR. ALLEN: Anyone else? Someone needs to be
19 last. All right. We'll close the hearing. Public
20 hearing portion. Let's take just a three- or four-minute
21 break, please.

22 Off the record.

23 (Pause in proceeding.)

24 MR. ALLEN: All right. Let's recommence the
25 hearing. And our agenda provides that next on the list

1 is the Applicant having the opportunity to rebut or
2 comment on any of the testimony that has been presented
3 thus far.

4 Maybe you can start out by delineating as
5 clearly as possible who the manager is.

6 MR. MC CLOSKEY: Yeah, let me start there.

7 First of all, the person that is there during
8 the day is Karen --

9 MR. KIFF: I'm sorry, Jim. Did you give your
10 name for the record?

11 MR. MC CLOSKEY: I'm sorry, Jim McCloskey.

12 Karen Knapp. And let me tell you a little bit
13 about Karen. Karen is a Master-level counselor. She
14 also worked at one of the most prestigious facilities in
15 the country, a place called Hazelton (phonetic). We're
16 very, very lucky to have her. She's been with us for
17 quite some time.

18 We also have a nighttime manager who actually
19 lives on the facility. He's actually in unit number six.
20 His name is Brian Lennon. He is there every single
21 night, seven days a week. So he is always there.

22 If somebody needs get us, they can call our
23 phone number. And if somebody doesn't pick up the phone,
24 there's an answering service that will pick up the phone.
25 They're instructed either to call Cathy Tunny (phonetic),

1 who is our executive director, first. Kevin is also on
2 that list, Kevin Cullen, myself, and Brian will also be
3 on that list.

4 MR. ALLEN: Now, is Kevin an employee?

5 MR. MC CLOSKEY: He's strictly an employee of
6 Ocean Recovery; correct.

7 MR. ALLEN: I see.

8 MR. MC CLOSKEY: So should I go to the next
9 level or anything else?

10 MR. ALLEN: Sure, that's fine. Thank you.

11 MR. MC CLOSKEY: Let me address the cars.
12 Again, I'll state for -- again, our clients do not have
13 cars. They are not allowed to have cars. If they do
14 have cars, please let us know. We'll impound the cars.
15 There are no cars at our facilities.

16 What's -- the other thing that came up is how
17 many clients do we have? I know as of today, we have 18
18 clients there at the facility. So what we've
19 runned -- it varies a little bit from when we last met,
20 but I would say we probably ran somewhere between 15 and
21 18 clients during that whole period of time.

22 We're more than happy to have Ms. Darling have
23 her input on the wall that's being built, so we have no
24 objections there.

25 I would also like to address the -- Kevin's

1 facilities. He has -- we have no affiliation with him.
2 We has no ownership in his facilities. That's his
3 independent thing. Kevin is strictly an employee of
4 Ocean Recovery. Kevin does intakes for us, and that's
5 what his role model is or his role -- his job assignment
6 is there. So we have no affiliation with what he does.

7 Let's see what the third thing was here
8 that they came up with. I don't think I missed anything.
9 I think those were the main concerns that were addressed,
10 so that was basically it.

11 MR. KIFF: I may have a few for you,
12 Mr. McCloskey, based on some of the statements, if you
13 wouldn't mind.

14 I wanted to stress to the audience, too, as a
15 result of the way this played out between now and
16 February, Ocean Recovery was not under any directive by
17 the City to do anything beyond what it's licensed to do.

18 The appeal of the Hearing Officer's decision in
19 my mind, rightly or wrongly, made me believe this was
20 coming back sooner, and we didn't have an ability or an
21 action to apply some type of interim use to this
22 facility. So anything that Ocean Recovery did or didn't
23 do was voluntary.

24 So when -- if people did mention, "Well, gosh,
25 there's a violation of the nighttime 9 o'clock thing,"

1 well, if that 9 o'clock thing was voluntary, that's all
2 it was. It wasn't adopted by the City. And I know, at
3 least in my conversation with Mr. McCloskey, that the
4 house rules were being shopped around for a period of
5 time before implementation.

6 And indeed, I was under the understanding that
7 some of them have not been implemented yet, and that's
8 just fine. Because the only tool we have as a City to
9 make them being implemented is the issues -- the
10 conditions within a Use Permit.

11 I did have a question for you, though,
12 Mr. McCloskey, about how you're dealing with smoking,
13 say, in the last week or today. How was that being dealt
14 with now absent the requirement to use one of the garage
15 facilities?

16 MR. MC CLOSKEY: We have, as mentioned in our
17 good neighbor policies, we've tried to limit that to a
18 minimum of four people smoking.

19 MR. KIFF: So in the patio?

20 MR. MC CLOSKEY: In the patio. We've also
21 tried to get them up against the -- for lack of a better
22 word -- the staircase, where it would be most close to
23 the building itself and less exposure going out to the
24 outside neighbors.

25 MR. KIFF: I see. And how long has the

1 facility not allowed clients to have cars?

2 MR. MC CLOSKEY: Quite some time. There was
3 one isolated incident several, several months ago, I'm
4 going to say at least six or eight months ago, where a
5 person was there on a temporary basis. He was going
6 home. He had a car. He maybe had that car for maybe
7 about two days.

8 Generally, and especially from this point
9 forward, our clients do not have cars. And again, I'll
10 say it. If they do have cars, we'll impound the cars and
11 get them out of there. Our clients are not allowed cars.

12 MR. KIFF: And then tell me a little bit more
13 about how the deliveries work today of clients, sorry,
14 pick up and transit to various meetings or counseling
15 off-site potentially?

16 MR. MC CLOSKEY: Yeah. We have a van that
17 picks them up. And it was complained that the van wasn't
18 picking up in the alley. The reason it wasn't picking up
19 in the alley is because we were asked not to pick up the
20 clients in the alley.

21 It was told to us that that would be more
22 disruptive, and that we would please pick them up in the
23 front, so that's what we'd be doing. If they prefer us
24 to pick them up in the alley, we'd pick them up in the
25 alley. Basically, we have two pick up's a day. I'm not

1 sure what time it is during the day, but basically we
2 have two pick up's per day.

3 MR. KIFF: Okay. Thanks. I think that those
4 are my questions, Mr. Allen.

5 MR. MC CLOSKEY: I think that's it. I tried to
6 address everything that was brought before us.

7 I don't know if you have any follow-up, Sean?

8 MR. O'CONNOR: Very briefly. Again, for the
9 record, Sean O'Connor on behalf of Ocean Recovery.

10 Couple of brief points. We heard some comments
11 regarding what is and what is not a block. And I think
12 that the staff report adequately covers that,
13 particularly Exhibit 5. And it talks about the rationale
14 of having the center of Balboa Boulevard be a border in
15 defining a block.

16 I would also note that the APA standard
17 references are not "one use per block" but actually "one
18 or two uses per block." As it is, we're the only use on
19 this block. I would argue that even if there was another
20 use there, you would have the discretion to allow us to
21 remain there. That's not, of course, the situation where
22 we're the only use on the block. So I think that clearly
23 you must grant the application based on that ground.

24 Also, as Mr. McCloskey just noted, currently we
25 have 18 residents. For the past couple of months, we've

1 had between 15 and 18. We heard some comments today that
2 suggested that we must have intentionally reduced the
3 number of clients so that we could be in better behavior.
4 That, in fact, is not the case.

5 In fact, what is the case is that we are
6 operating at near capacity or at capacity with the 18
7 beds. The behavior has been better, and I think that
8 speaks volumes to what we've tried to do, what I
9 addressed when I was up here earlier this afternoon in
10 terms of your Good Neighbor Rules, and I think that that
11 is evidence that it's working.

12 I would close my comments with noting that the
13 City, as you well know, is in the unfortunate position of
14 being able to please no one in these types of situations.
15 You have people, such as the neighbors, that are here
16 today thinking that the City is not doing enough to
17 regulate operators, such as Ocean Recovery. You have a
18 group of operators who are thinking that the City has
19 done far too much, and that the Ordinance is unlawful.

20 I would suggest to you that if Ocean Recovery
21 doesn't get this Use Permit granted, effectively no one
22 would be able to. Because I look at what we've done, and
23 I ask myself, what more could we have done? And I really
24 don't think we could have done much more.

25 I think that we have done everything that's

1 been asked of us. We've proven ourselves to be good
2 neighbors. We've listened to neighbors' concerns. We've
3 taken a good operation and made it better, as evidenced
4 by the concessions from the people here tonight that
5 since February, certainly, we have been behaving well.

6 And based on that, I think that we deserve to
7 have you follow the staff's recommendation and grant our
8 Use Permit application.

9 I'm happy to answer any questions. Other than
10 that, I'm happy to close it. Thank you.

11 MR. KIFF: Mr. Allen, unless you had any
12 objections, I did want to try to attempt to answer a
13 couple of other comments made by the public. They don't
14 involve the operator, per se.

15 I think they were some fair questions that need
16 to be addressed. And then I do have a couple of slides,
17 if you'd like, on staff's interpretation of how the APA
18 standard and the block definition work into this
19 decision.

20 MR. ALLEN: Okay. That's fine. The critical
21 issue that's being identified here in my mind is
22 overconcentration. I very much tend to agree with what
23 Mr. McCloskey said with respect to the conditions that
24 are proposed here, the degree of control that the City
25 would have, and the obligations that this operation is

1 going to have to meet are huge. And so I'm only
2 interested in hearing a little more about
3 overconcentration and how that applies.

4 Mr. Mathena takes the position -- I don't think
5 it's correct -- that this Hearing Officer has the right
6 to -- well, first of all, the Hearing Officer is required
7 to make a determination as to whether to apply the APA
8 standards. It's not obligatory; it's voluntary.

9 And once the Hearing Officer makes that
10 determination, it appears to me that then the Hearing
11 Officer must apply the standards as they are proposed.
12 That's what the City Council adopted, and I don't think
13 that there's the authority to start drawing circles
14 around uses and then creating distancing requirements,
15 like adult uses, to implement that.

16 So I think I said more than I intended to, but
17 that's the focus here in my mind.

18 MR. KIFF: To that point, then, let me go
19 through staff's analysis and either may help you or draw
20 up some more questions, so we've identified a couple of
21 issues, and you just touched on this.

22 One was appropriateness of the conditions.
23 Will the conditions, if enacted, allow us to make the
24 required findings on the things suggested here? We do
25 think they are tough conditions. We do think, if

1 implemented and then enforced on our part, that they will
2 allow those required finding to be made.

3 The next issue to talk about is the APA policy
4 guide and the standard. And forgive me, for folks who
5 know this a lot, I'm going to go through it briefly. The
6 APA standard is something that we've included, sir. The
7 APA policy guide is a document we've literally referred
8 to within our Ordinance. It's called out in the
9 Ordinance, the letter of the law.

10 And it says among -- it has the discussion
11 about community residents, which just includes group
12 homes and what they call halfway houses. I note folks
13 tend to think of halfway homes of more pejorative, but
14 it's actually, in the APA standard, someone who is
15 halfway home to recovery.

16 But they do say they are residential uses of
17 land. They have no effect on the value of neighboring
18 properties. They have no effect on neighboring good
19 safety. Do not generate adverse impacts. And then,
20 importantly, should be scattered throughout residential
21 districts rather than concentrated or on a single block,
22 and that, quote, and I'm emphasizing this, the existing
23 social structure of the neighborhood can accommodate no
24 more than one or two group homes on a single block.

25 So I'm saying this again, because we

1 incorporated this entire document into our Ordinance.
2 And especially that standard of "one or two group home
3 uses on a single block." So whether we agree or disagree
4 with the policy guide itself in some of these statements,
5 it's part of our Ordinance.

6 So I'm going to move to -- also, what the APA
7 concluded is that higher density neighborhoods presumably
8 have a higher absorption level, community residents
9 should be licensed or certified, which this one is,
10 halfway houses should be allowed in all single-family
11 zones by special Use Permit, and this is, indeed, what
12 we're considering today, what the Hearing Officer is
13 considering with a special Use Permit.

14 So then you get to the essential issue of what
15 is a block is. Again, whether we like it or not, the
16 definition within the Ordinance -- and this was adopted
17 in January -- was "a block is an area of land bounded on
18 all sides by streets, or by streets and a shoreline, or
19 by streets and a cul-de-sac." This is a definition in
20 the Code.

21 And at the previous hearing or at a previous
22 hearing, the Hearing Officer said that "a block in a
23 non-standard subdivision area," which is this area of the
24 Peninsula, "can be up to 617 feet long."

25 So if you take the APA standards, the Hearing

1 Officer's previous action, and the Code's definition of a
2 block, then staff comes to this conclusion, and I would
3 just want you to follow with me.

4 If the Code says that West Balboa Boulevard is
5 a dividing line between two blocks, and the Hearing
6 Officer said 617 feet is a length of a block in this
7 area, and the APA standard says one or two uses per
8 block, and 1115 West Balboa is the only group home within
9 617 feet of any other group home use on this block, there
10 are -- we are recommending approval of this use at this
11 location with conditions.

12 It's one plus another plus another leads us to
13 one irrefutable conclusion if the conditions are right.

14 UNIDENTIFIED SPEAKER 1: Hearing Officer Allen,
15 may I answer your question?

16 MR. KIFF: When we're talking about integral
17 facilities, I think --

18 MR. ALLEN: There, sir, is not going to be any
19 more of the -- coming in. There's a gentleman standing
20 here. Do you have something you must tell us?

21 UNIDENTIFIED SPEAKER 2: Yes.

22 MR. ALLEN: Well, the public hearing has been
23 closed. Why did you not come up when that was open?

24 UNIDENTIFIED SPEAKER 2: Because of the issue
25 of overconcentration was --

1 MR. ALLEN: We're discussing overconcentration
2 now, and the public hearing is closed. I'm sorry.

3 MR. KIFF: Let me talk a little bit about
4 integral facilities, because I think Mr. Mathena does
5 raise a point that's worth discussing.

6 Remember, the Ordinance looked at home -- two
7 different types of homes in different ways. The
8 Ordinance says that if you are an existing use,
9 regardless of where you are, regardless as if you are
10 integral facilities or not, that you have the opportunity
11 to come in and get a Use Permit and stay where you are.

12 And not everyone applied during that period,
13 that 90 days, that May period. Ocean Recovery did apply.
14 This is a Use Permit for an existing use.

15 However, Mr. Mathena is correct if you're a
16 facility proposing to come in as an integral facility,
17 because the Code would direct you to a multi-family zone.
18 However, this is not a new facility proposing to come in.
19 So that's the dividing line.

20 Now, Mr. Mathena makes another point worth
21 discussing. He made it in an e-mail to me about
22 Mr. Cullen's facilities at Balboa Recovery. They did not
23 applied for a Use Permit. It may be more appropriate to
24 look at integral facilities with Mr. Cullen's facilities;
25 however, he didn't go through the Use Permit process.

1 He's going through a different process called reasonable
2 accommodation where the reviews and the tests are
3 different.

4 He's actually trying to say that his facility
5 should be treated differently than the Ordinance treats
6 them. So had Mr. Cullen come in and attempted to get a
7 Use Permit, I think that the integral facilities thing
8 would have applied, again, if they were new facilities.
9 But remember, the Ordinance treats existing facilities
10 differently.

11 So I know that the whole concept is kind of
12 challenging to explain, and it's probably easier to
13 understand it if you've been with us, and I'm a better
14 teacher at that. But that is what our Ordinance does.
15 It treats these two uses differently. So that's why
16 Mr. Mathena's point is not directly on point for this
17 case now. With that, I'm done talking about
18 overconcentration.

19 I would like to address Ms. Curran's point
20 about using the garage for smoking. This garage still is
21 available for parking. And just as if -- like what I do
22 at home, I work on my bicycle in my garage. I pull my
23 car out, and I work on my bike.

24 Now, what Ms. Curran's argument is, if you take
25 it to the full extent of her point, no one should be able

1 to do that. The garages should all be available for
2 parking. And having an area where people come in and
3 smoke when the cars are not there is perfectly legal,
4 just like it's legal to tune up your bike, or to set up a
5 workshop table, or to push one car out and repair your
6 other car, lots of things that happen in typical garage
7 uses.

8 This is not a conversion of a garage to another
9 use. It was discussed in the staff report. She
10 identified it herself. It's on page 12. According to
11 Ms. Curran -- and I think the other important point to
12 remember -- there's two. One is that this is a six-unit
13 apartment complex where we're saying that no one who
14 lives there, except for maybe one staff member, can even
15 have a car.

16 So I think it is appropriate, in light of that,
17 to say that there could be a part of a garage reserved
18 for a use, yet still made available for parking, to look
19 at the larger issue of protecting the neighborhood, the
20 immediate residences, from secondhand smoke.

21 So I think it's a reasonable proposal. It does
22 not do anything to up-end our Ordinance. So, I'm
23 comfortable recommending it, and I would resist strongly
24 Ms. Curran's characterization of it as somehow flying in
25 the face of past City practice.

1 I will stress to Ms. Darling, I think she
2 should have a very appropriate review opportunity over
3 those walls. Those are against her property, too.
4 That's a very appropriate thing to ask. I'm happy to
5 participate in that and help that be accomplished.

6 And I'm trying to look through some of my notes
7 and see where everything came in. I know Ms. Verdugo
8 made a number of comments about the folks who reside at
9 Ocean Recovery and may have come out and greeted the
10 person that may have been a tenant of Ms. Darling's.

11 I do want to stress for the public record,
12 again, that the City views any person in recovery as not
13 being -- as being welcome in our community, and we have
14 not developed this Ordinance to allow that type of
15 housing to stay. I would reject the comment that people
16 in recovery are, quote, unquote, not clean cut, and I'll
17 leave it at that.

18 Thank you, Mr. Allen. If you have any
19 questions, I'm obviously here.

20 MR. ALLEN: Thank you. Does legal staff have
21 any points that they feel appropriate or that they need
22 to address?

23 MR. BOBKO: (Nods know.)

24 MR. ALLEN: All right. I need just a moment to
25 gather my thoughts, and we will be right here.

1 All right. I see it as desirable and
2 appropriate to apply the APA standards to this item. And
3 I should have prefaced my comment by saying that my
4 decision is going to be to grant this permit.

5 I see conflict of a legitimate basis. I see
6 justification for not doing it. But the balance in my
7 mind weighs in favor of granting it, and I'll go into
8 some of the reasons in a moment.

9 But for starters, the overconcentration issue,
10 I understand the concept of a different approach that
11 would be more desirable to apply to cause this one to be
12 disapproved. However, I think it's important, for
13 consistency and for compliance with the City's Ordinance,
14 to stay with the block definition as it's stated in the
15 Code and as Mr. Kiff described it here today.

16 And incidentally, with respect to that, if
17 there's the opportunity to incorporate that diagram into
18 the Resolution, it would be desirable to do that. I
19 don't know if we can do it, but it's very explanatory
20 with respect to what is occurring here, and points out
21 the clear concerns with the fact that there's another use
22 directly across the street, as well as points out the
23 distancing on either side of the other uses.

24 I wanted to look at just the conditions just a
25 little bit. And first of all, I want, again, to concur

1 with what Mr. O'Connor says, that if this one can't work
2 with the degree of conditions and the severity of them
3 that are being applied, if this won't work, nothing's
4 going to work on the Peninsula or anywhere in the
5 community, because this is a very strong set of
6 conditions that are well articulated. They are
7 definitive.

8 I have a couple of comments. But,
9 nevertheless, I think that, given the fact that the
10 nearby residents do not want this at all for very
11 understandable reasons, if it has to be left there, which
12 I'm deciding it does as a small player in this big chest
13 game, I think there's all the reason in the world to
14 believe that it will work. And if it doesn't, we'll know
15 that.

16 The smoking condition -- there were a number of
17 different approaches to that. And this latest one
18 involving the garage seems to be the best idea, because
19 there won't even be four people smoking in the patio
20 anymore. Hopefully, the smoke doesn't drift over the
21 fence.

22 The vehicle parking plan is very comprehensive
23 and restrictive. I don't have anything to add to that.

24 One concern I have is with 27-G, and that
25 condition has to do with change of ownership and causing

1 the requirement that there might have to be an amendment
2 to the Use Permit or issuance of a new permit. Those
3 conditions don't become important until they really
4 become important.

5 And I think that G could use some artful
6 drafting with some legal input. The clear intent is that
7 if a majority ownership in the property, as I see it,
8 changes, then that would trigger. And I don't think this
9 is quite -- you can do a better job of it, and it would
10 be very helpful. That's 26-G.

11 The side property wall appears to be a great
12 idea. I'm sure you've thought a lot more about it than I
13 have. Looks like that wall steps up quite a bit as it
14 goes back on the property.

15 Is that in excess of the height that's
16 permitted, or is it just because there's some kind
17 of -- it looks higher than 6 feet is my point. I wonder
18 if this wall should be as high as the City standards will
19 allow it, it seems to me.

20 MR. KIFF: That's what we discussed, and then
21 eventually adding -- sorry to talk over.

22 MR. ALLEN: No, go ahead.

23 MR. KIFF: -- as high as the City standards
24 allow, and also encouraging some type of landscaping that
25 add an additional buffer so it doesn't run afoul of the

1 City's hedge capacity rule. So we'll be working with the
2 Applicant on that, and with Janet knowing the City's
3 Codes.

4 I think the issue is -- that I see is making
5 sure that we don't impair the 10-foot front yard
6 set-back, yet we still get the appropriate wall height.
7 So arguably, you can do some of that in a set-back with
8 additional landscaping rather than the wall, but we'll
9 look at that and involve Ms. Darling.

10 MR. ALLEN: My main observation about this use
11 is, viewing the City Council's action here to establish
12 criteria for these uses on the Peninsula as well as
13 throughout the City, we can't, at this level, become
14 policymakers for what the City Council sees in its vision
15 for the Peninsula to be.

16 What they've said is that they want to promote
17 public health, safety, welfare, and implementation of
18 goals and policies of the General Plan, and not allow
19 conditional uses and residential neighborhoods to change
20 the character of the neighborhoods. That's what they
21 said is the objective.

22 The second objective in the commencement of
23 that Ordinance is to protect and implement the recovery
24 and residential integration of the disabled, on and on.
25 So there's two important policy determinations that were

1 made by the City Council at the time they adopted this
2 Ordinance. And there's tension between the two of those.

3 But the City Council clearly said "We are going
4 to have to integrate disabled uses into this area, the
5 City." And with that, I see that that's how the
6 Peninsula develops for -- at least for the near future
7 here.

8 I think that this application is a good effort
9 to do this. There's substantial evidence in the record
10 that this use has been troublesome in the past. The
11 petition and letters and e-mails that you've given us
12 clearly indicate that there's been trouble.

13 The Applicant is certainly aware of that. And
14 with the conditions that are imposed on them to operate
15 this place, I think it's not going to be long before
16 you're going to go see whether he succeeds or fails based
17 on a very difficult road to hoe with the conditions that
18 are here.

19 I believe all the finding and determinations
20 required by Ordinance 2008-5 can and are made. The
21 analysis is set forth very articulately in the staff
22 report. We'll impose all of the conditions that have
23 been proposed in -- I believe it's Exhibit 1 -- yes,
24 Exhibit 1, as modified today during the course of the
25 hearing.

1 And what I would request is that the staff will
2 prepare a draft Resolution, as you have in the past, and
3 then I'll review it and possibly modify it to the extent
4 I feel the need to do so, and then we'll need to adopt
5 that Resolution at a future public meeting.

6 Is there any legal requirement that we
7 establish today when that Ordinance is to be adopted, or
8 can that be kept open until such time as it's ready for
9 adoption?

10 MR. KIFF: That can be kept open. Our hope is
11 to bring that back to you at the next public time when we
12 would see you, which is Wednesday, May 20th.

13 MR. ALLEN: Okay. I do not -- I'd just like to
14 get it at least three business days for me to review it
15 and not wait until the day before.

16 MR. KIFF: Understood.

17 MR. ALLEN: I believe this is the very
18 important one, not that all of these aren't very
19 important. But this is very important, and I feel the
20 obligation to do the best job I can, as you already have
21 by the work you've done. That concludes my presentation
22 and time.

23 Is there anything else that needs to be done
24 before we close the hearing?

25 MR. KIFF: Very briefly, Mr. Allen.

1 Just to note for the public, the next hearing
2 schedule is, indeed, for Balboa Recovery's two facilities
3 and their reasonable accommodation hearings, Wednesday
4 May 20.

5 I know that for folks who have been interested
6 in this issue and are on my e-mail list, I had proposed a
7 May 21st date for Newport Coast Recovery. That's a
8 reopened Use Permit hearing. The Applicant has now told
9 us, through their Counsel, that they cannot attend on
10 that date. We will reschedule that with the goal of
11 rescheduling it promptly.

12 And then yet to be scheduled remains
13 Morningside Recovery. One of the reasons this is taking
14 a while is they are going -- part of their facility is
15 going through licensure.

16 And then the pending hearing will be
17 Yellowstone Women's First Step Home, which appealed their
18 denial of the Use Permits and reasonable accommodation to
19 the City Council.

20 So with that, Mr. Allen, I believe staff is
21 done.

22 MR. ALLEN: Okay. Then if there's nothing
23 further, we're adjourned.

24 (Ending time: 5:46 p.m.)
25

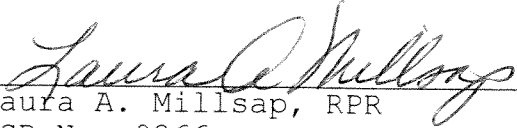
1
2
3 I, the undersigned, a Certified Shorthand
4 Reporter for the State of California, do hereby certify:

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

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

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

18
19 Dated: MAY 29 2009

20
21 
22 Laura A. Millsap, RPR
23 CSR No. 9266
24
25

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