

CERTIFIED COPY

PUBLIC HEARING ON
NEWPORT COAST RECOVERY, LP
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
MONDAY, JANUARY 12, 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 5:35 p.m., on Monday, January 12, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

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LAWYER'S NOTES[illegible]

1 NEWPORT BEACH, CALIFORNIA; MONDAY, JANUARY 12, 2009

2 4:00 P.M. - 5:50 P.M.

3
4 MR. ALLEN: I'm going to open the hearing for
5 the Newport Coast Recovery Facility. I'm going to
6 reconvene. This matter was continued from December 8,
7 2008, until today. Again, I'm Tom W. Allen, the
8 appointed Hearing Officer for this matter. The agenda
9 for today has been posted and is available outside, as
10 well as the reports.

11 The first matter on the agenda is the
12 presentation by staff, and I presume Mr. Kiff will
13 commence?

14 MR. KIFF: Yes, Mr. Allen. Thank you.

15 We'll do -- as we have in the past practice
16 with these hearings, we'll do a brief background on the
17 ordinance again, presentation on the Newport Coast
18 application. Then the Applicant, at the Hearing
19 Officer's invitation, is invited to come up and make
20 comments.

21 The public hearing remains open, so this allows
22 anyone to come up and offer comments again. Comments are
23 limited to three minutes, unless the Hearing Officer
24 determines otherwise. Then we close the public hearing.

25 The applicant can come up and return to rebut

1 or clarify comments made. And then there's time for the
2 Hearing Officer's questions to the staff or to the
3 Applicant. And then possibly a determination, approve
4 with conditions, deny or continue to a date certain.

5 Most of the folks in the audience have seen
6 this before, but this is a group residential use permit
7 hearing, held under 20.91(a) of the Code. And basically,
8 it says that any existing operation like this one,
9 Newport Coast Recovery, needs to apply for and receive a
10 use permit no later than February 22nd of 2009. So this
11 is part of that process.

12 And just to point out for you where Newport
13 Coast Recovery is, it's this facility here. It's
14 licensed by the State for a 29-bed men's facility. The
15 other facilities and uses nearby, you can see Newport
16 Elementary School. You can see this. This is Balboa
17 Horizons. This is the one facility in the City that's
18 been approved for a use permit. That's an 11-bed women's
19 facility.

20 There's also Ocean Recovery. Twenty-two beds
21 here applied for the use permit. Their hearing is set
22 for later in the month. There is a pending six and under
23 facility operated by Ocean Recovery about 30 feet away
24 from Newport Coast Recovery. This is Ocean Recovery's
25 second facility up here across from Marina Park near

1 16th.

2 This is Narconon's 49-occupancy facility.
3 That's subject to abatement in February of 2010. And
4 then there's some other facilities that did not apply for
5 use permits and are due to be abated at the end of
6 February.

7 Here's a more specific location map. This is
8 1216 West Balboa. Again, Balboa Boulevard, Newport
9 Elementary, and the other facility permitted is down here
10 at 1132.

11 So with that, I'm going to turn that over to
12 Debbie Linn, the planner who worked on this application.

13 MS. LINN: Thank you, Mr. Kiff.

14 This is a continued hearing item from December
15 the 8th, and the hearing was continued due to the fact
16 that the application at the time was incomplete and the
17 required materials for staff to complete their analysis
18 of the proposal were not included in the package that was
19 before the Hearing Officer at that time.

20 At the close of the public hearing, the Hearing
21 Officer continued this public hearing to January the 12th
22 and also directed the Applicant to submit all the
23 required application materials within 21 days of -- prior
24 to this scheduled hearing.

25 The remaining application materials required

1 for staff to complete their analysis did arrive on
2 December the 12th as directed. And from that, we've
3 prepared the enclosed staff report.

4 The application, as submitted on December the
5 12th, was an application for 18 beds of recovery -- the
6 resident beds. The Applicant has a license for 29 beds,
7 but this application has been submitted as an 18-bed
8 application for the use permit purposes.

9 After analyzing the proposal, staff determined
10 that the findings, as stated in the staff report, could
11 be made to recommend -- in order for staff to recommend a
12 conditional approval of the application.

13 Specifically with regard to the number of beds,
14 staff is recommending that the application could be
15 approved more in compliance with the State or with,
16 excuse me, APA requirements for proximity of other uses.

17 And given the fact that there's the six-bed
18 facility that's likely to be licensed for operation
19 within 30 feet, staff recommended that the Hearing
20 Officer consider reducing the Applicant's total allowable
21 number of beds to be licensed at 14.

22 Staff included a number of conditions of
23 approval, which are as recommendations, which are listed
24 in Exhibit 1 of the staff report.

25 And I'll just summarize those briefly, because

1 these conditions of approval, if added to the approval
2 for the conditional use permit, really are part and
3 parcel of the finding to be made by the Hearing Officer.
4 So the findings, we felt like, needed to have reference
5 to these conditions. Because as conditions, the project
6 could be determined to be in compliance.

7 For the most part, the significant conditions
8 of approval pertain to parking. There had been some
9 concerns expressed at the public hearing regarding
10 parking. The facility has enough parking to meet the
11 Code requirements for the facility.

12 However, we are aware, based on their
13 operational statements, that they do weekend counseling
14 of family members. And for that reason, we have required
15 them, as a condition of approval, to obtain permits to
16 take care of visitor parking on weekends. And that at
17 any time on- -- that any time on-street parking is
18 required, that that be limited to Sunday hours as
19 specified in the conditions of approval.

20 We added conditions to reinforce some of their
21 operational requirements that are already in place. The
22 quiet hours between 10 to 8 a.m. We've put that as a
23 condition of approval to reinforce -- to have them
24 implement.

25 The curfew hours, we've changed their

1 application from a curfew of 11 o'clock on weekends and
2 10 o'clock on weekdays to be 10 o'clock p.m. every day.

3 We've specified that the route plans for their
4 vans -- for their one van that takes clients to about
5 four locations during the week off-site to be adhered to.

6 And that the deliveries take place only between
7 8 and 5 normal work hours as well.

8 Trash pick up being limited to those hours.

9 That their State licensing be amended to
10 reflect the 14-bed maximum down from 29, which represents
11 a 50 percent reduction in their licensed beds.

12 That they enforce their policies now in their
13 rules and regulations regarding profanity and lewd
14 behavior, to keep that enforced; that that not be allowed
15 to be expressed at a level that's audible beyond the
16 property so that it might annoy neighboring residents.

17 And smoking to be restricted to the designated
18 area that they described in their application, which
19 happens to be a courtyard area that's completely enclosed
20 by walls but open to the sky. And that smoking outside
21 of the facility be completely prohibited, and that be
22 implemented.

23 We added a condition of approval that would
24 allow the City to review this conditional use permit, if
25 approved, within six months of the final approval of the

1 conditional use permit in order to determine whether the
2 conditions of approval that had been set forward here and
3 possibly adopted today are being enforced, if there are
4 any further problems that may be reported to the City, so
5 that the City's Hearing Officer may review this in six
6 months and make that determination as to whether the
7 facility is being operated according to the conditions of
8 approval and in a manner that's compatible with the
9 neighborhood.

10 And then the condition also requires that the
11 application be or the conditional use permit be reviewed
12 annually thereafter after the first six months. So we
13 thought that that would help reinforce the City's ability
14 to evaluate this in the event that it's approved.

15 And with that, staff has recommended that the
16 application be a -- that you direct the staff to prepare
17 a Resolution of Approval with the conditions of approval
18 as proposed.

19 That concludes the presentation. If you have
20 any questions, we can answer those now.

21 MR. ALLEN: I don't have any questions at the
22 present time. Any other staff comments before we open
23 public hearing?

24 MR. KIFF: No.

25 MR. ALLEN: All right. Let's proceed with the

1 public hearing. We'll follow the same format that we
2 have in the past, where people can come forward on an ad
3 hoc basis, and we limit the comments to three minutes, so
4 please be concise and to the point, but take time to make
5 your presentation.

6 MR. KIFF: Mr. Allen, just one point of
7 clarification. You would potentially have an
8 opportunity, your choice, to have Applicant speak first
9 and then the public -- or the Applicant has spoken but --

10 MR. ALLEN: That's right. That's probably
11 appropriate. If the Applicant would like to make a
12 presentation now and in response to the staff comments,
13 let's do that before we move forward with the public
14 hearing.

15 MR. NEWMAN: Good afternoon, Mr. Allen. My
16 name that Mike Newman, N-e-w-m-a-n. I'm a partner in
17 Newport Coast Recovery. Mr. Allen, my comments are going
18 to be brief, and they are going to be pertinent and
19 facts, not rumor or innuendo.

20 First thing I'd like to address is all the
21 concerns about Newport Elementary School. That seems to
22 be the main concern with everyone here, the proximity to
23 the school and the welfare of the kids.

24 We spoke to the principal of Newport
25 Elementary. The principal stated in the five years she's

1 been the principal there, they have not had one problem
2 with Newport Recovery. Not one problem. She assured us
3 that if she had any problems with my rehab facilities, it
4 will be dealt with immediately.

5 That's supported by the Newport beach Police
6 Department. There have been no reported problems. Not
7 just with Newport Coast Recovery but any rehabs with
8 Newport Elementary School.

9 Furthermore, the principal stated that she
10 knows of no students, no students that have left that
11 school because of any actions related to rehabs. This is
12 fact. This isn't just thrown out there. This can be
13 verified through the school.

14 The school yards. That seems to be a big
15 concern, the blacktop behind the school on the weekends.
16 Our clients have been instructed never to use that
17 schoolyard, basketball court, or adjoining equipment. We
18 take our clients to the gym three days a week.
19 Participation is mandatory. They're encouraged to get
20 all their exercise at the gym, because there's very
21 little down time for them to do anything else based on
22 their treatment schedule.

23 In regards to traffic and vans, as was stated,
24 we only have one van. They are not parked all over the
25 streets. There's not numbers on them. There's one van,

1 and that's the van that transports our clients.

2 In regards to our trash, we have a private
3 trash service that picks up all our trash. We don't
4 burden the City with any of that extra refuse that we may
5 have on our property. And we have no need to throw our
6 refuse in the neighbor's garage cans. And if that
7 happened at some time, I'm very sorry for that. But it's
8 a not a common practice, and it's not something that we
9 have our clients doing. We have a big garage receptacle
10 right outside our facility.

11 Some people -- what really concerned me is
12 someone came up here and talked about clients threatening
13 neighbors. That came up in the staff report that I read.
14 And again, I've talked to the Newport Beach Police
15 Department. There's not been one incident reported of
16 any Newport Coast Recovery client threatening any
17 neighbor. If there was any report like that, I certainly
18 would have gotten it, and we would have dealt with it.
19 And certainly we would have heard about it through the
20 Newport Beach Police Department. It would have been
21 investigated thoroughly, I promise you.

22 In closing, I'd like to leave you with a few
23 factual documented numbers for the year 2008. And this
24 isn't Costa Mesa. This isn't any adjoining city. This
25 is Newport Beach.

1 962 arrests for drunk in public in Newport
2 Beach in 2008, 276 drug abuse violations, and 677 DUI's
3 as of December 31st in Newport Beach alone.

4 These aren't just people coming from outside
5 this city, even though we have one of the highest
6 concentration of bars and places to buy alcohol. These
7 are people that live in the city as well.

8 And if you look at our newspapers, the Daily
9 Pilot, every Wednesday, you'll see that many of these
10 people that are arrested are our neighbors. These aren't
11 people that we're shipping in from outside the city for
12 treatment. These are people that are looking within
13 their community for treatment.

14 I have the statistics, if you guys would like
15 them. I also have some letters from neighbors which I'll
16 give to the appropriate person so they can be made part
17 of the meeting. And I look forward to any questions, and
18 I'm happy to address anything else.

19 MR. ALLEN: Thank you.

20 And that mention of letters raises a questions.
21 We've had a number of communications that have come in in
22 the form of e-mails, primarily. I believe that should be
23 made a part of the record of this as well.

24 MR. KIFF: I'll go over just some of those that
25 we received without getting to the substance, in case

1 those people want to make equivalent testimony.

2 We have a letter from Larry Mathena that I
3 provided earlier today. We have an e-mail correspondence
4 from a Ms. Lori McKinsey. I have an e-mail
5 correspondence from a woman named Suzanne. I forwarded
6 that to you as well.

7 MR. ALLEN: Yes.

8 MR. KIFF: I have here a letter signed
9 by -- looks like 42 folks who are saying they are parents
10 of Newport Elementary School students. I believe someone
11 was going to speak to that.

12 Previously, we've received some correspondence,
13 including some photographs from Jeffrey Myers. I
14 provided those to you as well. And I have some of those
15 photos up here on the screen, too. I have some
16 correspondence from Denys Oberman, in addition to -- and
17 additional correspondence from Jeff Myers that's not just
18 photos.

19 So that's kind of a summary of the
20 correspondence I've received both at the last hearing
21 and -- between that hearing and this hearing.

22 MR. ALLEN: The only thing I haven't seen that
23 you've mentioned is the 42 signatures. And I guess that
24 has just come in; is that correct?

25 MR. KIFF: That's right.

1 MR. ALLEN: Okay.

2 MR. MYERS: And the video.

3 MR. ALLEN: We'll take a few minutes to look
4 through that in due time.

5 Anything else from staff?

6 MR. KIFF: No, sir.

7 MR. ALLEN: Let's proceed with the public
8 hearing, then. And again, we'll open the public hearing,
9 and each person has three minutes to speak. Please come
10 forward and give us your wisdom.

11 MS. INGHAM: Good afternoon, Mr. Allen, and
12 everyone here. My name is Kristin (phonetic) Ingham.
13 I'm a parent of a student at Newport Elementary.

14 MR. ALLEN: Spell your last name for the
15 record.

16 MS. INGHAM: Sure. I-n-g-h-a-m.

17 MR. ALLEN: Thank you.

18 MS. INGHAM: And I did bring in the 42
19 signatures that you're referencing. Sorry they came in a
20 little bit late. I just sort of became aware of this
21 hearing and tried to organize something at Newport El.

22 Because we're new to Newport El, our son's a
23 kindergartner, I wasn't sure if the school had an opinion
24 one way or the other. So in a little over 24 hours,
25 through e-mail to about eight people and then just my

1 standing outside in front of the school for five minutes
2 before school and five minutes after school, I was able
3 to collect 42 signatures.

4 There wasn't a single person that walk by or
5 that I talked with that had -- that did not want to sign
6 the letter that I had submitted today. Every parent over
7 at Newport El has concerns about the amount of beds in
8 the vicinity of Newport Elementary.

9 And I've seen the character of the neighborhood
10 and the adjacent playground that our family visits, not
11 just during school hours but on weekends and after
12 school, change. My husband personally had to remove my
13 son from the playground a couple weekends ago due to
14 loitering and profanity, some conversations that just
15 weren't appropriate for a 6-year-old to hear.

16 We feel that our school staff and City staff
17 work really hard to swear children from such habits, such
18 as smoking, profanity. And it's just those are behaviors
19 that we all too often witness in our community.

20 When we are out in the community, such as local
21 coffeehouses and places like that, you know, we've had to
22 maybe change tables because of conversations we hear
23 among patients from rehabs centers that are seated next
24 to us. And when we're out in public as a family, we have
25 the option to do that.

1 But when our children are at school, they don't
2 always have the option to leave the playground, leave the
3 soccer fields or the blacktop. And that's the concern of
4 my husband and mine and 42 other people at Newport
5 Elementary, at least. And we feel that our playground
6 and our school is unique in our school district. It is
7 more of an open campus, unlike others that are shielded
8 from the public that are behind a fence.

9 And we have seen just too much loitering and
10 unhealthy behaviors, such as smoking, cigarette butts,
11 that, again, just are not appropriate for a nurturing
12 environment, such as a school and a city playground for
13 our children.

14 Thank you for your time.

15 MR. ALLEN: Quick question. You mentioned that
16 your husband had a specific situation where he removed
17 your 6-year-old child because of profanity?

18 MS. INGHAM: Yes.

19 MR. ALLEN: Was there a basis he had to make a
20 determination that the people that were doing this were,
21 in fact, rehab clients or --

22 MS. INGHAM: Yes.

23 Do you want to speak?

24 MR. INGHAM: Sure.

25 MR. ALLEN: Good.

1 MR. INGHAM: Yeah. It was on a --

2 MR. ALLEN: Please identify yourself for the
3 record.

4 MR. INGHAM: Sure. My name is Jeff. Last name
5 is Ingham, I-n-g-h-a-m.

6 And I believe it was on the day before -- the
7 Saturday before the holidays, and I had taken my son to
8 the park there at the school to play on the playground,
9 which I do typically on Saturdays.

10 I typically come on Saturdays and Sundays. And
11 what they tend to have is the group sessions held at the
12 park. So there are about 100 people. I actually have
13 photos of 100 people outside. And they generally go off,
14 away from the blacktop, to smoke. And they also smoke on
15 both sides of the blacktop, in and amongst it. Now, I
16 can't tell you which recovery group it was, per se, but
17 it's generally -- it's 100 people that circle all around
18 the school campus.

19 And the specific profanity was -- and it was in
20 conversations in -- in and amongst -- I guess it was on
21 14th Street, right adjacent to the playground, someone
22 yelled the F--- word four times in a row. And it's just
23 like, do I really have to deal with this while they're on
24 their smoke break? And, you know -- so anyway, that's
25 the gist of it.

1 MR. ALLEN: Okay. Thanks, the red light is
2 blinking, but you shouldn't -- take your time. You can
3 continue for additional time if you need.

4 MR. INGHAM: That's all I had to say, yeah.

5 MR. ALLEN: Okay. Thank you.

6 MR. INGHAM: And the reason why we knew it was
7 recovery is based upon the conversations that were had
8 amongst the groups in or around the playground.

9 MS. INGHAM: The content of the conversations,
10 sometimes you can hear what sounds like might be a -- I
11 don't know enough about the process, but what might be
12 called like a counselor, or somebody maybe who has been
13 in the facility for awhile maybe talking to somebody who
14 is newer, or that's sort of the gist of what I could get
15 from a conversation that would make me think that.

16 Because, of course, at Newport Beach, we get a
17 lot of people coming to visit. Who knows where they are
18 from. But those types or parts of the conversation are
19 what would make me think that they were patients from a
20 rehab facility in our area, you know.

21 And again, we -- we're just concerned about the
22 amount, the number, of beds in the close vicinity of
23 Newport Elementary, and the way that the character of the
24 neighborhood has changed for our school, for our children
25 working to and from school, and for their health, for the

1 secondhand smoke.

2 We have several children who are medically, at
3 school, impaired, and -- as well as educationally
4 impaired, and it's not a good sight for them.

5 Again thank, you for your time.

6 MR. INGHAM: One thing to add, I do have
7 electronic photos, if you'd like to see them, but I don't
8 have printed copies.

9 MR. ALLEN: Thank you.

10 Anyone else wish to speak?

11 MR. LISKIN: My name is Matt Liskin (phonetic).
12 I live on the Peninsula. And I have a couple specific
13 questions that I hope you can ask the Applicant.

14 This is about our lifestyle and community. And
15 the first question is, he quoted the crimes statistics in
16 Newport. I'd like to know, A, or to point out, the issue
17 here is overconcentration. I think a better statistic
18 would be, what percent of those crimes occurred on the
19 Peninsula? Because that's why we are all here.

20 Number two, he mentioned that these are people
21 in Newport and from Newport, or something to that effect.
22 I'd like to know, how many of those arrests were people
23 from Newport Beach?

24 The third question I have is, if he's serving a
25 need of Newport, he has census, I'd like to know, what

1 percent of his census annually is from people from
2 Newport Beach? I think that's all information which is
3 easily obtainable.

4 Finally, last time we were here, it was pointed
5 out that the gentleman spent \$200,000 fixing the facility
6 up. I have to say, if you look at his revenue line of
7 his business, that would be fairly immaterial. And I
8 think that's somewhat disingenuous.

9 And finally, as you can sense it in my voice,
10 it was said earlier that these are non-violent criminals.
11 Violence is something which we all associate with being
12 struck. But I think a greater violence, actually why
13 these people are here, is emotional violence.

14 And the emotional toll that these people put on
15 their families is the result, in many instances, that
16 they are here. And, unfortunately, that emotional toll
17 is being put in this community on an overconcentrated
18 basis. And I don't really think that's particularly
19 fair.

20 It should be dealt with in a non-concentrated
21 way. And I think if we get to the bottom of the numbers
22 I just asked, I think that we can see that numbers, you
23 know, can tell a couple of different stories. And I
24 think we should look at the forest, not these trees.

25 Thank you very much.

1 MS. BACICH: My name is Pam Bacich, and I live
2 on the Peninsula. We own property directly behind this
3 particular rehab facility. I did send a letter before
4 the last hearing, because I wasn't able to be there. And
5 I didn't hear it referenced.

6 MR. KIFF: I'm sorry. We did receive that.

7 MS. BACICH: One of my main points in that was
8 that --

9 MR. ALLEN: Are you the duplex owner?

10 MS. BACICH: We are.

11 MR. ALLEN: Excuse me. Thank you.

12 MS. BACICH: The duplex directly behind it.

13 And one of the owners' comments was that there
14 had not been any police reports. Yes, we never filed any
15 police reports in our complaints, and we had many of
16 them. We went directly to the manager of the facility
17 and tried to deal with them that way.

18 We did have an incident about two years ago
19 where we had a car keyed after our tenant had a
20 confrontation with some of the people at the rehab
21 facility. And they left subsequently because they were
22 so frustrated in having, as he said, pissing matches with
23 20-years-old on a regular basis.

24 We had recurring trash incidents. One
25 Saturday, while we worked in the garage over there when

1 we were turning tenants, we counted, I believe, 16 -- I
2 have it written down somewhere at home -- 16 vehicles
3 coming and going in a couple-hour period from the back
4 alley. So there were many vehicles coming and going from
5 that facility.

6 So although there may not have been police
7 reports, that doesn't mean that there weren't ongoing
8 problems and ongoing conversations that we were having
9 with them.

10 MR. ALLEN: Anyone else?

11 MS. MORRIS: Hi. My name is Jill Morris. Do
12 you want me to spell it? M-o-r-r-i-s.

13 And I, too, am a mother of a child at Newport
14 El, second grade. And she's been there from Kindergarten
15 on to 2nd grade. And within those two years we've been
16 there, not only during the weeks of school has she come
17 home and said, "Mommy, what does 'shit' mean? What's
18 does 'the F--- word' mean?"

19 And I'm like, "Where did you hear that?"

20 And she said, "Oh, a group of men are walking
21 by while we're playing soccer, and we're hearing these
22 words from these older men."

23 To a 6-year-old, you know, they don't really
24 know what the age is. So I did not get the age of the
25 men. But she has come home in those two years that she's

1 been there. And I'm obviously having to assume that, you
2 know, they might have or may not have, just because,
3 again, Newport is a touristy place. But it was also
4 during the wintertime, where we don't really have a lot
5 of tourists. And she just actually told me this again in
6 November.

7 I, too, have been to the park on Saturdays and
8 Sundays with my daughter and my 4-year-old. And my
9 husband also has had to say to some men during the same
10 type of -- I see that meeting that they have, you know,
11 on the weekends.

12 And we also have, along with the Inghams as
13 well -- and we also had to say, "Hey, hey, please don't
14 use that type of language in front of our children." And
15 they just kind of -- either get kind of angry or just
16 softly same some words back. And we also have to leave.

17 We spend a lot of money to live in this lovely
18 area that we live in. And we just feel that it's really
19 unfortunate that we have to remove our children from open
20 space playgrounds when we should be able to enjoy them
21 and just have a wonderful life, which we're trying to
22 have.

23 But again, I understand that people need help
24 and rehab, and that's wonderful. But like Matt says, you
25 know, it's so condensed, there's so many beds between

1 13th Street -- I believe 11th Street and 13th Street,
2 there's so many, you know. Maybe we could limit them
3 down to a smaller number. And it's also a concern that
4 they are across the street from our school. It's just
5 very congested and trafficky.

6 And I do -- I understand that the gentleman
7 back here said that he has one van. I live on Lido Isle,
8 and I see probably ten vans a day when I'm driving
9 around. So I do know that -- I was actually behind one
10 on the way here. So I do know that there are quite a
11 few. And I'm sure they are from all the different types
12 of rehab places, but it does cause a lot of traffic in
13 the area as well.

14 So that's all I have to say. Thank you.

15 MR. MYERS: Hello. My name is Jeff Myers,
16 M-y-e-r-s. I'd like to take a moment to introduce you to
17 my two children. This is Jordan. She's 7 years old.
18 And this is Ryan. He's 9 years old. They are absolutely
19 fantastic kids.

20 We live in a duplex across the alley from the
21 facility. And we lived there for 10-plus years, and I
22 think the facility has been there for about 10 years,
23 so --

24 MR. ALLEN: Excuse me. Do you live there now?

25 MR. MYERS: Yes.

1 MR. ALLEN: Thank you.

2 MR. MYERS: And it's a duplex. I have the back
3 unit rented. I've lost renters in the past over the
4 noise coming from the facility. I seem to have a good
5 renter now, though, that seems to be okay with it.

6 My car also has been keyed in the past. I
7 don't know who did it, but things happen.

8 What I'd like to talk about a little bit is the
9 photographs and the DVD that I produced and submitted
10 into evidence last time we were here December 8th.

11 Specifically on this DVD -- I don't know, Dave.
12 Can you play that?

13 MR. KIFF: Let me make sure I have the right
14 understanding of the DVD. The one that I have is a
15 replication of photographs. It's not a movie.

16 MR. MYERS: No. There's a video that I took
17 that has evidence on it that I've also uploaded and given
18 you a link to, so --

19 MR. KIFF: Okay. I don't have access to it.

20 MR. MYERS: Okay.

21 MR. KIFF: If there's a way we can figure out
22 how to do it with you, I could put it on the screen.

23 MR. MYERS: I didn't bring it.

24 MR. KIFF: I apologize, Jeff. I was confused.
25 I had your CD. And again, it was just a series of

1 photographs, kind of faded.

2 MR. MYERS: It's a DVD video.

3 MR. KIFF: Okay.

4 MR. MYERS: And then I printed out the
5 photographs and submitted the photographs into evidence.
6 I also, with the photographs --

7 MR. ALLEN: What does the DVD depict just
8 quickly? Because this sounds like a problem to try to
9 get this into evidence and get it considered and let the
10 Applicant have an opportunity to respond to it.

11 MR. MYERS: I don't understand why it's a
12 problem if I submitted it on the 8th, but --

13 MR. ALLEN: I understand.

14 MR. MYERS: -- technology.

15 I think it's very important for you to see the
16 DVD before you make a ruling. I'd be more than happy to
17 provide you as many copies you want, or a link to you, or
18 whatever.

19 MR. ALLEN: My point is that the Applicant
20 needs to see it, too. Just me seeing it isn't sufficient
21 due process to everybody that's involved.

22 MR. MYERS: Maybe I can put it on U-Tube and
23 have the whole city watch it.

24 What it depicts is an individual in the back of
25 the facility talking on a cell phone, walking the alley

1 smoking. And the music is just glaring out of the
2 facility.

3 And what I was doing is, it was a weekday or
4 weekend. I was sitting in my living room, which faces
5 West Bay. So our lot is, what, 30 by 90. So, 90-plus
6 feet away, my house is shaking from this music. The
7 music was full of profanity. I don't even know if it's
8 rap. It was just hideous music and profanity and
9 everything.

10 So what I decided to do is go to my garage and
11 videotape what was going on. This gentleman's walking in
12 the alley, smoking, talking on a cell phone. Now, you
13 know, I feel badly for these guys, because they don't
14 really have any place private to make these conversations
15 with their family, or whoever it is. And they are always
16 out there doing it.

17 The problem is, you know, I have these two
18 young children, and we play in the alley and in front of
19 the house. So right now, with the kids being 7 and 9,
20 I'm able to, you know, always be there with them and not
21 let them out of my sight and say, "Hey, let's play in the
22 front." If there's, you know, people in the alley or
23 whatever --

24 MR. ALLEN: So the time's gone.

25 When did you take this DVD?

1 MR. MYERS: Probably seven or eight months
2 ago.

3 MR. ALLEN: Okay. And you've described it
4 quite well, it sounds like, to me.

5 MR. MYERS: You need to see it. It is
6 incredible.

7 MR. ALLEN: I understand, but you have
8 described it, so at least we know that much.

9 MR. MYERS: You're doing an injustice to your
10 ruling without seeing it. At any rate --

11 MR. ALLEN: Okay. So your time is up.

12 MR. MYERS: My time is up?

13 I've got a lot to say. I've live next to them
14 for ten years. There's another facility going in next
15 door to me. I'm being completely surrounded by
16 recovering addicts, which is fantastic for the people who
17 are recovering, but what's happening to my kids?

18 I can't have them playing in front of the
19 house. I can't have them playing in back of the house.
20 Now, this is ridiculous. Something needs to be done.
21 And I believe this is why the City created this
22 ordinance.

23 And your job is hopefully to listen to this and
24 make just out of it. But something needs to be done.
25 Please watch this DVD before you rule.

1 Thank you.

2 MR. ALLEN: Thank you.

3 MR. MYERS: I'd like to talk longer.

4 MR. BACICH: My name is Mike Bacich,
5 B-a-c-i-c-h. I'd be happy to give my three minutes to
6 Jeff, who's organized and has some things to actually say
7 other than repeat others, if that's possible.

8 MR. ALLEN: All right. This time, go ahead.

9 MR. MYERS: Thank you.

10 So during this video with this music blarring,
11 this gentleman says, "Hey, stop videoing me." And so I
12 say, "You're on public property, and I can video you all
13 I want." So he went on private property, and I stopped
14 videoing.

15 So then he comes back in on me and says, "Hey,
16 what are you doing?" And I stopped videoing him, but I
17 kept the tape rolling. And basically, you know, he
18 didn't turn down the music or anything. And I
19 complimented him, actually, on being better than they
20 used to be.

21 But the fact of the matter is, this is my home
22 with my children. I shouldn't have to go knock on the
23 door over there every time someone's speeding down the
24 alley with loud music in their car, every time, you know,
25 they have a ping pong game and they're swearing, every

1 time the music is blarring, every time somebody's
2 smoking. I mean, I shouldn't be subjected to do this
3 every five minutes.

4 And yeah, I'm not one of these individuals that
5 call the police and complain. You know, I went to Mike's
6 door in my underwear in the morning and pounded on his
7 door. And I told him, "Every time you guys wake me up,
8 I'm going to come find you and wake you up or wake them
9 up." And he was kind enough to resolve the problem. But
10 I shouldn't have to do that still after ten years every
11 day.

12 So is that the DVD? Can we watch that? It's
13 short. Can you play that, David?

14 MR. KIFF: No, Jeff. It seems like I just
15 still have the one DVD you gave me that has the photos on
16 it.

17 MR. MYERS: There's no photos on the DVD that I
18 have. It's just video.

19 MR. KIFF: Okay. Someone gave me a DVD, I
20 thought it was you, that has photos from behind Newport
21 Coast Recovery. I'm sorry, that's the only DVD I have.
22 So it's not to say -- you know, the hearing is until 6
23 o'clock arguably.

24 But Counsel just advised me we need to be
25 cautious about showing pictures in public of people who

1 are in recovery and, therefore, are a protected class.
2 So I think that Counsel would have to review that before
3 to see that at least that person's face was blocked out.

4 MR. MYERS: The individual is on public
5 property. I think it's a free shot.

6 MR. KIFF: I'm not the attorney, Jeff.

7 MR. MYERS: I am not the attorney either.

8 At any rate, you guys need to do something,
9 because I just can't subject my children to this. And
10 with both sides of the house being surrounded like that,
11 I'll be the first one to take my two kids out of Newport
12 El and move. But I shouldn't have to move. I can't
13 afford to move. I can't afford to lose any more tenants.
14 So please do something.

15 MR. ALLEN: Next?

16 MS. OBERMAN: Good afternoon, Mr. Allen and
17 staff. Denys Oberman.

18 I am a resident of the central Peninsula, and I
19 live approximately 80 to 100 feet from the subject
20 facility. I also live directly in the path of where the
21 residents of the facility regularly and for the
22 past -- well, beyond five years have walked to and from
23 the beach, up and down the boardwalk, et cetera. I
24 happen to live on the boardwalk.

25 I wanted to make a couple of quick points

1 relative to the findings. First of all, the documents of
2 complaints and the evidence of violations that have been
3 submitted by the residents during the 2003 through recent
4 period, somehow it has not made it into public record.

5 Prior to the initial December hearing, I did
6 feel concern about this, and I did voice my concern
7 orally and in writing by e-mail to Dave Kiff, and he said
8 he would look into it. It would appear that those
9 documents still have not been retrieved.

10 And I am -- those documents were created not
11 only by me personally but by a number of other residents.
12 But Jeff Myers was one, with a number of others. So we
13 would like to know where those documents are that were
14 primarily sent to the City Attorney.

15 MR. ALLEN: Can you identify them just a little
16 more. Is it a public records request you made, or is
17 this --

18 THE COURT: Some of the documents have to do
19 with the Public Records Act, but the documents I'm
20 referencing primarily are documents that are produced
21 directly by people.

22 They are complaints that were submitted
23 relative to physical code violations, TI, Tenant
24 Improvements, and work on gas lines, et cetera, being
25 done without permit and documentation thereof. It's

1 documentation of noise. It's documentation of complaints
2 about repeatedly loitering and swearing.

3 Complaints that were submitted to various City
4 departments, Code Enforcement. Most of them to John
5 Capler (phonetic), but also to some others. Documents
6 forwarded in to the City Attorney's office, which were
7 handled by several of his staff members in that
8 department. Complaints made to the police department.

9 MR. ALLEN: Possibly there's a response from
10 Mr. Kiff?

11 MR. KIFF: Hopefully you'll hold Ms. Oberman's
12 time?

13 MR. ALLEN: Yes.

14 MR. KIFF: I do, Denys, have about a seven-page
15 document from Jeff Myers that he submitted that addresses
16 profanity, fire danger, parking, code violations. I have
17 some material from you that also discusses items like
18 that.

19 So I think I have everything that's on the
20 record. We tried to appropriately characterize that
21 within the staff report, knowing that some of it is
22 speculation, certainly not all of it. But we do -- we
23 did consider it in the record with this case.

24 MS. OBERMAN: Okay. We don't see any evidence
25 that it's been considered. And I would be more than

1 happy, at a convenient time for you, to review the
2 documents you have to let you know whether that does
3 represent a complete record.

4 Okay. Going on to the question of Public
5 Records Act, in fact, one of the findings and
6 representations made by the operator on their revised
7 application is that the operator has been in compliance
8 with the relevant State, Federal and local laws.

9 The operator has not been in compliance with
10 the local laws, and we believe also the State laws on
11 several different occasions. One is -- I'll just mention
12 several incidents.

13 At the last hearing, I submitted an example of
14 a business license that was, in fact, obtained. But
15 there was a misrepresentation of what the business use
16 was. Said it was a personal service business rather than
17 a residential care and treatment facility. And the
18 requirement was very clearly stated in local ordinance.

19 Secondly, there were requirements, before the
20 local ordinances were modified in 2004, which required
21 this facility of this scale, a residential care facility,
22 to obtain a CUP. And that CUP was never defined. And we
23 did, in fact, find that evidence through a formal Public
24 Records Act request.

25 Next, the documents for this Federal exemption

1 permit that the City had required for facilities of this
2 scale in nature and that was passed into local ordinance
3 in 2004, that permit was never applied for or received as
4 well.

5 So we would say that this operator has been
6 operating for some period of time avoiding, you know,
7 getting the required permits and licenses.

8 Secondly, with the findings relative to
9 parking --

10 MR. ALLEN: Would you please wrap it up.
11 You've had an extra minute and a half.

12 MS. OBERMAN: Thank you. I'll take it.

13 MR. ALLEN: No, I've given you an extra minute
14 and a half. So go, please.

15 MS. OBERMAN: Okay. All right.

16 Parking. The operator contends -- I've got two
17 more point. I'll make them quickly.

18 Relative to the parking, the operator puts in
19 his completed application that, in addition to the people
20 that are going to visit and to the residents and to the
21 faculty, that he is -- that he has AA meetings, which he
22 cites to be of 20 people on the premises. There's no way
23 Jose that there's parking available for that many people
24 in that area.

25 And then lastly, this particular operator has

1 demonstrated that -- and even appears on a mission that
2 he is unable to control the behavior or actions of his
3 clients. And that's a major concern for an area that is
4 an area that is dominated by families not only that live
5 there but families whose basic life function is going to
6 and from school and playing with their kids involves
7 being in that area. And we're more than happy to submit
8 additional documentation. We'll continue to do so.

9 Thank you.

10 MR. MATHENA: Hello. Larry Mathena,
11 M-a-t-h-e-n-a. And I did submit written comments. Just
12 make a few observations hopefully briefly.

13 I want to make the observation -- and I have
14 not heard any refutation of Denys' points -- that if
15 there were a number of local filing requirements that
16 needed to be made that were not made in the past, then,
17 arguably, the current facility is, to some degree,
18 illegal.

19 And if it is illegal, then they are not an old
20 facility. They are a new one. And arguably, a new one
21 should simply be denied, period. So if the assertions
22 made are proper, then they are a new facility of excess
23 size. It should be denied.

24 Second point I'd like to make -- because I
25 finally did sit down and read the APA document that is

1 the basis, evidently, for relying on how these facilities
2 can be. Per that definition, this facility, and frankly
3 everyone else we've seen, is not a group home. It's a
4 halfway house.

5 The definition of group home within what you're
6 relying upon specifically talks about, quote, unquote,
7 long term rentals, i.e., years, not months.

8 And, in fact, that document is very explicit in
9 saying that a heavier burden should apply to halfway
10 houses, and that the density should not be so extreme.
11 And, in fact, it lays out the point that, because of the
12 transient nature of halfway houses, that an appropriate
13 standard should be something much more restrictive.

14 So I have a real problem with saying, oh, we're
15 complying with general philosophy, you know, stated law
16 about only one or two per block, when it doesn't apply to
17 anybody who's come here yet, period, including these
18 folks.

19 Second point -- and I feel compelled to make
20 this point. And I appreciate, actually, the candor of
21 this Applicant who goes out of his way to say, "We know
22 our people will fail." And, in fact, if we accept this
23 number at 14 people, that means 56 people a year will go
24 through their facility.

25 If that many people -- and assuming they are

1 all there 90 days, and it may actually be more, 36
2 percent of their people fail and actually, according to
3 their documentation, you know, will not remain sober
4 during their stay there.

5 That means during the course of a single year,
6 they will have 14 people in one facility that can't
7 control themselves relative to alcohol on a single block
8 300 feet from an elementary school. I'm sorry. I mean,
9 which sort of gets to my point. You know this now. This
10 is part of the public record. I have a real problem just
11 in term of your risk issues.

12 Two more very brief points. I see the red
13 light flashing. Number one, police reports. I have a
14 facility on either side of me. My wife has been
15 threatened. My daughter has now. I have. And frankly,
16 when we get to that facility, I'm going to come in with a
17 trash can that's about this far away from a gas tank that
18 is scared with cigarette butt burns in it. And I've had
19 the fire department tell me not to bother them.

20 Last point is, if we're going to go through
21 this process, I promise you, I will gather the evidence
22 that it will take to either make people run right or get
23 run out of business.

24 But this gentleman's observations get real
25 interesting. You have two different things that are

1 going to happen. One is you're going to raise all sorts
2 of privacy issues, horrendous ones.

3 And secondly, what you're telling us -- and I'd
4 love to have the police come in -- is to need to call the
5 police every time anything happens, because that's all
6 you folks seem to think matters.

7 And otherwise, we're continually subject to
8 harassment, intimidation and the like. And
9 it's -- you're setting yourself up that you're going to
10 need triple the size of the police force because you will
11 get those calls because you've invited them.

12 MR. ALLEN: Who would like to follow that?
13 Anyone else? Is anyone waiting to be last? Someone
14 raising their hand?

15 MR. LISKIN: I'd just like to make sure that
16 the questions I asked are going to be answered.

17 MR. ALLEN: The Applicant will be offered the
18 opportunity to respond to this after the public hearing
19 is concluded. Thanks.

20 MS. MC NEISH: Cindy McNeish. I live on the
21 Peninsula. I just have a very --

22 THE COURT: Spell the last name?

23 MS. MC NEISH: M-c, N-e-i-s-h.

24 I have a neighbor and good friend whose two
25 children go to Newport Elementary. And she was picking

1 up one of the kids one day. And out of the residence
2 we're talking about, there was a young man who ran out to
3 get in the car that was right in front of her. And there
4 was another man in that car.

5 And he came out, got in the car. But he was in
6 the car for 20 seconds, probably, she said. And then he
7 took -- ran right back into this facility. And she said,
8 "Oh, my gosh. I think I just witnessed a drug deal."
9 She had nothing to write on, no way to get the license
10 plate number. This car just took off. So now, she
11 doesn't let the kids ride their bikes to school. So
12 she's worried about it.

13 And one comment I wanted to make to the
14 operator is I think the principal has only been there
15 maybe two years. Just a thought.

16 MR. ALLEN: Anyone else?

17 Okay. We're going to close the public hearing
18 now. And it's probably appropriate to have the Applicant
19 have the opportunity to respond to whatever he'd like to
20 respond to here. And the one gentleman raised some
21 questions. If there's an opportunity for you to respond
22 to them, this is the time.

23 MR. NEWMAN: Sure. Thank you.

24 Mr. Allen, I'm going to answer a few different
25 questions that come up, specifically to Mr. Oberman.

1 This lady has continually harassed me and my family for
2 the past two years. She's gone out of her way to spread
3 rumors and innuendos about me personally to the owners of
4 my building, as well as the tenants of the buildings that
5 I work at.

6 A family member that was the center of her
7 rumors called her to ask her to stop spreading rumors
8 about her. Her pattern of behavior was finally
9 documented by the Newport Beach Police Department, as
10 well as Orange County Superior Court.

11 On June 3, 2007, Ms. Oberman was stopped for
12 failing to stop at a stop sign. No big deal. The
13 problem began when Ms. Oberman provided the Newport Beach
14 police officer false information. For some reason,
15 Ms. Oberman decided to provide the Newport Beach
16 policeman with the address of Newport Coast Recovery,
17 1216 West Balboa Boulevard. She stated she lives on the
18 bay front. I don't understand why that was. I can only
19 imagine what her intentions were.

20 MR. ALLEN: Now, are you -- is this directly
21 relevant to this proceeding? Because we don't want to be
22 here to impugn character.

23 MR. NEWMAN: It's not impugning character, sir.
24 She's putting my address down of my facility, my drug and
25 alcohol facility, in order to create a statistic there.

1 It's not a mistake. She did put down my address on that
2 citation, and she was cited for providing false
3 information to a police officer, because it was some
4 flippant move on her part.

5 She gave a false address, and there was a
6 reason for it. She was charged a misdemeanor for
7 providing this false information, and she was released on
8 her own recognizance. She pleaded no contest and paid a
9 fine.

10 This is -- the reason this is pertinent is it
11 just shows a pattern that she perpetuates. She goes
12 around and spreads rumors and innuendos, yelling fire in
13 at theater. And I'm tired of it. This lady has sat
14 across from me in meetings where I've told her, "I
15 promise I'll work with you."

16 And she says, "Great." We were in attorney's
17 offices. She acts like she's a friendly person.

18 MR. ALLEN: Let's go ahead and stick with the
19 conditions.

20 MR. NEWMAN: Okay. So now we're going to
21 go -- I want to go to the -- and I'll mention the actual
22 people that talked. Kristin, whose children -- Ingham,
23 whose children have had a hard time on the playground,
24 and her husband and her had to talk.

25 We don't have our clients on that place

1 anywhere on the weekends. They do not go to that NA
2 meeting on the beach. They don't go there. We had a
3 couple of clients go there over the years, but they are
4 no longer allowed to attend that meeting.

5 Ms. Oberman and a few of these other people
6 know that I personally walk that boardwalk Saturdays and
7 Sundays to ensure that my clients aren't out there. I
8 know what's going on out there. There's a big problem
9 out there with that unregulated -- I don't know. I
10 shouldn't say unregulated -- meeting that's going on out
11 there.

12 I walk up and down that boardwalk, and there's
13 certainly a lot of people smoking and loitering, and the
14 City should do something about that. But it's not fair
15 that I carry the burden of every rehab on my shoulder.
16 We were there before all these other rehabs. We were
17 there before Mr. Liskin. We were there before a lot of
18 these people that are complaining.

19 We've done our best to work with everyone. And
20 it's not fair that we're being basically looked at as the
21 center of all these problems. We have a facility at 1601
22 West Balboa Boulevard, one behind us, and one over on
23 11th Street owned by the same operator. We were there
24 before all three of those facilities opened.

25 Yet, the City is telling me I have to lower my

1 bed count. I lowered from 11 to 18 -- I mean from 29 to
2 18. And now I'm being told to go to 14, because there's
3 another facility behind me next to Mr. Myers that he
4 doesn't want there, and it's coming in after the fact.

5 So now, not only is Mr. Myers paying the price
6 for that, we're being told that we have to lower our bed
7 count so we don't have as high a concentration. When we
8 came there -- and we were the first ones there, there was
9 no high concentration. We were it. Everyone else
10 followed us. We don't follow everyone else.

11 And, you know, I could go on with people at the
12 last meeting who talked about being within a -- a rehab
13 shouldn't be within a thousand feet of the school. Yet,
14 they're the ones who sold the property to the people that
15 are within a thousand feet of the school.

16 You know, so I don't know who the profiteer is,
17 a broker who sold the property at 1601 West Balboa
18 Boulevard and then comes here and says there's no way a
19 rehab should be within a thousand feet. These people --
20 talk about profiteers. You know, I don't know who is
21 more of a profiteer there.

22 Mr. Liskin, I don't really want to answer this
23 man's questions. Okay. I've brought it up before. He
24 doesn't have a right to know what my census is. This is
25 private stuff. This is just like taking the pictures.

1 If he wants to know crime stats, he can go to the Newport
2 Beach Police Department just like I did and get this
3 information.

4 Mr. Liskin lives over three-quarters of a mile
5 away from my facility. I don't know what problems we
6 cause him. We don't walk by his home. I don't believe
7 he has children in the school. And I'd like to
8 know -- he has all these questions. I don't know what
9 we've done to interfere with his lifestyle.

10 And the people that I am interested in are the
11 people that tell me that there's something we're doing
12 that is threatening their children in a way that they
13 can't live with it, and I don't believe that's the case.

14 The last lady who spoke said the principal had
15 been there two years. She's been there for over five
16 years. Okay. She's lying to us. Okay.

17 Anyhow, if there's specific questions that you
18 want to ask that came up, I -- you know, everything that
19 was brought up -- we don't go to the meetings on the
20 beach. We're not on the blacktop. We have one van.

21 We try to keep our people from going in the
22 alley, talking on phones, using vulgar language. We do
23 our best. It will happen, and we will stop it. If that
24 happens repeatedly, we stop it, and we will have the
25 person leave the facility.

1 I want to treat -- you know, as I told
2 Mr. Myers, who's the only neighbor that has enough
3 respect to come and actually speak with me, that I would
4 work with him in any way possible. He doesn't spread
5 rumor and innuendo. He doesn't go around and try to make
6 stuff up and basically incite a situation.

7 There's only one person that's close enough to
8 our facility that's incited this whole thing, and she's a
9 couple hundred feet away, she said. The other gentleman
10 who's on 11th Street, next to a unregulated facility, is
11 absolutely right. There's -- I can't agree more than,
12 who wants to live next door to a halfway house that
13 doesn't have anyone watching it?

14 I take extreme offense to our place being
15 called a halfway house. It's licensed by the State.
16 It's highly regulated. They come out, and they don't
17 issue licenses freely. It's a very difficult process to
18 go through.

19 As far as Ms. Oberman telling us how we weren't
20 in compliance, we didn't need to have a Federal exemption
21 permit. We are State licensed. We don't need that
22 permit. That permit was specifically going to be for
23 people that are unlicensed facility offering sober
24 living. That wasn't what we had to do.

25 I came to the City. I talked to the City about

1 this. And if I was given wrong direction, it was only
2 because I was given wrong directions by the City. It
3 wasn't because of something we tried to go around.

4 Ms. Oberman probably knows -- you know, she
5 seems to take a lot of pictures and has a lot of
6 information about all the illegal things we've done. And
7 I can tell you that shoe fits both feet. And a lot of
8 things are going to be coming up there in the next few
9 days that are going to make this whole situation a lot
10 clearer.

11 But right now, what I'm stating is that these
12 people come in -- and I understand their problem with
13 rehab. But it's not fair for every problem to be thrust
14 upon us. We went. We've done our diligence. We've
15 talked with the police. We've talked with the schools.

16 The most important thing is we talked to the
17 schools and the principal. And that's no way to skew
18 that. Someone can stand out front and, I'll tell you
19 what, she can probably get 200 signatures.

20 Because there's not going to be one parent that
21 she's going to go up to and say, "Hey, listen. Do you
22 want to have a rehab in your neighborhood?" I'll sign
23 it, you know. That's what she wants. And that's what
24 they're going to get. Nobody's not going to sign that,
25 and I understand that.

1 But we're here. We've been good neighbors, and
2 we've been here before a lot of these people that were
3 complaining, and we hope to be here after. But really,
4 we just want to be judged fairly on what we've done and
5 what we have accomplished.

6 We have men that do very well in our program.
7 It's not 18- and 19- and 20-year-olds. We are an 18- to
8 80-year-old facility. We have 80-year-old men and
9 18-year-old men, and everything in between.
10 Professionals, bank presidents, local doctors, local
11 attorneys, people that work in this area, people that
12 live next door to us.

13 I have a feeling that the view here is that
14 everyone that's in treatment is coming from outside this
15 city, and that's absolutely not true. And if anybody
16 wants to find out that stat, they certainly can go and
17 find out how many people were arrested in Newport Beach,
18 how many people are arrested on the Peninsula, and all
19 those things.

20 That's not information that we have, and that's
21 not information that we're willing to provide. But it is
22 successful, if everybody wants to go through the City.

23 Any other questions you might have, I'm happy
24 to answer.

25 MR. ALLEN: I don't have any other questions at

1 the moment.

2 Mr. Liskin, there were allegations back and
3 forth. I think we're through with the personal issues.

4 MR. LISKIN: It's not personal. He asked a
5 direct question, why am I concerned?

6 MR. ALLEN: It doesn't matter. Everybody's
7 concerned for one reason or another here, and you don't
8 have a right to respond to that. Thank you.

9 Does the staff have anything in particular that
10 you would like to propose at the moment?

11 MR. KIFF: Well, I do have a couple of
12 clarifying comments that I hope might be helpful. A
13 number of the, what, roughly ten people that spoke, a few
14 many of them asked questions, and I'll try answer those,
15 and -- with the understanding that I'm doing this as
16 they're speaking and trying to be helpful to you,
17 Mr. Allen, in the guidance.

18 A couple of folks made an important point about
19 the Narconon meetings that are on the beach, and
20 Mr. Newman referred to those as well. I agree that these
21 are a problem.

22 And it's been brought to my attention by the
23 Council member representing this area, as well as the
24 residents, that we need to exhaust all administrative and
25 legal abilities we have to make sure that either that use

1 is contained in the matter that's not impactful to the
2 residents or goes away. The problem we face, of course,
3 is the beach is open to everyone.

4 But just so folks in the audience know, I have
5 tried to communicate with Narc -- I'm sorry -- Narcotics
6 Anonymous. I apologize if I said Narconon. I did, but I
7 meant Narcotics Anonymous. It's an NA meeting. And I've
8 communicated with Narcotics Anonymous to try and meet
9 with the organizer and to address these problems as best
10 we can. So please know that that's underway.

11 The one gentleman said he did have photos of
12 those beach meetings. Those are always appreciated as I
13 work with that organizer to, again, try to change those
14 meetings. So if you wouldn't mind providing me with
15 those at your leisure, please do.

16 Mr. Mathena raised some interesting issues
17 about the American Planning Association standard that I
18 wanted to address. He did talk about the difference
19 between a community care facility and a halfway house.

20 I have to disagree with Mr. Newman. I do think
21 the Newport Coast Recovery facility is, as the APA would
22 define it, more of a halfway house. I think that's does
23 have a negative connotation. I think when the American
24 Planning Association was discussing it, it was not
25 intended to. It was to think that this person is halfway

1 towards reintegrating in society.

2 But I'll try to put something up on the screen
3 to show folks what is coming. What the APA standard
4 says, and it's Policy 4,

5 "Halfway houses should be allowed in all
6 single family zones by a special use permit due
7 to their multi-family characteristics --
8 multiple family -- that warrant the extra
9 scrutiny provided by the use permit."

10 So I don't know that I've characterized it the
11 same way Mr. Mathena did, that there should be a tighter
12 standard than one per block. But I do think -- it does
13 say right there that,

14 "Halfway houses are not, per se,
15 incompatible with single family, but the
16 heighten scrutiny of a conditional use permit
17 hearing," which is what we're doing right now,
18 "is warranted to assure that the proposed
19 halfway house will be compatible with other
20 land uses in the single family district. The
21 standards to apply are the same ones used for
22 other special uses."

23 So that's just background on how we got to that
24 statement in the ordinance a full year ago.

25 MR. MATHENA: Excuse me. I feel compelled to

1 observe that there's other language in that thing taken
2 as a whole that are very explicit in saying that these
3 things are the equivalent of multi-family. They are more
4 burdensome, and there shouldn't -- they definitely
5 shouldn't be applied if you take that as a whole.

6 MR. ALLEN: We understand. It's a lengthy
7 document with a lot of issues and a lot of ambiguity in
8 it as well.

9 MR. KIFF: And I'm happy to re-review that.
10 This is just, again, my cursory review of a document that
11 we considered a full year ago.

12 Secondly -- let's see if I had another note
13 that folks brought up. I guess those are all the
14 comments that I had about the questions or comments that
15 individuals made.

16 I know, Mr. Allen, you may have some questions
17 more about the ordinance and about that APA standard and
18 block distance, and things like that. So I'm happy to
19 entertain those questions.

20 MR. ALLEN: Please, no more comments. You've
21 had an opportunity. You've debated this a lot, and
22 you've gotten an good opportunity to present all your
23 thoughts. We could go on arguing and debating for days
24 on this.

25 My observations are the City Council, for the

1 last couple of years, has been challenged by this issue
2 as a result of a lot of the political activity and legal
3 activity by people on the Peninsula and elsewhere.

4 And the Council did the best job they could
5 under the legal constraints that they have to draft an
6 ordinance that addresses as many of the issues as they
7 can in attempts to establish some standards, and a lot
8 tighter standards in many instances, incidentally, to
9 allow the City to regulate these facilities, particularly
10 that have heretofore been done clearly.

11 The constraints that would be put on this one
12 that's before us now are so much more rigid than has been
13 done in the past. One of the biggest issues we face here
14 is that use permits are very permanent in nature, despite
15 the fact they permit uses that are not otherwise
16 permitted the right in the district where they are
17 allowed to locate.

18 They run with the land. They are permanent
19 covenants, if you will, to the land. They are freely
20 transferable by one owner to another. They are very
21 difficult to revoke or even modify once they are in
22 place. Very difficult. And so these have to be granted
23 with a great deal of care.

24 My sense is that this particular use is right
25 on the border as far as what the City Council was seeking

1 to address and say this is one too many for this
2 location.

3 The Hearing Officer's required to view the
4 concentration alone as an issue. The Hearing Officer's
5 required to address the issue of the changing character
6 of the neighborhood as a result of the use. And the
7 Hearing Officer's also supposed to look at the proximity
8 of other uses, like schools, to the particular use.

9 This one has a school in close proximity. It's
10 close to at least one other facility. And I noticed in
11 the staff report that it states the Hearing Officer's
12 precluded from considering six or fewer facilities that
13 are in close proximity, and I didn't quite understand
14 that provision. I wonder if you could just quickly
15 address that before I go on.

16 MR. KIFF: Sure, Mr. Allen. I apologize if
17 I've mischaracterized it. You're allowed -- and I
18 believe the ordinance allows you to consider an existing
19 six-or-under.

20 The issue with this facility is that the 1217
21 West Bay facility is not existing yet. It's not in
22 operation. We expect it to be in operation, but the
23 ordinance doesn't say to consider things that you expect
24 to be in operation.

25 MR. ALLEN: Okay. That's what I thought was

1 probably the case, and it makes this whole issue much
2 more difficult than the general separation between uses,
3 for instance, for adult uses, where you establish a
4 separation. And that's the beginning of the end.

5 In the recovery facilities, the City can
6 attempt to do separations and still not get there because
7 of the inability to regulate the smaller ones. But
8 that's just something that has to be dealt with here in
9 the legislative process and the hearing process.

10 So in any event, I guess we're legally
11 constrained from not being able to consider a use that's
12 pending and seeking approval right behind this one. But
13 Balboa Horizons is about 300 feet away.

14 The concept of concentration, insofar as the
15 American Planning Association standard is concerned, as I
16 read it, has to do with the concept of
17 institutionalization, that is that when there are several
18 or a few in close proximity, the concept is that they
19 become interactive, that it becomes a more
20 institutionalized zone rather than a residential zone.
21 And the occupants, therefore, don't have the feeling of
22 being in a normal residential zone.

23 Whether that happens here, I certainly can't be
24 certain. But that's a concept that's advanced, as I
25 understand it.

1 Mr. Kiff alluded to the fact that there are
2 some concerns that I've expressed with respect to minor
3 ambiguity but may be major significance with respect to
4 this ordinance and specifically the distancing or
5 separation that can be -- that is to be applied.

6 And are you putting that up on the screen now,
7 by chance?

8 MR. KIFF: Yes, sir.

9 MR. ALLEN: The particular issue that finds its
10 way here is that the ordinance recognizes and addresses
11 the fact that there are blocks in the City of Newport all
12 the way from 300 feet long to 1200 feet long. And it's
13 necessary to arrive at some degree of standardization was
14 my understanding of this ordinance. But I may not be
15 absolutely correct in this instance.

16 And Mr. Kiff and apparently Counsel for the
17 City have proposed an analysis of that in short order, so
18 that it could be applied.

19 MR. KIFF: Mr. Allen, and for the audience, up
20 on the screen is the text of the ordinance. And this
21 is -- I apologize. It's Section D of 20.91(a)060.

22 These are the findings that the Hearing Officer
23 has to make, and I'm focusing on D, that's the one that
24 Mr. Allen was referring to, where it says that,

25 "The Hearing Officer needs to make a finding

1 that the use will be compatible with the
2 character of the surrounding neighborhood. In
3 making this finding or sustaining a finding,
4 the Hearing Officer" -- and then "if appealed
5 to the City Council, shall consider as
6 appropriate the following factors: First one
7 is the proximity of schools and parks, outlets
8 for alcoholic beverages."

9 And so these are addressed in the staff report.

10 "The second one is the existence of
11 substandard physical characteristics of the
12 area which the use is located, such as lot
13 width, set backs, et cetera."

14 This proposed facility -- sorry. This existing
15 facility is within the non-standard subdivision area
16 that's depicted within the ordinance. And basically,
17 that is all of the Peninsula, most of West Newport and
18 Lido Isle.

19 And then -- so if something is proximate to
20 schools, parks, et cetera, and if it exists in the
21 sub- -- non-standard subdivision area, then the Hearing
22 Officer can decide whether, in light of that, it's
23 appropriate to apply the APA standard of one to two such
24 uses per block.

25 And then it discusses this concept that in

1 Newport Beach, block differences -- block lengths vary
2 quite a bit. The average calculable block length,
3 though, is 711 feet. The median is 617.

4 So then, it directs the Hearing Officer to
5 apply the APA standard in a manner which eliminates those
6 differences in block lengths. And then in making the
7 determination, the Hearing Officer is supposed to be
8 guided by those blocks lengths.

9 And then there's an important sentence. It
10 says, "The Hearing Officer shall retain the discretion to
11 apply any degree of separation of uses which he or she
12 deems appropriate in any given case." And then it refers
13 to the APA document that I had on the screen earlier.

14 So there's some "shalls" and "musts" in there.
15 There's also "retaining the discretion to apply any
16 degree of separation of uses." This was discussed. This
17 was written this way so as not to apply what special
18 Counsel in California -- sorry -- our special Counsel,
19 but looking at what the 9th Circuit U.S. District Court
20 of Appeals has said is that a hard and fast standard of
21 say 1,000 feet, or 700 feet, or 300 feet, is not legal in
22 the 9th Circuit.

23 So thus, an ordinance that is created to allow
24 you, as a Hearing Officer, and then ultimately City
25 Council, potentially, to use your judgment, look at the

1 neighborhood characteristics, look the situation on the
2 ground.

3 I apologize. I know that's not helpful.

4 It's -- it's something that --

5 MR. ALLEN: It's descriptive of the problem
6 we're facing here. And it's -- as you can see, there's
7 ambiguity and there's difficulty in application of it.
8 You just can't simply pull out a ruler on a map or go out
9 on the street and put down a tape measure and decide
10 where these uses can go.

11 There's been a lot of testimony on this one
12 about the troubles and problems associated with this
13 particular use. There's no question about that. And
14 it's all sincere and well intended, I know.

15 I am of a mind that this matter should be
16 denied. Mr. Kiff, do you have a feel for findings that
17 could be created that would support that conclusion in
18 this instance?

19 MR. KIFF: Well, just thinking through what the
20 ordinance says, and we've had to do this as we've
21 approached each hearing. If, indeed, your inclination is
22 to issue a denial for this use permit application, the
23 findings would be a number of things.

24 One would say that the proximity to Newport
25 Elementary. The other would be the proximity to Balboa

1 Horizons. You also could say that the proximity to the
2 Christ Church licensed day care facility, which is around
3 Newport El as well.

4 So I think we could come back to you with those
5 findings in support of that, that basically say that it's
6 more than -- that the APA standard -- that being
7 consistent with the APA standard would allow you to look
8 at the distances of these other uses and declare that
9 this use is not appropriate in this location.

10 Mr. Allen, in light of what I've just said, is
11 there a direction that you'd like to give us to further
12 refine that or to include specific information such as
13 that in a denial finding for the record?

14 MR. ALLEN: Yes. My particular concern is what
15 is the nature -- definition of the block, of the length
16 of the block, that this ordinance directs be applied?

17 You've given an interpretation that this is a
18 non-standard subdivision area, and ergo, this average
19 median block definition may not be applicable, as I hear
20 what you're saying. And I may be wrong, and let me keep
21 going, and then you can respond.

22 MR. KIFF: Okay.

23 MR. ALLEN: But as I read that section, it's my
24 impression that the intention of the drafters of the Code
25 and, therefore, the City Council was to establish a

1 criteria in terms of the length of a block that's
2 applicable throughout the City.

3 So that if there's facilities up on the port
4 streets, the same number would at least be addressed, and
5 same block length would be viewed there as it would in
6 the Peninsula, despite the fact there's such a difference
7 in density between, let's say, the port streets or any
8 other large residential areas, like Oak Shores and the
9 City, versus Corona del Mar and the Peninsula here, where
10 there's a lot more people per dwelling unit or per
11 parcel.

12 And that's where I think the consideration of
13 the -- or the discretion, I should say, of the Hearing
14 Officer would come into play, both in application of
15 number of beds and number of units per block that would
16 be applied.

17 And I guess that's what I'm trying to get
18 through here, because I'd like to have this resolution
19 prepared denying this facility contain the proper block
20 application so that the City Council understands what was
21 intended here, assuming this matter gets appealed.

22 MR. KIFF: I see. And the last several
23 sentences you said are consistent with the thinking of
24 the Council, I believe, that in this non-standard
25 subdivision area -- again, this is part of the Peninsula.

1 This is within the area that is characterized by shorter
2 blocks.

3 In this area, you can decide that just because
4 a block is short doesn't mean you can say -- doesn't mean
5 that you have to say there should be one or two uses on
6 that block, that you can expand the distance and consider
7 two blocks or three blocks guided by that roughly 711
8 foot line, and say that, "You know what? In this case, a
9 block should be longer."

10 So, as a Hearing Officer, you would permit one
11 or two uses in a longer block -- or sorry, a longer
12 stretch of land. It doesn't necessarily comport with the
13 block distances. So I'm reiterating what you're saying
14 maybe in different words, but I think your understanding
15 is correct.

16 MR. ALLEN: Okay. Obviously the other issues
17 that you referenced are also apparent in this one. This
18 is probably an area -- I did not attend City Council
19 hearings or even read the newspaper about this to speak
20 of, but I have my senses that this is concentrated area
21 on the Peninsula was one of the ones that the City
22 Council felt was necessary to address. And, therefore, I
23 feel as though, as a Hearing Officer, I need to address
24 the concentration in this area.

25 And so, I would request or require that a

1 resolution be brought back, and give yourselves enough
2 time to do it as best you can. And at the same time, we
3 need to move forward as quickly as we can to deny this
4 application.

5 MR. KIFF: Thank you. Well, I'll discuss that
6 with Debbie and Janet, and we will work with your
7 calendar to see what -- actually, I'm not even sure if
8 this needs to be at a second hearing where the findings
9 are -- let's kick that around here.

10 Do we need to reschedule this for a public date
11 certain?

12 MR. ALLEN: Probably should be a formal
13 adoption, even though it won't be a public hearing. It
14 would still just be a formal adoption that would commence
15 the time running for appeal of the whole thing.

16 MR. KIFF: Go ahead, Debbie. Why don't you
17 fill us in.

18 MS. LINN: I believe you can make your
19 determination. You can call for the resolution to
20 return. The question of whether it needs to be adopted
21 formally as a hearing item or a minute action, I'm not
22 sure.

23 MR. KIFF: We'll clarify that with Counsel, if
24 Kit doesn't know it off the top of his head, which he
25 might.

1 We do have an opportunity, Mr. Allen. We have
2 another hearing on Thursday, the 22nd, for the Kramer
3 Center. That's a continued hearing. At the start of
4 that hearing, you could, by order, execute that
5 resolution for Newport Coast Recovery.

6 MR. ALLEN: That's perfectly simple for me, if
7 that gives you enough time to do this job. It's a big
8 job.

9 MS. LINN: Oh, to draft of the resolution?
10 Yes. It has to go --

11 MR. KIFF: Ten days.

12 MS. LINN: We have ten days, yeah.

13 MR. KIFF: Does that seem reasonable?

14 MS. LINN: Sure. We'll do it.

15 MR. KIFF: We'll take care of that then.

16 MR. ALLEN: Okay. I think my thinking has been
17 hopefully sufficiently articulated to support the
18 determination.

19 We have the proximity of the school. We have
20 the concentration of these uses in close proximity here,
21 and they are set forth in the staff report. Ocean
22 Recovery and Balboa Horizons and the other owner
23 recovery, the church down the street, alcohol outlets at
24 Fry's market, and again, at the American Legion, all of
25 which are factors that work together.

1 A lot of emphasis, from my perspective, is the
2 combination of the several together here with the
3 elementary school. And I don't want to overemphasize
4 petitions that's signed by parents of children just today
5 and recognize that the emotional responses like this can
6 be misleading sometimes.

7 But nevertheless, I think it's a very
8 significant issue. And the community obviously feels
9 that way, or you wouldn't have kept coming back and
10 bringing it up time and again, both in writing and in the
11 public hearings that we've conducted on this one.

12 That's a summary of my determination. And
13 unless -- does the staff have anything else to add?

14 MR. KIFF: I would just add that the process
15 from here then, in addition to the hearing -- at the
16 public meeting at which you would execute that resolution
17 on the 22nd, the Applicant has an opportunity to appeal
18 that, and that would be to the City Council.

19 It's not a de novo hearing. So all of the
20 material presented to us would be all of the material
21 that can be considered by the City Council at that
22 hearing. So that's up to the Applicant, certainly, but I
23 just wanted to make sure the folks in the public and the
24 Applicant knew what the options are from here.

25 MR. ALLEN: Thank you. And we're adjourned.

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(Ending time: 5:33 p.m.)

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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: JAN 14 2009

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

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