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PUBLIC HEARING ON
NEWPORT COAST RECOVERY, LP
and
KRAMER CENTER AT NEWPORT BEACH, LLC
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
THURSDAY, JANUARY 22, 2009

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

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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 4:28 p.m., on Thursday, January 22, 2009,
before LAURA A. MILLSAP, RPR, Certified Shorthand
Reporter No. 9266.

NEWPORT COAST RECOVERY - 1/22/2009

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NEWPORT COAST RECOVERY - 1/22/2009

1 NEWPORT BEACH, CALIFORNIA; THURSDAY, JANUARY 22, 2009

2 4:00 P.M. - 4:28 P.M.

3
4 MR. ALLEN: All right. So we'll open the
5 agenda for Thursday, January 22. First item on the
6 agenda is the Resolution of denial for Newport Coast
7 recovery. We had public hearings on this matter, and we
8 now have a Resolution before us to consider for adoption.

9 So with that preface, would staff like to
10 report?

11 MR. KIFF: Yes, Mr. Allen. I'm going to move
12 to the slide that contains that Resolution. Because as
13 you pointed out at the last meeting, you directed us to
14 prepare a Resolution. We did prepare one. We posted it
15 on the Web site. And then you, as you're entitled to do,
16 had some recommendations for a change to it. So I wanted
17 to draw your attention and the audience's attention to
18 that change up on the screen. It's going to come up
19 here. It's towards the end.

20 It's relating to the finding about -- it's
21 Finding D, where it talks about compatibility with the
22 neighborhood. And the language you'll see in black is
23 the language that's in the draft that's outside, and then
24 you'll start to see this struck out and added change.
25 And this is something that the hearing officer

1 recommended being added.

2 And I'll start, "It's appropriate to apply the
3 APA standard to this application. Use is located
4 mid-Balboa Peninsula, which is part of the non-standard
5 subdivision area."

6 And continuing on, you go to the next paragraph
7 where you say, "Within that 607 foot block, where this
8 use is located, there's already one 11-bed residential
9 care facility, and that's Balboa Horizons." And here's
10 where I had made some modifications to the phrases you
11 used.

12 And it's fair for you to ask me that question
13 as to why I did this, but within 100 feet, there is an
14 application pending with the State ADP for a facility
15 housing six or fewer people at 1217 West bay. This is
16 not yet approved. And the City, by State law, needs to
17 treat this facility like it treats any single family use.

18 So we believe it's not appropriate to use that
19 facility based -- for two reasons, because it's still
20 pending, and because it's a six-and-under that we're
21 specifically excluded from considering as anything but a
22 single family use.

23 That the distancing comment is not appropriate
24 to apply to that building. It's very appropriate to
25 apply to Balboa Horizons, as you did. So that's my

1 proposed amendment to your language there. And again;
2 that's kind of in the purplish blue on the screen.

3 And then it continues on, "Across Balboa
4 Boulevard, there are two residential care facilities
5 which are closed or under abatement. However, it's not
6 certain that these will, in fact, remain closed or abide
7 by the order." And then you note that "Across Balboa
8 Boulevard at 115 West Balboa, within 300 feet, is the
9 122-bed residential facility known as Ocean Recovery."

10 So if you were amenable to those changes, this
11 would be the final Resolution that we have prepared for
12 your signature then.

13 MR. ALLEN: Do you have concerns over the
14 reference to the "uses across the street," "across Balboa
15 Boulevard" and east or toward west?

16 MR. KIFF: No. I think the American Planning
17 Association standards allows you to look around, not
18 necessarily in a linear way, as to what a block is. But
19 to look across the street, for instance, we've certainly
20 done that with other uses. I think the standard does
21 allow you to consider that.

22 MR. ALLEN: Mr. Bobko, do you have any concerns
23 over reference to the six-or-less use that's across the
24 alley from this use?

25 MS. BROWN: No. We'll defer -- the City's

1 position is what the staff has said, obviously. So the
2 City endorses that.

3 MR. ALLEN: Okay. I understand the concern
4 that the City does not have a right to object or prohibit
5 or even regulate the six-or-less use. But it still
6 is -- it is not the use -- and I'm sorry, I can't
7 remember the exact terminology that the City used in
8 adoption of its ordinance. But it's not the single
9 family -- the traditional single family use. It's still
10 a group facility use.

11 MR. KIFF: Are you referring to the integrated
12 facilities concept?

13 MR. ALLEN: Yes.

14 MR. KIFF: Okay. Yes. I think it's the City's
15 position, and it's been the City's position, that an
16 operator that operates a home networked or managed with
17 other homes is integrated.

18 However, Judge Selna has directed us, via his
19 injunction, not to apply that provision of our ordinance
20 involving integrated uses.

21 So I apologize that this is relatively gray, it
22 is a gray area. But it's clear to me, the couple of
23 things. That this facility is not yet operable, and that
24 it's a six-and-under. And Judge Selna has told us that
25 we cannot, right now, consider it as an integrated use.

1 That it shouldn't be considered by -- it shouldn't be a
2 consideration by you to say, "See what else is in that
3 block."

4 MR. ALLEN: Okay. Thanks.

5 So, I mean, your proposed changes to my
6 proposal is perfectly acceptable.

7 I have one other issue, and that was with, I
8 believe, Finding Number 1 with this Resolution. And that
9 was that the proposed location of the use -- I'm sorry.
10 That was -- it was the -- it was the finding in reference
11 to the 21 -- yes. Finding number 1.

12 MR. KIFF: Finding number 1 of -- let me catch
13 up with you here.

14 MR. ALLEN: 21.91.035(a).

15 MR. KIFF: Okay. Property is located --

16 MR. ALLEN: I failed to mention, as I try to
17 remember to do, that people should turn their cell phones
18 off. Thank you.

19 MS. BROWN: Section 1.

20 MR. KIFF: Section 1, okay.

21 MR. KIFF: Okay. So Finding 1 of Section 1?

22 MR. ALLEN: And possibly you missed my e-mail
23 or something on this, but my feeling was that this is the
24 requirement in .035 that allows -- that gives
25 consideration to whether to allow a use permit to be

1 considered. And you can't even consider a use permit if
2 the use is not in accordance with the objectives of this
3 code was the way I read that.

4 And that, therefore, if overconcentration was,
5 in fact, in existence here or would occur as a result of
6 this use, then that would not constitute this use being
7 in accordance with the objectives of the code.

8 MR. KIFF: I hear what you're saying.

9 MR. ALLEN: If you rejected that recommendation
10 of mine, then I wanted to consider that, if you did.

11 MR. KIFF: Give me and Janet or moment to two
12 to take a second to look at that.

13 (Pause in proceeding.)

14 MR. KIFF: Mr. Allen?

15 MR. ALLEN: Yes.

16 MR. KIFF: After conferring, because you have
17 directed to us make a finding -- prepare a Resolution of
18 Denial, and, in your judgment, the denial relates
19 specifically to accordance with the objectives of the
20 code and the purposes of the district, we would then
21 change this finding to one that cannot be made.

22 And I think, as you expressed at the last
23 hearing, this is a challenging application and a
24 challenging issue. So I would -- if you give me a few
25 minutes, I'll propose some wordsmithing to that, and you

1 could just address us to adjust this finding, and then
2 prepare it with the statement that that cannot be made,
3 and then can you come in and execute the Resolution with
4 that finding adjusted that way.

5 MR. ALLEN: I would prefer the latter.

6 MR. KIFF: Okay. I would, too.

7 MR. ALLEN: Okay. Let's do it that way. And
8 with that, I don't have any other concerns. As I
9 mentioned in our e-mail, I thought that the Resolution
10 was well drafted and addresses all the issues that need
11 to be addressed.

12 MR. KIFF: Okay.

13 MR. ALLEN: So that concludes this agenda item,
14 unless staff or anyone has any further comments.

15 MR. KIFF: No, we don't.

16 THE COURT: Thank you.

17 MR. KIFF: All right. So our next item is
18 Kramer Center of Newport beach, 207 28th Street. And
19 this hearing is continued from a previous hearing on -- I
20 believe it was December 10th.

21 And I see a gentleman at the podium. Would you
22 like to address us, sir?

23 MR. COOKSEY: Yes, Mr. Allen. My name is David
24 Cooksey. I'm an attorney from Costa Mesa. I am
25 representing the Kramer Center.

1 I just this afternoon received the
2 recommendations from the staff, and I am not totally
3 familiar with them. What I would seek at this time is a
4 continuance of this hearing so that I may familiarize
5 myself with the material, confer with Mr. Kiff, and see
6 if there are some problems that we can iron out and
7 possibly come to a resolution.

8 Not knowing the full scope of the problems,
9 it's difficult for me to address the merits of it at this
10 time. So I'd ask the matter be continued to a date.

11 I don't know what the timing is on future
12 hearings, but with the exception of the first week in
13 February, I can generally make myself available to meet
14 with the City and try to get a resolution put together.

15 MR. ALLEN: What position does the City staff,
16 legal staff, have with respect to continuing this matter?

17 I want to preface their comments, however, by
18 saying that this is the second hearing for this item, and
19 this item has been before the City since last summer, I'm
20 quite certain.

21 And the issue here is that there are a lot of
22 citizens who are very interested in these uses in their
23 neighborhoods. And they give us their time to come to
24 these hearings to assert their position and make their
25 comments.

1 This is very late for someone to come forward
2 and now ask for a continuance on the basis that it so
3 inconveniences so many people and City staff.

4 So with that preface, however, I'd certainly
5 like to hear from staff insofar as their position.

6 MR. COOKSEY: By the way, I make apologies to
7 those citizens who would be inconvenienced by such a
8 continuance. I was the attorney representing Kramer
9 Center in two federal lawsuits that involved the City of
10 Newport Beach, both of which have been resolved as to the
11 Kramer Center.

12 So I'm not totally new to the game, but with
13 this CUP process, that is fairly new to me. I haven't
14 dealt with it before.

15 MR. ALLEN: Okay.

16 MR. KIFF: Mr. Allen, the thoughts that you
17 expressed about the folks in the audience and their
18 interest in this item, I respect that. I also believe
19 that in order for this process to remain effective, we do
20 need to give the applicant and applicant's Counsel the
21 time they need to review this material. Although, I will
22 say what we did pretty good about posting it on time.

23 You said you're out next week?

24 MR. COOKSEY: First week in February.

25 MR. KIFF: Potentially, if you wanted to ask

1 some questions about the application, maybe if you had
2 some time tomorrow, potentially before you
3 leave -- although we have another week, don't we?

4 MR. COOKSEY: Yes.

5 MR. KIFF: So the first week of February, we do
6 have some hearings set up the 5th, and then the 12th, and
7 I'll explain that in a little bit.

8 But so potentially, if you were amenable,
9 Mr. Allen, maybe we could reschedule this for a week from
10 today, potentially -- staying still staying in January?
11 Because otherwise, we're talking about three weeks away.
12 And if I could make myself available to meet with you as
13 early as tomorrow or Monday --

14 MR. COOKSEY: All right. I know I'm free on
15 Monday. I could meet with you on Monday.

16 MR. KIFF: Do you think a week from today seems
17 reasonable to reschedule the hearing?

18 MR. COOKSEY: I hate to reschedule and then
19 reschedule it again. Do these hearings take place always
20 on a Thursday?

21 MR. KIFF: No, they don't. Depending on the
22 availability of the room and Mr. Allen's availability, we
23 are running up against the deadline of February 22 by
24 which we need to have determinations hopefully on as many
25 of the existing operations as possible, if not all of

1 them.

2 So my goal is to allow, potentially -- if we
3 schedule the hearing for next Thursday, and held the
4 hearings, Mr. Allen has been very amenable to taking
5 public comments and continuing things.

6 But I just don't want to get all jammed up near
7 the end of February and overwhelm him and staff and the
8 public and the applicant's with the hearing after
9 hearing.

10 So my preference would be to try to stick with
11 the week from today, if that's amenable to you.

12 MR. COOKSEY: I guess it will be amenable to
13 me.

14 MR. ALLEN: And that would be the same time the
15 Ocean Recovery hearing?

16 MR. KIFF: Ocean Recovery we've had to move
17 back a week, so this would just be Kramer Center.

18 MR. ALLEN: Okay.

19 MR. KIFF: So we have the room reserved, don't
20 we.

21 MR. ALLEN: Okay. Good. All right. Well
22 then, if that's the position of the staff, then it would
23 be appropriate to continue.

24 However, what I believe should always be done
25 in instances like this is if there is someone here in the

1 public who needs to speak to us who cannot be here a week
2 from today, and I mean that sincerely, that this wouldn't
3 be another opportunity just to talk about it, but if any
4 of you cannot be here a week from today and need to make
5 your comments for the record now, you're welcome to do
6 so. But I would discourage it, but on the other hand,
7 you should all have a chance to be heard one way or the
8 other.

9 I see Mr. Mathena.

10 MR. MATHENA: Yes.

11 MR. LISKIN: What date again?

12 MR. ALLEN: January 29th; correct?

13 MR. KIFF: 4 o'clock on the 29th, a week from
14 today.

15 MR. ALLEN: If you can't be here, you're
16 welcome -- you realize --

17 MR. MATHENA: I can't be here.

18 MR. ALLEN: Okay. Well, you're very good about
19 putting your comments in writing, and they are well done.
20 And so if you need to say something, say it.

21 MR. MATHENA: A couple different points.
22 Number one, I have reviewed this file in depth. I have
23 looked at -- and actually, the City's superhuman efforts
24 in attempting to get that out of this applicant, getting
25 it, having an initial proceeding, naming a date for this,

1 timely delivering the proposed -- the staff findings --

2 MR. ALLEN: I'm sorry, Mr. Mathena. But we
3 need -- if you can't -- if you need to make comments
4 about the substance of the application, that's what I
5 think we should hear today, and the public hearing is for
6 this purpose.

7 MR. MATHENA: My point in this is you are
8 precluding me from doing so. And you are precluding me
9 from so in a circumstance where, frankly, I rearranged my
10 schedule in light of Ocean Recovery's hearing, and in
11 light of his changing, and in light of it -- and now
12 you're telling me I have to go back.

13 And you're doing it in a context where you have
14 met due process in this readily, multiply. And
15 using -- having an applicant throw "We hired an attorney
16 yesterday at this," my God, I wish that you were doing
17 the reviews of any other permit, because I'd eventually
18 get it done just out of attrition.

19 I want this on the record. I want a copy of
20 this transcript. I want an agenda of all the items that
21 happened and when they happened. Because I personally,
22 if this does pass, will appeal it, especially in light of
23 the appropriate staff findings. Personally I will appeal
24 it.

25 MR. ALLEN: Thank you.

1 MR. MATHENA: And I want that in the record.
2 Thank you.

3 MR. ALLEN: Sir, if you can't be here at the
4 next time, and if you have to have --

5 MR. LISKIN: You know, my name is Matt Liskin.

6 MR. ALLEN: We cannot have more argument on
7 continuing this matter. It's going to be continued.

8 MR. LISKIN: You know what? Sir, with due
9 respect, I, and all these citizens, came here. And just
10 because this gentleman and this organization -- it's
11 inconvenient and they are not prepared, I'm not going to
12 guess if I'm available next week. I'm here now, and I'd
13 like to make a comment.

14 And my comment, which I think is significant,
15 is that if you do review the file, which I have done, and
16 if you take today into context, it's consistent with this
17 operator really not doing a good job being responsible
18 just in the process.

19 And what I think is pertinent is, how can they
20 be responsible in the care of troubled people in the
21 community when, once again, they can't be responsive to
22 the City or to all these people who interrupt their day
23 to come here to get resolution to what is a difficult
24 issue?

25 That is a core competency issue in terms of

1 running any business, and that's being responsible from a
2 regulatory point of view. And in the case of health
3 care, it's paramount. And I don't believe that the
4 argument of, "Well, I got this file today, because they
5 just hired me today," says very good things about this
6 operator's ability to work with this community -- and
7 I've made that comment about other operators -- but more
8 importantly, about how they must be caring for their
9 patients.

10 This is black-and-white stuff. You fill it
11 out. Drug patients have a multitude of problems which
12 have to be solved in a very careful and thoughtful way.
13 And I think careful and thoughtfulness is anything but
14 what we're seeing with the conduct of this operator.

15 MR. ALLEN: Okay. Thank you. That's a valid
16 comment.

17 MR. LISKIN: Thank you.

18 MR. ALLEN: All right. So there's been a
19 request by the applicant to continue this matter. Staff
20 and the applicant's attorney has spoken here on the
21 record here, and it's agreed that this matter, Kramer
22 Center, 28th Street, will be continued to January 29th at
23 4 p.m. And at that time, it will go forward.

24 All right. Any other business? I believe
25 there's some business about the Ocean Recovery matter

1 that needs to be focused on.

2 MR. KIFF: Let me just briefly tell the
3 audience the upcoming group residential hearings.

4 Ocean Recovery is confirmed for February the
5 5th. So same room, 4 o'clock. They will have two
6 properties up at once, 1601 West Balboa and 1115 West
7 Balboa.

8 Yellowstone Recovery, and they have four
9 properties in Santa Ana Heights. This is a combined use
10 permit and reasonable accommodation hearing. That is
11 schedule for Thursday, February 12th. So a week later,
12 same location, same time.

13 And there are others pending. Pacific Shores
14 Recovery. That will -- they are approaching us with a
15 reasonable accommodation hearing.

16 There's an organization called Balboa Recovery
17 that has three unlicensed treatment homes they are
18 proposing to ask for reasonable accommodation.

19 And then finally, Morningside Recovery has told
20 us that they intend to ask for reasonable accommodation
21 on some locations, and then potentially involving a use
22 permit hearing for locations in a multi-family zone.
23 That would be new locations.

24 MR. ALLEN: Okay. So the certain times right
25 now are January 29th for Kramer, February 5th for Ocean

1 Recovery, and February 12th for Yellowstone?

2 MR. KIFF: That's right.

3 MR. ALLEN: All right. Is there any other
4 business to come before the hearing officer or hearing
5 matters that the audience should be aware of?

6 MR. KIFF: I would make one final note,
7 Mr. Allen. A number of folks have asked for the
8 transcript from these hearings. And we're remiss in not
9 putting them up on the Web site. I will do that for each
10 of the hearings we've held and on a going-forward basis
11 when we receive those transcripts. Those are available
12 to the public, to the applicant, to anyone else who wants
13 to see them.

14 MR. ALLEN: Thank you. And with that, we're
15 adjourned.

16 (Ending time: 4:28 p.m.)
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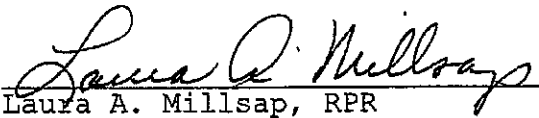
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2
3 I, the undersigned, a Certified Shorthand
4 Reporter for the State of California, do hereby certify:

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: 1-26-09

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

WORD
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